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| Report Title | Beddington Farmlands Update | | |
| Committee | Housing, Economy and Business Committee | | |
| Meeting Date | 6 June 2023 | | |
| Chair | Councillor David Bartolucci | | |
| Report From | Spencer Palmer, Strategic Director, Environment, Housing and Neighbourhoods Directorate | | |
| Report Author(s) | Andy Webber, Head of Development Management and Strategic Planning | | |
| Ward(s) Affected | Beddington | | |
| Ambitious for Sutton priorities | Action on Climate Change An Inclusive Place for Everyone | | |
| Open/Exempt | Open | | |
| Signed |  | Date | 25 May 2023 |

1 Summary

- 1.1 The delivery of the restoration of Beddington Farmlands forms part of the Council's Corporate Plan, and supports the Ambitious for Sutton plan priorities of taking Action on Climate Change and being An Inclusive Place for everyone. It is imperative that the restoration is completed within time and to the expected quality indicated in the relevant planning permissions. This significant strategic priority is set out in Policy 5(e) and Policy 26 of the Council's Local Plan and is supported by the Biodiversity Strategy, the Environment Strategy and the council's contributions towards the Wandle Valley Regional Park. The area forms part of the All London Green Grid and is recognised as a significant regional asset in the London Plan (policy G4).
- 1.2 The restoration of the Beddington Farmlands from its use as a landfill site to an important high quality nature reserve was a condition attached to Viridor's planning permission for the landfill operations and the adjacent Energy Recovery Facility (ERF).
- 1.3 Since the last update to the Housing Economy and Business Committee on 6 December 2022, VWM were expected to produce a new project plan and viability assessment which was discussed at a workshop attended by members of the Conservation Access and Management Committee (CAMC) on 8th March. It is evident from this workshop that

the approved restoration will not be completed by the end of 2023 but the delays by VWM are preventing the formal consideration of their alternative proposals. As such, the Council is in the process of initiating formal enforcement action against the breach of the planning permission(s) and legal agreement(s) by the failure to provide the Restoration, with the aim of progressing the required works on the site.

2 Recommendation(s)

- 2.1 To note the latest update on the status of the restoration.

3 Background and Key Information

- 3.1 VWM is the company set up following the sale of the shares of Viridor landfill in April 2021 to Frank Solutions Ltd. The Council understands that as part of that share sale, all staff and resources set aside by Viridor landfill for all of the sites involved in the sale, including Beddington Farmlands, were transferred to what is now Valencia Waste Management. VWM, as successors in title for the land from Viridor landfill operations, are required to restore the site from landfill by the end of 2023. This includes a variety of new habitats, including wet grasslands and acid grassland / lowland heath, as well as the management and enhancements of habitats created prior to the agreement of the current planning condition. In total, habitats on site are to include lakes and islands, reedbeds, sacrificial crops (winter bird food resources), meadowlands and the management of the 'displacement habitats' (old sludge lagoons important for target species, particularly lapwing).
- 3.2 The overarching objectives for the restoration of the site are set out in the Conservation Management Scheme (CMS), which has seven objectives, six around target species and the necessary habitat creation and enhancement to provide for those species, as well as the final objective, which is to deliver appropriate public access.
- 3.3 The habitat creation, habitat management and public access objectives of the CMS are to be delivered through condition 42 of the landfill permission (D2015/72898) the Restoration Management Plan (RMP/RAMP). It is the delivery of the RMP/RAMP that is required to be completed by December 2023.
- 3.4 VWM has sole responsibility for delivering the RMP. The council not only continually monitors VWM's obligations to deliver the restoration of the farmlands site but also provides technical advice. Monitoring is undertaken on a continuous basis by the Council's Senior Biodiversity Officer, Reserve Warden, and the Principal Enforcement Manager.
- 3.5 The Senior Biodiversity Officer chairs the Conservation Science Group (CSG), which was set up following the landfill planning permission granted in 1995 and includes representatives from VWM and Thames Water as major landowners, and local conservationists including the Beddington Farmlands Bird Group. The CSG provides technical advice to VWM on habitat creation and management and species

management. The CSG meets every three months and provides updates to the Conservation and Access Management Committee (CAMC) on progress, decisions and areas of concern. The CAMC's role is to ensure that the owner/operator abides by the objectives set out in the relevant permissions that govern the implementation and future management of the restoration.

- 3.6 VWM is required to provide the financial means for the provision of a Council Officer, to oversee the restoration and development of the site. This payment is for a 25 year duration. The Reserve Warden was appointed in August 2020.
- 3.7 The report to the Housing Economy and Business Committee in July 2022, as updated by the report to the meeting on 6 December 2022, set out the latest position on a number of key areas and the following sets out the current situation.
- 3.8 **Programme of works**
- 3.9 Since the previous HEB meeting, VMW has appointed a specialist consultant *Stantec* to bring forward a review of the viability of the Restoration Management Plan, which was discussed at a 'Master Planning workshop' with CAMC members on 8 March 2023. At this workshop, potential changes to the Restoration Management Plan were outlined and the rationale for the changes explained by VWM. Stantec, on behalf of VWM, outlined the current position ahead of the master planning session in relation to the restoration which they have found to be unsustainable and unviable, in the following ways:
- *Acid grassland (12.60 ha) was deemed to be unviable as the soil conditions on site are unsuitable and the habitat fits poorly into the wider environment.*
 - *Wet grassland (14.55 ha) was deemed to be unviable in its current form near the north of the site, known as phase 1 and 2, as the hydrological conditions on site are not suitable (insufficient water) and in addition the corrective actions required for this increase the risk of pollution (for which the habitat is very sensitive).*
 - *Heathland (3.15 ha) was deemed to be unviable as the soil conditions on site are unsuitable and the habitat fits poorly into the wider environment.*
 - *Wet woodland (0.21 ha) was deemed to be unviable in its current form as the hydrological conditions on site are not suitable (insufficient water).*
 - *Reedbeds (2.70 ha) were deemed to be unviable in their current form as the hydrological conditions on site are not suitable (insufficient water)."*
- 3.10 It is disappointing that this summary only amounted to a rehearsal of previous discussions, with little evidence of new ideas or a real sense of urgency to make progress. It is important to note that whilst there are challenges, Council officers do not agree with Stantec's conclusions on each habitat and note that the issues they refer to

arise from a lack of dedicated forward planning, resources and implementation over a long period of time, which VWM has inherited from Viridor, after undertaking 'due diligence' before completing their purchase of Viridor's interests in the site. It is also of note that the origins of this habitat creation has been known to the responsible site owners since 1995, with some minor adjustments over time. The output from the workshop was that VWM will review all feedback and prepare a revised masterplan to be brought forward as a formal planning application to vary the Restoration Plan, after a detailed pre-application submission. To date, the Hackbridge and Beddington Corner Neighbourhood Development Group has commented that "*While understanding there is a lot of work that needs to be done to provide the output and way forward from the master planning session, the community is understandably very concerned about timings and deliverability that were not covered in the session.*" There has been no further output from VWM, since the 8 March 2023 meeting.

- 3.11 Although VWM characterises the proposed changes as not being significant, this is not the case in practice. Taken individually, the change from acid grassland and heath to a lesser quality meadowland habitat is considered to be a significant material change that would require the amendment of the originating planning permissions, both as a measure of the downtrading in biodiversity quality but also in view of the quantitative change of 15.75ha of habitat as part of the overall site restoration of c.94ha.
- 3.12 The lack of viability of the northern wet grassland areas is due to the lack of readily available water. Thames Water are currently undertaking a water sustainability study but the initial outputs from that are that a water abstraction permit, to pump water from the Main Effluent Carrier to the wet grasslands (and displacement habitats) is highly unlikely to be granted by the Environment Agency. As such, Stantec proposed converting Phase 2 wet grassland into some kind of reservoir, to be able to provide water to Phase 1 wet grassland. Where the water to fill the reservoir is to come from was not fully explained, given the likely lack of an abstraction permit being granted.
- 3.13 All of this leads to the conclusion that the Restoration will not be completed by the end of 2023, either in its original manifestation or through some future revision to the Plans. There is insufficient time for the former, and the timeframe for revising the Restoration, assuming agreement can be reached on a way forward, means it is now a realistic prospect that the Restoration will not be completed on time.
- 3.14 **Planning Enforcement**
- 3.15 In light of the continued delays, the failure to provide the Restoration Plan to enable delivery by the end of December 2023, and the lack of a timescale to complete a formal process that would consider alternative habitats, it has been considered necessary to commence formal enforcement proceedings.
- 3.16 The option of commencing enforcement proceedings is being brought forward after obtaining legal advice on the most appropriate course of action. In summary, this is to enforce the lack of compliance with the relevant clause(s) in the legal agreement(s) as

this would be the most effective means of enforcing against the non-delivery of the RMP, because this means that the responsible owners would be liable for prosecution through the continued failure to comply with the terms of the legal agreement. It is a more direct route to securing compliance as there is no appeal process in place unlike the service of breach of condition and/or enforcement notices. The Council wrote to Valencia Waste Management on 23rd May 2023 as successors in title to Viridor, and who are liable for the ongoing obligations which run with the land. The Council has also issued a formal letter to Viridor as they are also liable for breaches occurring because they are still bound by the failure to deliver the restoration in the period of their ownership.

- 3.17 Appendix A sets out the factors that have led to the current position and summarises some of the key breaches of the Restoration Management Plan on the site.
- 3.18 The above represents a summary of the main breaches but it is not an exhaustive list. These matters were set out in the letters to VWM and Viridor and required that the breach(es) cease and for them to carry out all works required within the specified restoration management plan. The letter carries a strong warning to VWM and Viridor that the seriousness of the breaches means that the Council will pursue a mandatory injunction¹ under section 187B of the Town and Country Planning Act 1990 (as amended) requiring the cessation of the breaches of the planning permission(s) and legal agreement(s)
- 3.19 The intention of this action is to achieve a positive response from VWM, by requiring them to complete the restoration in accordance with the RMP, and the warning letter is giving formal notice that the repeated failure to complete and manage habitats constitutes a serious offence. The Council will allow a reasonable period of time for VWM to respond. Should that response not provide the Council with the necessary assurance that positive action will be taken to address the breach of planning control, then the next steps would be to take action in the form of a mandatory injunction in respect of the non-compliance with the terms of the planning permission(s). It is important to stress that enforcement will not deliver the agreed habitats and public access by the end of 2023. By taking formal enforcement action it is considered that this would give greater control and assurances that the necessary time and resources will be applied to completing the restoration.
- 3.20 **Conclusion**
- 3.21 VWM have repeatedly been asked to give this project their urgent attention but there is an overwhelming concern by the Council that there is insufficient time and resources available for VWM to complete the restoration by December 2023.
- 3.22 The Council has considered the full range of potential enforcement powers available as it is now evident that the restoration will not be completed on time. After obtaining legal advice, the most expedient means of securing compliance is to pursue the

¹ <https://www.legislation.gov.uk/ukpga/1990/8/section/187B>

non-compliance with the obligations within the legal agreement, given that this would be the most effective way of securing the completion of the restoration as it does not allow for the possibility of a planning appeal against the service of a breach of condition and/or enforcement notice, which would significantly add time and cost to the process for the Council.

4 Benefits to Sutton and its Residents

- 4.1 The restoration programme is an important part of the Ambitious for Sutton corporate plan, as it will provide opportunities to residents to enjoy outdoor space and engage with the nature reserve. This is important for both physical and mental health and well-being. It will provide people with greater opportunity to enjoy the benefits of nature, which became more evident during the pandemic. It will significantly add to the borough's open space.
- 4.2 Beddington Farmlands will become the largest space dedicated to nature within Sutton and provide a significant amount of habitat to scarce and threatened species, especially lapwing, little ringed plover and a wide variety of other species rare within the London conurbation. The new habitats on site will provide a focus for wildlife tourism (in a similar vein as London Wetland Centre), as well as increasing species resilience in the face of a changing climate.
- 4.3 The successful delivery of Beddington Farmlands will provide significant landscape scale connectivity of green space within south London, forming part of the Wandle Valley Regional Park and All London Green Grid, linking existing parks and areas important for wildlife. The delivery of Beddington Farmlands is a key aspect of the Council's Biodiversity Strategy, to create 'more', 'bigger', 'better' and 'better connected' habitats.

5 Implications

Equalities Implications

- 5.1 There are no material equalities implications resulting from the recommendation of this report.

6 Finance and Legal Commentary

Finance Comment

- 6.1 The costs of the restoration of Beddington Farmlands will be met by Valencia Waste Management Ltd. Council Officers involved in the advice/monitoring of the works are funded within existing resources so do not present any financial pressures.
- 6.2 Since enforcement actions are being taken the Council will now incur legal costs. A KC has been commissioned at a cost of circa £5k but these costs could increase should the

matter end up in the courts and also if the Council has to step in and complete the restoration works on the land.

Financial Risks

- 6.3 Any action taken and all of those considered will have a financial cost to the council due to the complexity of the case, the officer time required and the specialist advice needed. An injunction is seen as the least 'risky' and lowest cost option. The 'Bond' on the land - while substantial - is unlikely to come close to sufficiently covering the cost of the remaining restoration works required.

Legal Comment

- 6.4 Counsel advice has been sought regarding the various enforcement options available to the Council and they are summarised in paragraphs 3.15 and 3.17 of this report. The change of name of the site owner does not affect those options

Legal Risks

- 6.5 Failure to take any enforcement action or advise VWM as to possible action in the event of continuing breaches will mean the restoration is unlikely to go ahead. This would cause reputational harm to the Council and long delays may undermine our future options.

7 Appendices and Background Documents

7.1 Appendices

| Appendix Letter | Appendix Title |
|------------------------|----------------------------|
| A | Summary of Planning Breach |

7.2 Background Documents

| Date of Expiry | Background Document |
|-----------------------|----------------------------|
| N/A | N/A |

8 Consultations

| Consultees | Yes/No | Officer | Date of Comments |
|----------------------------|---------------|----------------|-------------------------|
| Finance | Yes | Ramesh Teelock | 02/05/2023 |
| Legal | Yes | Allison Letts | 27/04/2023 |
| Commercial and Procurement | No | n/a | n/a |
| Others | No | n/a | n/a |
| EQIA | No | n/a | n/a |