



STRATEGIC PLANNING COMMITTEE

Thursday, 19 October 2023

10.00 am

Luttrell Room - County Hall, Taunton TA1 4DY

SUPPLEMENT TO THE AGENDA

To: The members of the Strategic Planning Committee

We are now able to enclose the following presentation slides which were unavailable when the agenda was published:

- | | |
|---------------|--|
| Agenda Item 5 | Wildlife and Countryside Act 1981 Section 53 Schedule 14 -
Application to upgrade footpath WN 27/4 and part of footpath WN
23/11 to bridleways from the A303, Queen Camel to Sparkford Hill,
Sparkford (Pages 3 - 18) |
| Agenda Item 6 | Progress Report: Phosphates and work undertaken to achieve
nutrient neutral development in the Somerset Levels and Moors
(Pages 19 - 46) |

This page is intentionally left blank

Strategic Committee

19 October 2023

Item 5 – Application 851 to upgrade Footpaths to Bridleways within the Parishes of Queen Camel and Sparkford

WILDLIFE AND COUNTRYSIDE ACT 1981 – SECTION 53

SCHEDULE 14 APPLICATION

APPLICATION TO UPGRADE FOOTPATH WN 27/4 AND PART OF
FOOTPATH WN 23/11 TO BRIDLEWAYS WITHIN THE PARISHES
OF QUEEN CAMEL AND SPARKFORD

Page 4

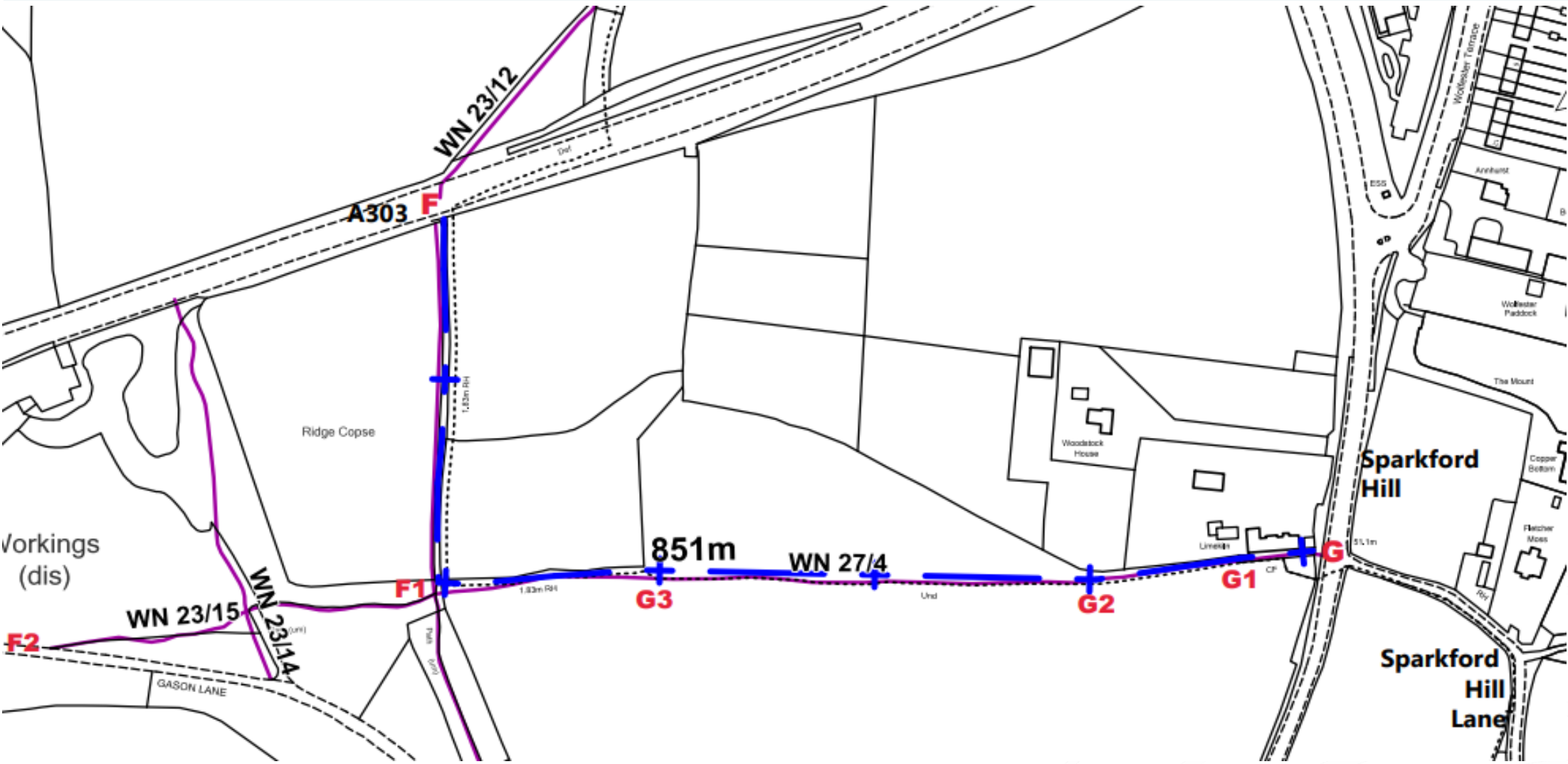
Application: 851M
Author: Sue Coman
Dates: Report: September 2023
Presentation: October 2023

Details of the Application

- An application was made by the South Somerset Bridleways Association in 2017
- The applicant claims a public bridleway is missing from the Somerset Definitive Map from the A303, Queen Camel to Sparkford Hill, Sparkford
- A public bridleway can be used by the public on foot, with bicycles, or riding or leading a horse

Application 851M (F-G)

Page 6



Potential outcomes 1

- Refuse to make an Order, in which case the route will remain a footpath
- If it is determined that public rights exceed those currently recorded, resolve to make an Order in the form of one of the following;
 - Bridleway
 - Restricted Byway
 - Byway open to all traffic (commonly referred to as a: BOAT)

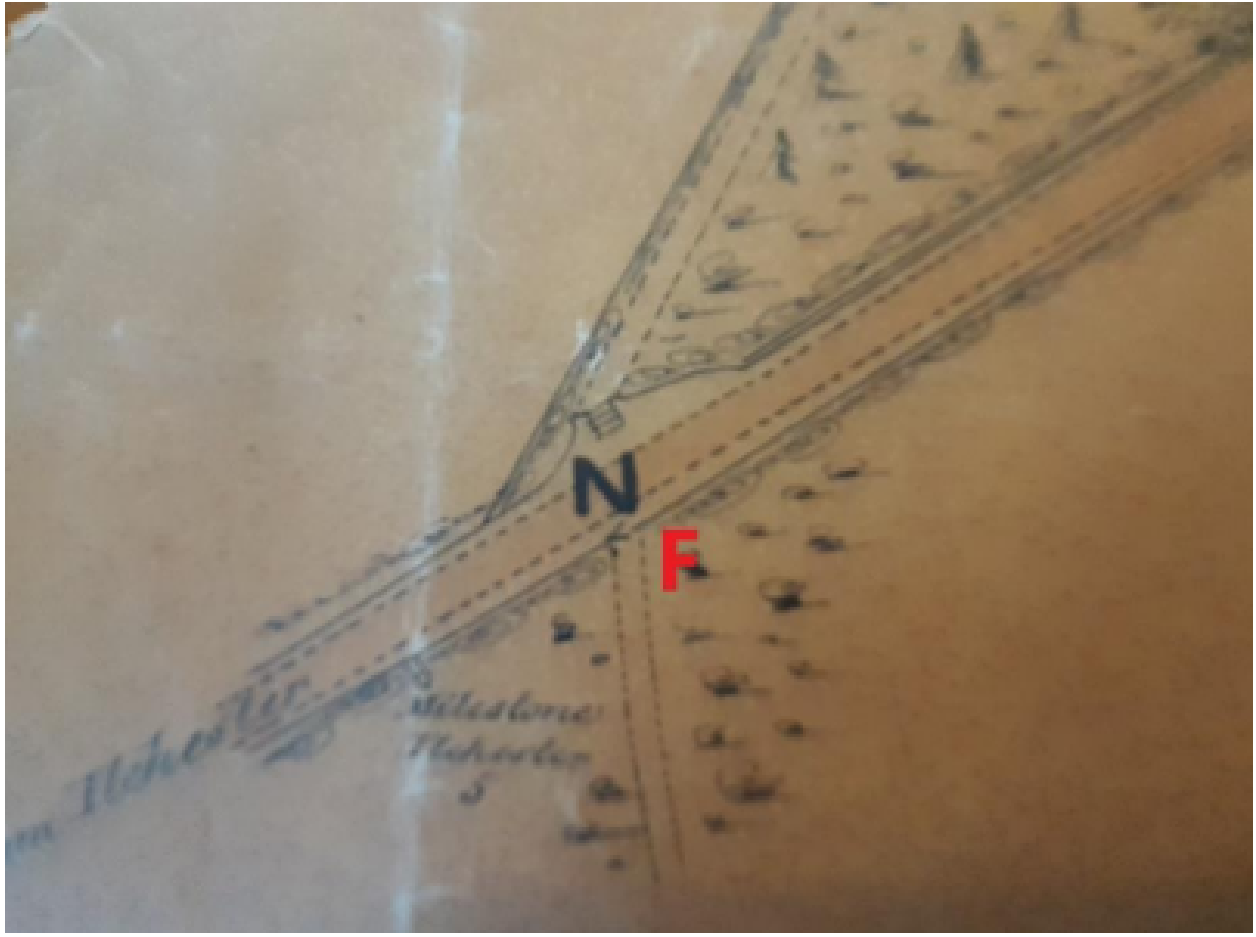
Potential outcomes 2

- At the end of the investigation report a recommendation is made as to whether or not an Order should be made to amend the Definitive Map.
- Committee members must make their own assessment of the evidence, rather than accept the report's recommendation without question.
- If the Committee reach an alternative conclusion, the grounds for that conclusion must be clearly stated and consistent with the relevant legislation.

Test to be applied

Before an order can be made to modify the Definitive Map, there must first have been a discovery of new evidence (i.e. evidence that was not considered when the Definitive Map was last reviewed). Having discovered that evidence, the standard of proof to be applied in this case is **balance of probabilities**.

Determining, based on all the available relevant evidence, whether higher public rights are more likely to exist than not. Applicable to all sections where footpaths are already recorded on the Definitive Map.



“Subject [...] as to that part of the property hereby conveyed [...] to a public right of way and bridle path running from the main road”



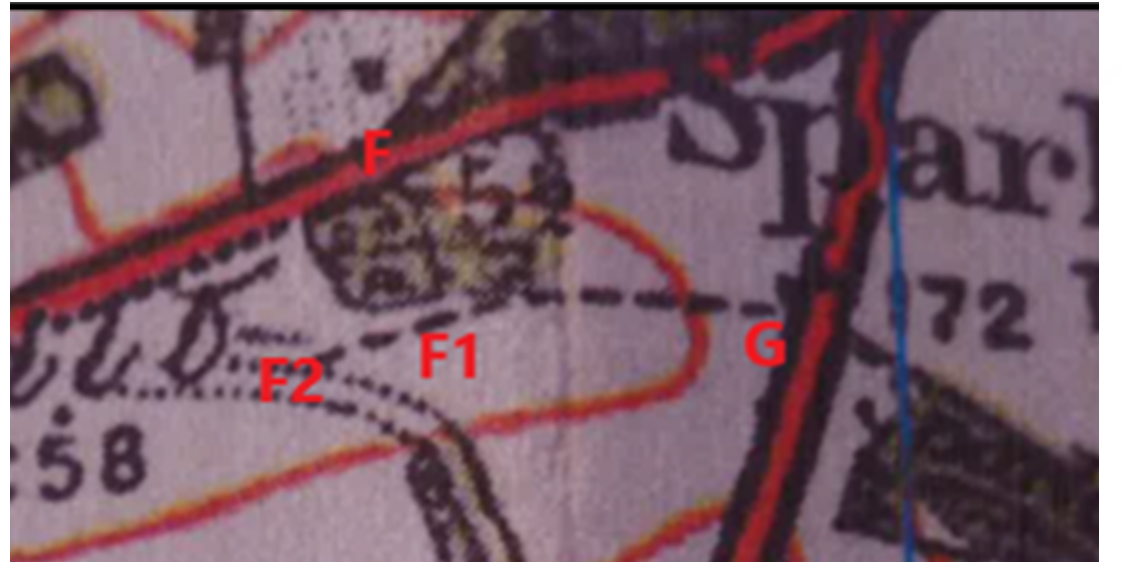
1910 Finance Act

Page 13

Land is poor & lies on
The hill with a thin soil.

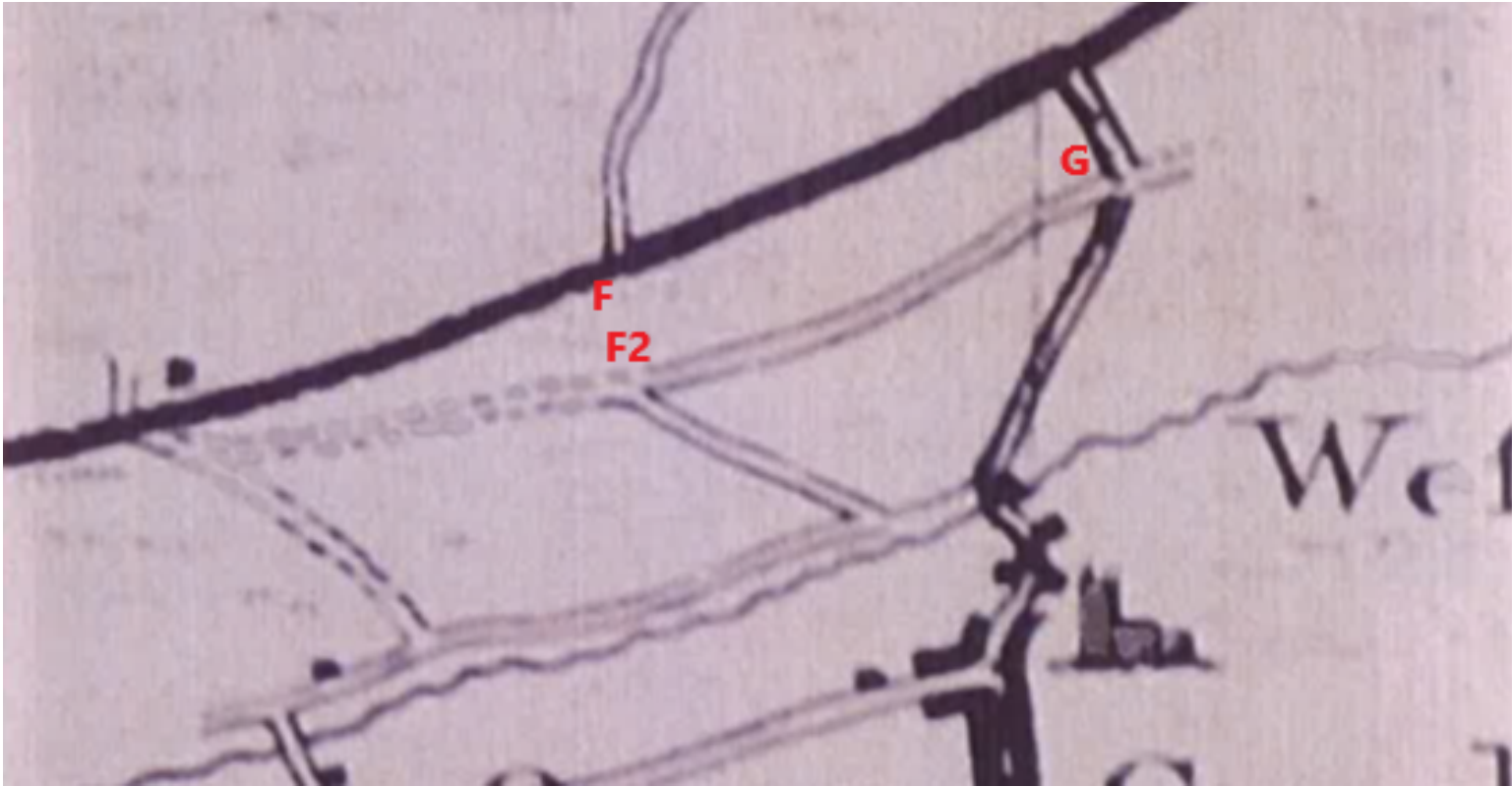
Charges, Easements, and Restrictions affecting market value of Fee Simple

Right of Way	$4/2 \times 25 \times P$	=	2.10.0
Land Tax	$3/6 \times 25 \times P$	=	4.10.0
Tithe	$3.7.6 \times 25 \times P$	=	92.0.0
			<hr/>
			109.0.0



Land held in strict settlement

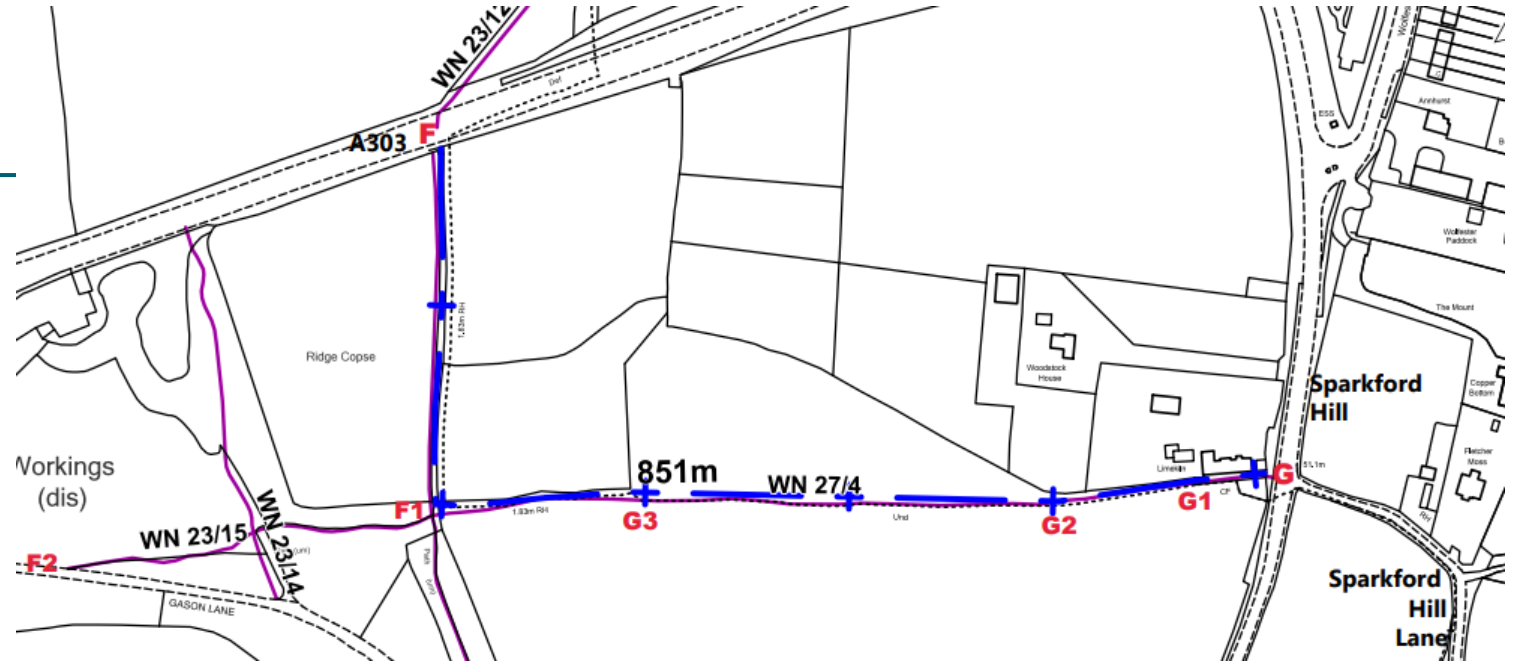
If the land over which a public right of way is alleged to exist was ever in strict settlement this might have a material effect on whether dedication at Common Law can be presumed to have taken place. However, it does not remove any rights which were dedicated prior to settlement, nor does it prevent them from being dedicated after the period of settlement has come to an end.



Main issues raised

- 1795 map of Queen Camel does not indicate that the routes are bridleways
- Purpose of bridleway to link lime kiln at G to quarries west of G and only private rights exist
- No evidence of bridle route turning north at F1
- Safety concerns in relation to a bridleway crossing field used for ponies
- No new relevant evidence
- Public purpose of route questioned
- Land held in strict settlement

Summary



An order should be made to modify the Definitive Map and Statement where the surveying authority discover evidence which, when considered alongside all other available evidence, indicates “that a highway shown on the map and statement as a highway of a particular description ought to be shown as a highway of a different description”.

Phosphates on the Somerset Levels & Moors

Briefing to Somerset Strategic Planning Committee
19 October 2023

Page 19 Alison Blom-Cooper, Assistant Director Strategic Place and Planning
Paul Browning, Principal Planning Policy Officer
Emmeline Brooks, Phosphates Planning Officer



Somerset
Council

Contact: phosphates@somerset.gov.uk

Purpose of Report

- Provide the Strategic Planning Committee with an **update on recent work undertaken in relation to nutrient neutrality**.
- Page 20 Outline the **key anticipated legislative changes**, as currently drafted within the Levelling Up and Regeneration Bill and an **update on the Council's funding bid** for £10m to the Government's Nutrient Mitigation Fund.
- Consider whether the **allocation process for Council's River Tone P-credits** should be updated and expanded.
- Part One and Part Two of the report are for information only. The Committee is asked to agree the recommendations in Part Three which we will cover in this presentation.

Update on Progress to Date



Update on Progress to Date

Somerset Phosphate Budget Calculator

- Natural England has signed off the key changes to the Somerset Phosphate Budget Calculator as reported to this Committee in July 2023.
- Officers are currently working to update the Somerset Phosphate Budget Calculator on the Phosphates Webpage and agree transitional arrangements for its use to be communicated to applicants.
- Once uploaded to the website, the updated Somerset Phosphate Budget Calculator will be the single, agreed nutrient calculator for use across Somerset.

Update on Progress to Date

Stakeholder Engagement and Lobbying Central Government

- Officers from the Somerset Area Planning Teams, and Dorset Council continue to have regular monthly meetings with the Environment Agency, Natural England and Wessex Water.
- The next Developer Forum meeting is scheduled for December 2023.
- We continue to lobby central government on a range of matters including 5- year housing land supply, and the delivery of mitigation solutions and this correspondence is available to view on the Somerset Council [phosphates webpage](#).

Update on Progress to Date

Jurston Farm, Wellington Appeal

- National 'test case' in relation to nutrient neutrality as previously reported to this Committee.
- A dismissed planning appeal in August 2022. The High Court dismissed a challenge by CG Fry & Son to the operation of the Habitats Regulations in June 2023.
- The next stage will be an appeal hearing in the Court of Appeal, but we have no hearing date yet.

Catchment Area Updates



River Brue Catchment

- Approximately 67 planning applications are held in abeyance seeking a phosphate solution equating to circa 1,100 dwellings.
- The Council have signed off three private phosphate credit schemes in the Brue catchment including:
 - **Yew Tree Farm, Walton** : Closure of a pig farm generating 48 P-credits. Currently, 45.8 P-credits have been allocated releasing 450 dwellings.
 - **Manor Farm, Prestleigh**: Farm closure and fallowing of land generating 143 P-credits which is anticipated to unlock approximately 1400 dwellings. A second phase may come forward if all these are allocated.
 - **Hillcrest Farm**: Located in Somerset South area anticipated to deliver c. 13 P-credits provisionally allocated to an application in Bruton.

River Brue Catchment

- Both the calculation of credits and management plans have been agreed with Natural England and secured via a Section 106 (S106) agreement.
- All P-credit sales/allocations are agreed between promoter and applicant. The LPA has no control on prioritising applicants or credit pricing. Agreed allocations are confirmed by a certificate provided to the LPA.
- A limited number of applications have also been agreed to date within the River Brue catchment where applicants have progressed their own mitigation solutions (woodlands, PTP upgrades).

River Parrett Catchment

- Approximately 320 planning applications held in abeyance seeking a phosphate solution equating to circa 4,500 dwellings.
- To date:
 - 240 dwellings are either approved or resolved to approve subject to S.106 using appropriately managed Package Treatment Plants.
 - 160 dwellings approved or resolved to approve using retrofitting of water efficiency measures.
 - 65 dwellings approved or resolved to approve using woodland planting.
 - 310 dwellings approved relying upon fallow land solutions.
 - Agreed roll out of a programme of septic tank replacements with more efficient Package Treatment Plants to unlock credits.

River Parrett Catchment

- Details about the background to the EnTrade P-credit scheme were report to this committee in July 2023.
- EnTrade has run its first “market round” which has allocated P-credits to applications for 80 dwellings and 2 care homes with some 130-bedroom spaces. A second market round will be run during Autumn 2023.
- Somerset Council is also currently drafting the relevant S106 Agreements to enable the release of two third-party land use change projects in the River Parrett catchment based on short term fallowing leading to wetland/woodland. Together these will release 270kg/p/year of P-credits. (NB includes Woodrow Farm)

River Axe Catchment

- Recent appeal decision received after cttee deadline, which supports the Council approach towards phosphates.
- It involves 2 schemes in Tatworth, area south, totalling 48 homes refused at appeal because of a risk of phosphate effects on the protected River Axe.
- The appellant had suggested that off-site mitigation, such as creating wetlands, could help to lessen the developments' impact, but this was not included in any of the submitted unilateral undertakings, leading to uncertainty that the homes wouldn't affect the river.
- The use of a planning condition to update the outdated ecological survey was also dismissed.
- Note: the same agent is appealing non-determination on an 80 house site near Yeovil.

River Tone Catchment

- Approximately 100 planning applications held in abeyance seeking a phosphate solution equating to circa 3,000 dwellings.
- Somerset is one of only a handful of Councils across the country to have its own operational nutrient credit scheme. To date:
 - 53 planning applications have been offered River Tone P-credits as part of Round 1 of the scheme.
 - 29 no. applications for River Tone P-credits have been received in Round 1.
 - 8.5 P-credits have been allocated, equating to 41 no. dwellings.
 - 22 no. planning applications have been offered P-credits in Round 2.
 - 4 no. planning applications have been approved as part of Round 2.

River Tone Catchment

- Planning applications are also progressing in the River Tone catchment area where applicants have their own phosphate mitigation solution.
- Officers continue to liaise with third party credit providers to aim to create further P-credit solutions within the catchment area.

Updates from Government



Updates from Government

Levelling Up and Regeneration Bill (LURB)

- End of August / early September 23 - turbulent few weeks in terms of nutrient neutrality and proposed changes by the Government.
- Government proposed amendments to HRA, and nutrient neutrality requirements (29 August) which were voted down in House of Lords (13 September) and therefore these will not form part of the Levelling Up and Regeneration Bill (LURB).
- The provisions contained within the LURB prior to these late amendments remain in place.
- Reports of additional legislation to come forward in the Kings Speech but no further information at this time.

Updates from Government

The LURB will contain:

- A new duty on water companies to upgrade wastewater treatment works in designated areas by 2030.
- Page 35 Once the LURB receives Royal Assent these upgrades can be considered to be 'certain' for the purposes of HRA.
- These upgrades will not apply to all Wastewater Treatment Plants (WwTW) and Officers are seeking further information as to what WwTWs will not be upgraded.
- Officers understand that the LURB will receive Royal Assent before the King's Speech on the 7 November 2023.

Updates from Government

Government Nutrient Mitigation Fund

- At the end of May 2023, Somerset Council submitted a partnership funding bid to the Government's Nutrient Mitigation Fund.
- The funding proposal seeks capital funding (£9.63m) and revenue funding (£0.9m) to deliver interim (to 2030) and in perpetuity phosphate mitigation measures to unlock affected housing development at scale.
- The aim of the funding bid is to significantly increase the supply of P credits, to assist all impacted developments in Somerset.
- A [letter](#) has been sent to the Secretary of State seeking clarity on the outcome of our partnership bid. A reply is awaited.

River Tone Phosphate Credit Scheme: P-credit Allocation



P-credit Allocation: Review

Page 38

- Since the River Tone P-credit scheme started allocating P-credits in December 2022, it has operated on a 'criteria' basis.
- River Tone P-credits have been offered to applications held in abeyance in accordance with a priority criteria agreed by the former SWT Phosphates Planning Sub-Committee.
- The criteria approach was developed based on the River Tone P-credit scheme objectives which are as follows:
 - Objective 1 – Facilitating the delivery of sustainable development;
 - Objective 2 – Supporting post-Covid 19 recovery;
 - Objective 3 – Supporting small and medium-sized businesses (SMEs);
 - Objective 4 – Maintaining a 5-year housing land supply (5YHLS) and meeting the housing delivery test (HDT);
 - Objective 5 – Meeting other housing duties, including facilitating the delivery of affordable housing;
 - Objective 6 – Timely delivery; and
 - Objective 7 – Value for money/Cost recovery

P- Credit Allocation: Review

- **Round 1** – prioritised planning applications for **minor housing development** (i.e., planning applications for C3 use classes or traveller accommodation comprising less than 10 dwellings).
- **Round 2** – prioritised planning applications for **minor housing development** (that were not included as part of Round 1) **AND** both major and minor planning applications for **housing development that exceeds affordable housing policy**.
- In all cases, it was agreed that River Tone P-credits should be allocated to applications for **'implementable development'** which was defined as development which could commence on site within 3 months of planning permission being granted.

P- Credit Allocation: Proposed Changes

- 12 months since the River Tone P-credit scheme became operational - Officers have recognised a need to reflect and review on progress including the way in which River Tone P-credits are allocated to affected applications.
- Based on the uptake of River Tone P-credits to date, and the number of River Tone P-credits currently still available (c. 30 P-credits) Officers are recommending changes to the allocation criteria.

P- Credit Allocation: Proposed Changes

- It is proposed that:
 - River Tone P-credits are still prioritised for housing development
 - The remaining River Tone P-credits are split into two 'pots' with 10 River Tone P-credits 'ringfenced' for minor applications.
 - The requirement for 'implementable development' is retained.
- This option is considered to maximise the scheme's contribution to the agreed objectives as outlined within the Committee Report whilst ensuring that the River Tone P-credit scheme continues to facilitate housing delivery in a timely manner.

Report Recommendations



Report Recommendations

- That the Strategic Planning Committee notes:
 - The content of the Committee report including activity across the 3 affected river catchments to continue to unlock housing deliver and other phosphate affected development.
 - The anticipated legislative changes flowing from the Levelling Up and Regeneration Bill.
 - The outcome of the Council's funding bid to the Government's Nutrient Mitigation Fund.

Report Recommendations

- That the Strategic Planning Committee recommends:
 - Changes to the criteria for River Tone P-credit allocation to allocate remaining River Tone P-credits to all full planning applications, applications for the approval of reserved matters or discharge of conditions and 'Section 73' applications that relate to C3 housing development or traveller accommodation and are 'ready to proceed' in planning terms.
 - That 10 River Tone P-credits are 'ringfenced' and can only be allocated to minor applications for housing development i.e. proposals for less than 10 dwellings.
 - The River Tone P-credit scheme maintains the requirement that P-credits are allocated to planning applications for 'implementable development.

Thank you and Questions



Somerset
Council

This page is intentionally left blank