

Extract from the minutes of the Environment and Sustainability Panel meeting of 21 March 2024

123. Ferry Marsh Nature Reserve Improvements

Glyn Evans attended the meeting and addressed the Panel pursuant to the provisions of Meetings General Procedure Rules 5 (1). He was a local Councillor and professional naturalist and wished to address the Panel about Ferry Marsh. He considered that there was no longer a dispute that there was a climate and biodiversity crisis, and this was at odds with the current housing crisis which often required housing to be built on green spaces, which lead to contracting space for local wildlife. Some years ago, Ferry Marsh had become an area of wetland due to blocked drainage, and this had led to a huge increase in biodiversity as well as other benefits that were associated with this type of terrain such as carbon sequestration. Mr Evans considered that a new management regime was required for the area which optimised it as a local nature reserve for the benefit of biodiversity. Although in the past there had been a path through the middle of the area, the marsh had become an area of reed wetland which attracted very shy species, and it was important that these species were not disturbed. There was the possibility of additional funding being obtained through the creation of biodiversity credits, and it was very important that modified access was provided to the wildlife which was reflected in the current proposals before the Panel.

The Panel wondered what effect the raised water level would have on the local area, would neighbouring roads and the railway be at increased danger of flooding? How would the potential loss of public open space in the area be accounted for? Fiona Shipp, Parks, Countryside & Greening Operations Manager, attended the meeting and advised the Panel that the proposed management plan would not allow flooding of the Wivenhoe Trail, and the water level would additionally be managed to allow service access to the drain. The water levels on the marsh would be controlled in a manner which had not been possible in the past when levels had risen due to a blocked pipe. This blockage had now been cleared and it was possible to manually let water flow from the marsh into the river if necessary, providing a much more controlled environment from both a flooding and enhanced wildlife perspective. The Council's team of Countryside Rangers did already manage nature reserves as well as sites of special scientific interest, and had significant experience in this role.

Graham Sutton attended the meeting and addressed the Panel pursuant to the provisions of Meetings General Procedure Rules 5 (1). He was a resident of Wivenhoe and wished to support the proposal for the management of Ferry Marsh which had been put forward. Although in general terms he would be concerned about any proposal which sought to limit access to public open space, in this instance he considered that public benefit could be served in many ways and the environmental improvement and access to enhanced nature which was being offered more than offset any reduced access to the site. He believed that the public interest was best served by enhancing the wildlife on Ferry Marsh which would be enjoyed not only by the residents of Wivenhoe, but also the wider population. He was aware

of a large number of bird watchers who were taking a keen interest in the site, and he believed that a very diverse group of people were now enjoying what the Marsh had to offer, and who were amazed and enthused by the site. He believed that there was no significant loss of utility associated with the closure of the path through the Marsh and that the benefit of the management scheme which was being proposed were disproportionately beneficial when compared to the amount of work which would be required.

The Panel noted that the path through the middle of the marsh had been closed for approximately 2 years since the marsh had flooded, and this closure had not generated a significant number of complaints. It was intended that the path remain closed under the proposed management scheme.

Professor Jane Black attended the meeting remotely and addressed the Panel pursuant to the provisions of Meetings General Procedure Rules 5 (1). She stated that her views were supported by the Wivenhoe Society Committee. She advised the Panel that Ferry Marsh had been gifted to the people of Colchester to provide public open space for the residents of new housing development, and in principle the whole of the area had been open to the public until it had flooded. The path across the marsh had been used by local people and had been closed since the flooding, and the proposed public access to the site was only for a very small area, which was inconsistent with the idea of a publicly accessible open space. It was suggested that the public consultation in respect of the proposed management scheme had been inadequate, and the public had not been directly asked whether or not the proposed access was supported. She stated that public access to Ferry Marsh could be modified by requiring people to keep to the main path and keeping dogs on short leads. Although the Officer's report asserted that biodiversity in the area had increased partly due to the exclusion of the public, there was no firm evidence to support this, and the data which had been provided concerning the number and species of birds was for a single year with no comparative data from previous years. It was suggested that the path across the Marsh should be reinstated at least temporarily with measures in place to control dogs, and the numbers of breeding birds should be recorded for a few years to gauge whether there was any significant decline. If it was evidenced that there had been a significant adverse effect on the bird population then the current proposal could be resubmitted. It was noted that the Officer's report suggested that Wivenhoe Town Council was supportive of the proposals, but it was her understanding that the Town Council had not, in fact, taken such a stance. If a Town Councillor had formed a part of the working group which had reviewed the consultation results, then they had not been acting as a designated representative of the Town Council as part of this group.

A Panel member was the ward member for Wivenhoe for the City Council, and although not a member of the Town Council had worked closely with this body when considering the future of Ferry Marsh. He confirmed that it was his belief that the Town Council had not taken an official resolution, either for or against, in relation to the proposals for the site.

In response to the points which had been made by Jane Black, the Parks, Countryside & Greening Operations Manager confirmed that the suggestion that access to the central path be regulated was a reasonable one and that some nature

reserves did employ systems of seasonal access or zones where dogs were required to be on leads. In the case of Ferry Marsh, however, the intention was to take a stronger stance on access due to the special nature of the site and the high quality of wildlife which could be found there as a result of the flooding. It was not unusual for nature reserves to contain areas which were free of people and dogs, and it was the intention of the proposed management scheme for the area to find a balance which allowed wildlife to flourish while also allowing people to visit and enjoy the area. It was reiterated to the Panel that flooding in the area would be very carefully controlled and would not therefore represent an ongoing risk to the area.

Responding to the points which had been made, Jane Black commented that although it had been said that biodiversity had improved at Ferry Marsh, no evidence had been provided to support this statement, and nothing had been said about other animals there such as insects, butterflies and lizards, with the report focusing on bird life. The fact remained that the area had been given for the benefit of local housing and was the subject of a covenant, and the use of the land was effectively being denied to local residents.

In discussion, the Panel wondered how biodiversity credits could be used by the Council? The Parks, Countryside & Greening Operations Manager confirmed that this was something that could be considered, and that Officers were starting to understand how biodiversity credits could benefit the Council. It was believed that Ferry Marsh could be a very suitable site for obtaining biodiversity credits as it should be possible to demonstrate a clear biodiversity net gain, although other grant funding may also be available on this site.

A Panel member had been closely involved with the Ferry Marsh project and gave an update to the Panel. There had been concerns from across the local community in respect of the extent of the flooding on the site, and in particular damage that may be caused to local paths and railway lines. When the sluice had been cleaned the water level had fallen significantly and concerns about flooding had been addressed. Water levels would be managed in the future to ensure that they remained at safe levels, and although there was a small risk that the levels may not be able to be managed successfully, a number of additional controls would be implemented to counter this risk. Groups such as the Essex Wildlife Trust and Natural England had been working together with Council Officers and the local community. There had been online consultations and 4 in-person events, where feedback about the proposed loop paths around the site had been received, and the Officer's report was an accurate representation of the wishes of residents which had been expressed via these consultations. The concerns which had been raised by some residents about the potential loss of public open space were understood, it had been ensured that public access remained through paths around the site, and it was considered that the area remained a lovely space which could be accessed well by residents. Given the current biodiversity crisis, it was necessary to find a balance in the management of the site which allowed some public access while also ensuring that in increased biodiversity of the area was protected.

A Panel member noted that a local housing estate produced water runoff into the marsh and that a covenant existed on the site which had been the subject of legal advice, however, the advice had not been included in the Officer's report. Although

he was very happy to support the proposals, he remained concerned about the loss of public open space, and how this was impacted from a legal perspective. He noted that mention had been made of acquiring the site from the Crown Estate, what did this mean in practical terms? He had been assured when hearing that residents were aware of what the proposals entailed.

In response to the questions which had been raised, the Parks, Countryside & Greening Operations Manager acknowledged that water runoff from a local housing estate may contain chemicals, however, the reed beds present on the marsh were extremely effective at filtering water and cleaning the ecosystem naturally. The risks which had been detailed in the Officer's report had related primarily to the requirement to clear the sluice as opposed to the need to control flooding in the area which had been addressed in discussion at the meeting. With regard to the concerns about the loss of public open space which had been raised, the Panel heard that Ferry Marsh had not been lost, but rather a fantastic nature reserve had been gained. Legal advice had been taken from the Council's legal advisor, and the risks relating to the potential breach of the covenant on the land had been considered. The covenant was still capable of being enforced, and there was a need to maintain a path through the centre of the area for access use when managing the land. However, there was an important distinction to be drawn between the closure of the path altogether, and restricting access to it. A direct quote from the Council's legal advisor could be provided to the Panel if this was felt to be necessary.

A Panel Member addressed the question which had been raised about the possibility of acquiring the site from the Crown Estate, and confirmed that he had personally spoken to the Crown Estate about the site some years ago, when it had been made clear to him that the Crown Estate had no interest in managing the site at all, and would happily relinquish it to the control of the Council. There would, of course, be legal costs associated with such a transfer of responsibility and these could be explored separately.

In discussion, the Panel appreciated the detailed and enthusiastic input which it had received during the meeting from all parties and noted the desire to strike a balance between preserving the ecological diversity of the area, while still allowing reasonable public access. The increasing importance of marsh areas as areas of biodiversity was recognised, and it was accepted that the public would still have access to the site through the loop paths which were provided around the edge of the area. It was assured that local views appeared to have been taken on board, but did consider that Cabinet should be provided with the full legal advice, in part B of the published agenda, in respect of the covenant which was in place on the land when it was asked to make a decision.

RESOLVED that:

- A complete copy of the legal advice which had been received in respect of the covenant which existed on Ferry Marsh be provided to Cabinet as an exempt from publication document, when Cabinet was being asked to consider recommendations in respect of Ferry Marsh.

RECOMMENDED TO CABINET that:

- The changes to Ferry Marsh Nature Reserve as set out in the Officer's Report be approved.

Please note that the report considered by the Environment and Sustainability Panel at its meeting on 21 March 2024 is attached as background information. The Legal Advice referred to in the Panel's resolution is included in Part B of the Cabinet agenda.