

## Full Council

---

<b>Report Title:</b>	<b>Cuttle Brook Local Nature Reserve - Scrape Project</b>
<b>Meeting Date:</b>	<b>25 March 2025</b>
<b>Contact Officer:</b>	<b>Mandy Sturdy – Town Clerk Graeme Markland – Neighbourhood Plan Continuity Officer Andrea Oughton – Operations Manager</b>

### Purpose of the Report

1. To update the Council on the project and subsequent issues that have arisen following the creation of two scrapes in the Cuttle Brook Nature Reserve (NR) which is owned by Thame Town Council and managed on behalf of Thame Town Council by the Cuttle Brook Conservation Volunteers (CBCV).

### Action Required

2. To note the appendices to the report:
  - 6.1 – Cuttle Brook Local Nature Reserve History Essay
  - 6.2 – Construction Specification from River Thame Conservation Trust (RTCT)
  - 6.3 – Cuttle Brook Management Plan 2025 – 2029
  - 6.4 – TTC Notes from meeting with Neighbours held on 14/03/2025
  - 6.5 – Green Living Plan Objectives Linked to NR
  - 6.6 - Flood Risk Appraisal
3. To consider advice from South Oxfordshire District Council's (SODC) Planning Enforcement Team regarding the scrapes which are deeper than originally proposed and agree the next steps.
4. To ask the council to consider options to address the concerns of a group of neighbours whose homes back on to the NR near to where spoil has been placed.

### Cuttle Brook Background

5. Designated as a Local Nature Reserve in 1993, the NR falls under the National Parks and Access to Countryside Act 1949 – *As such 'nature reserve means land managed not only for a conservation purpose but also for a recreational purpose, if the management of the land for the recreational purpose does not compromise its management for the conservation purpose'*
6. The attached documents give further details regarding the 30 years plus history of the NR and work of the CBCV to develop and maintain it.

## Project Background

7. The creation of scrapes are included in the latest Cuttle Brook Local Nature Reserve Management Plan 2025 -2029, which prior to being approved by the Environment and Assets Committee in [January 2025](#) was put out to public consultation between 5 December 2024 and 8 January 2025<sup>1</sup>.
8. The River Thames Conservation Trust (RTCT), working with CBCV tendered the works including the creation of the scrapes (Appendix 6.2). All costs were covered by RTCT and a Flood Risk Activity Permit was submitted to the Environmental Agency (EA).
9. Officers working with both volunteer organisations and with experience of a recent project to create a scrape at Rycote Meadow reviewed the specification and approved the works, understanding that the required approvals were in place from the EA and that the location of the spoil was suitable, out of the flood plain and not expected to form more than a low bank of soil.
10. RTCT awarded the contract to an experienced third party and works to create the scrape took place at the end of week commencing 17 February 2025. The scrapes, particularly that at Watkins' Bridge were made much larger than expected and subsequently so was the quantity of the spoil deposited out of the flood zone.

## Planning control

11. The Neighbourhood Plan Continuity Officer (NPCO) advised the Operations Manager in January that due to the limited nature of the works it was likely they would fall within permitted development rights, despite being proposed on a non-statutory nature site. Part 12, Class A of Schedule 2 of the 2015 Town and Country Planning (General Permitted Development) Order (the GPDO) grants local authorities, including parish councils the right to construct, maintain, improve or alter:
  - a. “any small building, works or equipment on land belonging to or maintained by them required for the purposes of any function exercised by them on that land otherwise than as statutory undertakers”.
12. The NPCO was and remains unaware of any local authority either undertaking or requiring planning permission for scrapes or small ponds of a scale similar or even larger than those proposed / constructed or the deposition of the resulting spoil, whether on general open space or sites of local nature importance.
13. Under Part 12 of the GPDO the buildings or works cannot exceed 4 metres in height or 200 cubic metres in capacity. The proposed scrapes each fell well short of that volume limit. Consideration was given to the cumulative impact of the two scrapes which, together, would exceed the 200m<sup>3</sup> limit. The NPCO noted that the straight-line distance between the works exceeded 400m and that it was not originally intended that the works would be carried out within the same year. Each could be undertaken as a standalone project and neither appeared to require any other work or operation to function as

---

<sup>1</sup> [Link to publicity](#)

planned. The proposed scrapes were, therefore, considered to be separate works with the full volume limit applicable to each.

14. In conversations held with the Cuttle Brook Volunteers they noted that the land has never been subject to a formal change of use from its function as agricultural land. The Volunteers provided evidence of Countryside Stewardship Agreements being in place for at least 15, consecutive years and noted these can only be granted over agricultural land. The Volunteers stated that for many years (until the risk of contamination from dog faeces prevented it) the hay on the meadows was harvested and sold as valuable fodder, meaning a crop was produced. The money raised provided an income that helped with the management of the Cuttle Brook Nature Reserve.
15. The possibility of the works having been carried out under Permitted Development rights (Part 6 of the GPDO) relating to agricultural land were, therefore, investigated. The District Council were asked for their view on this matter. It has been established that to enjoy the rights the land would need to be “in use for agriculture and which is so used for the purposes of a trade or business”. The CBLNR is not used for such a trade or business nor is it part of a wider agricultural unit under the control or management of a trade or business. Regardless, if the land could have been considered an agricultural unit the scale of the works would still have required a prior approval application be submitted to the District Council. A prior approval application would likely have to focus on flood risk and the proposed placement of the scrapes and spoil.

### **Planning control - summary and conclusion**

16. The works exceed the volume restriction under Part 12 and were reported as such to the District Council on 3 March 2025. They are also not capable of being considered under Part 6. Given the clear definition of an agricultural unit, it appears unlikely that a certificate of lawful development application would result in the works being found to comply with Part 6. Planning permission is, therefore, required for the works undertaken. This was confirmed by the District Council on 18 March 2025; the form and type of application to be submitted will be informed by the Town Council’s decision. The District Council also confirmed to the Town Council that an ecological assessment would need to be provided as part of any application and that this report will be key in deciding the application. It is worth noting the District Council’s ecologist has some familiarity with the CBLNR. In any case, their independent view on the application and its ecological assessment will hold the greatest weight in any subsequent decision.
17. Given the above advice, any works carried out by the Town Council outside of a permitted scheme would be wholly at the Council’s own risk.

### **Environmental permit**

18. Works within 8m of a principal river or within a flood plain will always require a Flood Risk Activity Permit (FRAP).
19. In February 2024 the RTCT submitted FRAP EPR/WB3752GM for multiple works they intended to carry out on the Cuttle Brook. The EA requested that further details be provided resulting in the submission in July 2024 of a Flood Risk Appraisal (FRA), attached as Appendix 6.6

20. This document details some 14 tasks or sub-tasks associated with the works outlined in the original FRAP. The works include depositing gravel to reduce scour and provide habitats; the insertion of log features to protect banks from increased flow, while mobilising sediments; localised vegetation removal; and the removal of the weir north of Rycote Meadow.
21. Both individually and in combination the works are meant to increase flow speeds at specific points in the channel during low-medium flows. There should be an overall reduction in sediment deposition which will provide a better habitat for desirable flora and fauna. The removal of the weir north of Rycote Meadow should have the greatest local influence on both flow and the transport of sediment. Anecdotally, it has been noted after the weir removal that during the last heavy rain event the waters rose as usual but fell far sooner than in the past.
22. On page 7 of the FRA it is stated that 2 scrapes will be created in the floodplain within the LNR (Figure 2). Such works are relatively minor and would not necessarily need to be included within a FRAP. The purpose of a scrape is primarily to provide habitats. Scrapes are agreed to be at least neutral, and usually positive in terms of their impact on local flood risk; the excavation provides a small amount of storage. Scrapes are usually fed by rain or surface waters but can be indirectly connected to a channel to ensure they are wetted / provide water storage during flood events. The scrapes as built connect to an existing fish-swim in Nontron Meadow and a surface water drainage ditch that flows into the Cuttle Brook north of Watkins' Bridge.
23. A mechanism exists for beneficial, minor works to be approved by the EA through a light-touch exemption scheme. The scheme allows for specific works, such as scrapes, to be carried out within certain parameters, subject to the EA being notified. Within the October 2024 Construction Specification supplied to the Town Council by the RTCT (Appendix 6.2) ahead of work starting, section 2.2 notes the scrapes will be excavated:
- a. "... in line with the EA Exemption 25 (Excavating scrapes and shallow wetland features totalling 0.1ha in a flood plain (FRA25)), meaning they will be no bigger than 0.1ha and no more than 0.5m deep. Excavation must not take place within 8m of the Cuttle Brook".
24. The scrapes occupy a surface area far below the 0.1ha limit, but the Watkins' Bridge scrape has been excavated deeper than 0.5m.
25. Following that contact, the NPCO held a telephone conversation with the EA on 11 March 2025 to discuss whether, due to the extra depth within the Watkins Bridge scrape there had been a potential breach of the exemption. The officer explained that the breach was real but would not be considered a severe breach. There would be further minor gains in terms of reducing flood risk. The officer noted they could not, however, locate the relevant exemption permit. The NPCO advised the EA officer that within the submitted FRA, received by TTC on 11 March 2025, it was noted the scrapes did not require FRAP exemptions, as confirmed by a named EA officer.
26. The NPCO received an e-mail from the EA on 13 March 2025. The officer had discussed the case with the officer responsible for signing off the FRAP EPR/WB3752GM and its associated FRA. The scrapes were not considered to be part of the granted permit as the

RTCT had agreed they would be able to meet the conditions of an exemption FRA25 (exemption for scrapes and wetland). The case officer stated it was agreed that if they could either not meet the conditions or if it was ineligible due to the location of the works then they would need to be included within a bespoke permit.

27. The site is within FZ3, within a LNR. The EA could not allow for an exemption under FRA25 due to the site's designation as a LNR. The EA appeared to agree there had been confusion caused but stated they must consider the works unconsented and they would be recorded as such. The EA would report back to TTC on any steps they chose to take.
28. The decision of the Council may affect the detail of the permit that will be required from the EA. Without any existing permit even depositing material back into the scrape, for example, will require a FRAP.

### **Environmental permit - summary and conclusion**

29. The works were intended to be carried out through complying with the requirements of a light-touch exemption scheme. Due to a possible misunderstanding the scrapes have been excavated without any form of EA approval. The scrapes would not be capable of being exempted under the FRA25 mechanism and it is not possible to retrospectively submit a FRAP. A FRAP will likely be needed no matter what decision the Town Council takes. The extra depth to the scrape/s will be beneficial in terms of alleviating local flood risk.

### **Project Outcomes**

30. Spoil mound: During the excavations and for the first 6 days the spoil pile was created and reached a height of circa 6 feet (183cm), this was reduced at the end of the works on 25 February to the height it is now, approximately 90cm at its highest. Neighbours with gardens that back onto the area of the reserve where the spoil was piled up were / are angry, upset and disappointed that the Council had allowed the works to go ahead and pile spoil behind their gardens. From 20 February numerous emails and telephone calls expressing these emotions were received by the clerk and officers of the council.
31. Flood risk: Concerns that the works had increased the risk of flooding were also raised by neighbours who live closer to the scrape in the meadow. The EA confirmed on the 11 March 2025 that the risk of flooding will have been reduced by the construction of the scrapes and that the additional depth will offer greater alleviation than originally planned.
32. Initial investigations began into the effects of the project on Sunday 23 February, since then a significant amount of time from 3 senior officers has been given to investigate the issues and to look for solutions.
33. An Initial meeting to listen to the neighbours in person took place at the NR on 6 March, agreeing that officers would update the neighbours with progress the following Friday.
34. A follow up meeting with the neighbours to discuss possible options took place at the Town Hall on 14 March.

35. As detailed above, during our investigations with the EA, SODC and RTCT because of the increased size of the scrapes it was discovered that both planning approval and approval from the EA should have been sought. RTCT and officers incorrectly understood that the works would have been completed under permitted development (which may have been the case for the proposed scope) and that the permit approved by EA and received by RTCT was all that was required.

36. Ecology: The NPCO discussed the scrapes with an EA ecologist on 10 March 2025. The ecologist’s opinion was that the extra depth would offer greater opportunities for biodiversity than the proposed, shallow scrape.

**The Scrapes Planning enforcement**

**Option 1 - Apply for Retrospective Planning Permission**

37. The Council are advised that we must apply for retrospective planning for the scrape as it was dug.

**The Spoil Mound Options**

38. The neighbours feel very strongly that the mound should be moved as soon as possible. And ideally all of it. Whilst as landowners the Council do not have a legal obligation to move the spoil, the intention of the project was never to be ‘bad neighbours’ and as such officers have been working with the neighbours, RTCT and CBCV to come up with the following options to reduce the height of the spoil.

39. Regardless of which option the council decide – A retrospective application for planning permission is required and will include whichever of the following options the council decide for the project. The application will at the very least require surveys, ecological assessment and the involvement of the EA.

- a. Do nothing (other than retrospective planning and EA approval for works to date).
- b. Move as much of the spoil that can be accommodated away from the affected houses<sup>2</sup> to areas within the NR under the guidance of the EA Biodiversity Technical Officer, with the remaining spoil being spread further out and landscaped and adding native seeds to expediate regrowth.
- c. The same as Option 2 but wait for planning approval.
- d. ~~Put some or all of the spoil back into the scrape.~~
- e. Move the spoil off site.

	Pros	Cons
a	No financial cost other than application fees to any party No danger of having to move the soil twice.	Very unhappy neighbours We would miss the opportunity to seed the spoil this season.

<sup>2</sup> a new locations behind houses with 5'+ fences further along the reserve which would cover brambles and poor quality soil. It would also be enhanced with wildflowers in the first year followed by native meadow grasses. Neighbours will be advised.

b	Slightly happy neighbours, reduced officer resources. Spoil banks in other locations will help improve biodiversity and not affect neighbours' views. Spoil can be seeded this season	Slight risk that spoil may have to be moved again if retrospective planning permission not granted or dictates alternative plan.
c	No risk of having to move soil twice or being in further breach of planning	Very unhappy neighbours as planning could be anything from 8 weeks to 8 months. We would miss the opportunity to seed the spoil this season
d	<b>20/03/2025 - Advised verbally by the EA that soil must not be put back into the flood plain.</b>	
e	No extra spoil on NR Very happy neighbours	High financial costs circa £14K High use of carbon in transportation*

40. \*In terms of removal off site, it is reasonable to assume an 8-wheel tipper truck can move around 12m<sup>3</sup> of spoil per trip (the soil will not be very compactible). If the spoil is around 350m<sup>3</sup> this would mean @ 29 trips, assuming weight would not be a limiting factor.

### Timeframe for planning

41. It is believed a Full planning application would be required. Depending on the decision this evening it could be in part, retrospective. If made by or on behalf of the Town Council the maximum fee required to process this type of application could be £1,268 (subject to confirmation from SODC).
42. Beside the standard forms and location and site plans it is known the application must contain an Ecological Assessment and Flood Risk Assessment. Other documents could be required such as Arboricultural Impact Assessments and Landscaping Plans. Guidance may have to be sought on this matter from the District Council.
43. Councillors should be aware that some matters may not be able to be carried out simultaneously or consecutively, e.g. the ecological assessment might have to await surveys in particular months / seasons. If the requirements are relatively simple, however, and qualified experts available an application could be made in between 8 weeks and 3 months' time. Given the involvement of stakeholders such as ecologists and the EA it might not be possible to see a decision before the Autumn.

### Resource Appraisal

44. A significant amount of senior officer time has already been spent on this project and the subsequent Freedom of Information requests in progress.
45. Support will continue to be required to follow the enforcement requirements and maintain communications with the residents of Thame.
46. There is £2.5K in Green Living Plan Budget which is available to support this project
47. Planning application (only) Circa £1.3K

## **Risk Assessment**

- Increased level of resources the longer this is not resolved.
- Staff welfare and impact on other projects and services
- Relationship and reputational damage to the Council
- Unexpected drain on budget
- Loss of volunteers
- Increase in precept

## **Legal Powers:**

National Parks and Access to Countryside Act 1949

Countryside and Rights of Way Act 2000(s17)

Local Government Act 1972 s139

Localism Act 2011, ss1-8

Public health Act 1936, s.260

Public health Act 1875, s.164

## **Action:**

***For Council to consider and approve options to move forward:***

- i) Note the need for retrospective Planning Permission for the Scrape.***
- ii) Decide on an option related to the spoil behind the houses***