



# RECORD OF OFFICER DECISION

Local Government (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

**Type of decision:** Material decision

**Decision Date:** 25 April 2023

**Decision Maker:** Graham Nelson, Executive Director Development and City Services

**Decision status:** Is Key decision? No

**Is subject to call in?** No

**Decision details:**

To allocate Nutrient Neutrality mitigation credits from the Council's Retrofit scheme to the first phase of the Anglia Square planning application (22/00434/F).

**Reason for decision:**

Decision delegated to Director, in consultation with portfolio holders for social housing and sustainable and inclusive growth in cabinet report of December 2022 (found [here](#)). Cllrs Stonard and Harris consulted in April and comfortable with the proposed decision. Rationale for which set out in attached note.

**Alternative Options:** None

**Declarations of Interest:** None

**Reports considered by the decision maker:**

Report of the Head of Planning and Regulatory Services

**Any background documents considered:**

Documents appended to the report of the Head of Planning and Regulatory Services, the December 2022 Cabinet Report, Appropriate Assessment of the Council's mitigation scheme, Natural England's formal response.

**Publication date:** 1 August 2023

**Member briefing note: Cllrs Stonard and Harris**  
**Subject: Nutrient Neutrality - Council retrofit scheme**  
**Date: 25<sup>th</sup> April 2023**

## **Background**

The Council's retrofitting scheme to partially mitigate nutrient neutrality was agreed by cabinet on 14<sup>th</sup> December 2022.

Authority is delegated to the Exec Director Dev & City Services in consultation with cabinet members for social housing (Cllr Harris) and for sustainable & inclusive growth (Cllr Stonard) to:

- Finalise details of the interim approach subject to sign off by Natural England
- Determine the final cost at which nutrient credits shall be sold
- Allocate credits to further sites provided the headroom exists to do so.

### **1. Final details of interim approach**

Appropriate assessment of the Council's retrofitting scheme was submitted to NE (see attached, which includes the scheme as an appendix) and sign off by them was received on 23 March 2023.

Sign off by NE was heavily caveated with the need to monitor delivery of the retrofit scheme to make sure it delivers mitigation as predicted as well as monitoring permissions granted and their delivery.

The retrofitting scheme reported to cabinet anticipated that the retrofit program would deliver sufficient headroom to off-set the nutrient impacts from 1412 new homes. The finalised scheme has increased this to **2151** over a 5-year period.

The increased headroom has come about by:

- The inclusion of additional re-fit work that would be undertaken as part of the responsive repairs programme.
- Through work carried out on properties that are vacant between tenancies, referred to as 'voids' in the paperwork.
- Refinement of the assumptions made in the calculation of the headroom, including (but not limited to) occupancy rates of council stock which tend to be higher than open market and therefore provide greater benefits when retrofitted.

### **2. Cost of credits**

The estimated cost of credits reported to cabinet was £4,350 per new dwelling. Following additional work, based on better information about the costs of the programme, this has been refined downwards to **£3,445.27**.

### **3. Allocation of additional credits**

In December, Cabinet was presented with a list of 52 sites that were stalled because of NN, equating to 1806 dwellings. A priority ranking was applied to that list, which produced a 'Top 10' list of sites as below:

	Application number	Address	General needs housing/gypsy & traveller led?	Allocated Site or proposed allocation?	Affordable housing?	Regeneration of a derelict site	Dwellings	Student beds	G&T pitches	Hotel beds	Care home beds
1	22/00434/F	Anglia Square (including land and buildings to the north and west)	Y	Y	Y	Y	1100				
2		Mile Cross Depot	Y	Y	Y	Y	76				
3	22/00108/MA	120 - 130 Northumberland Street	Y	Y	Y	Y	36				
4	22/00762/F	Land and buildings including 70 - 72 Sussex Street & land north side of 148 Oak Street	Y	Y	Y	Y	34				
5		Three Score Phase 4	Y	Y	Y	N	94				
6	22/00273/F	Land off Argyle Street	Y	Y	Y	N	14				
7	22/00392/F	Land at Swanton Road	Y	Y	Y	N			3		
8	22/00272/F	10 - 14 Ber Street	Y	Y	N	Y	9				
9	22/01471/F	Earl of Leicester (site of), Dereham Road	Y	Y	N	Y	9				
10	20/00998/F	126 - 128 Barrack Street	Y	Y	N	N	17				
							<b>1,353</b>				

Since cabinet considered this list, two applications have been determined because of revised legal advice or additional information provided by the applicant. The applications are at line (3) and line (7) (highlighted green in the table above)

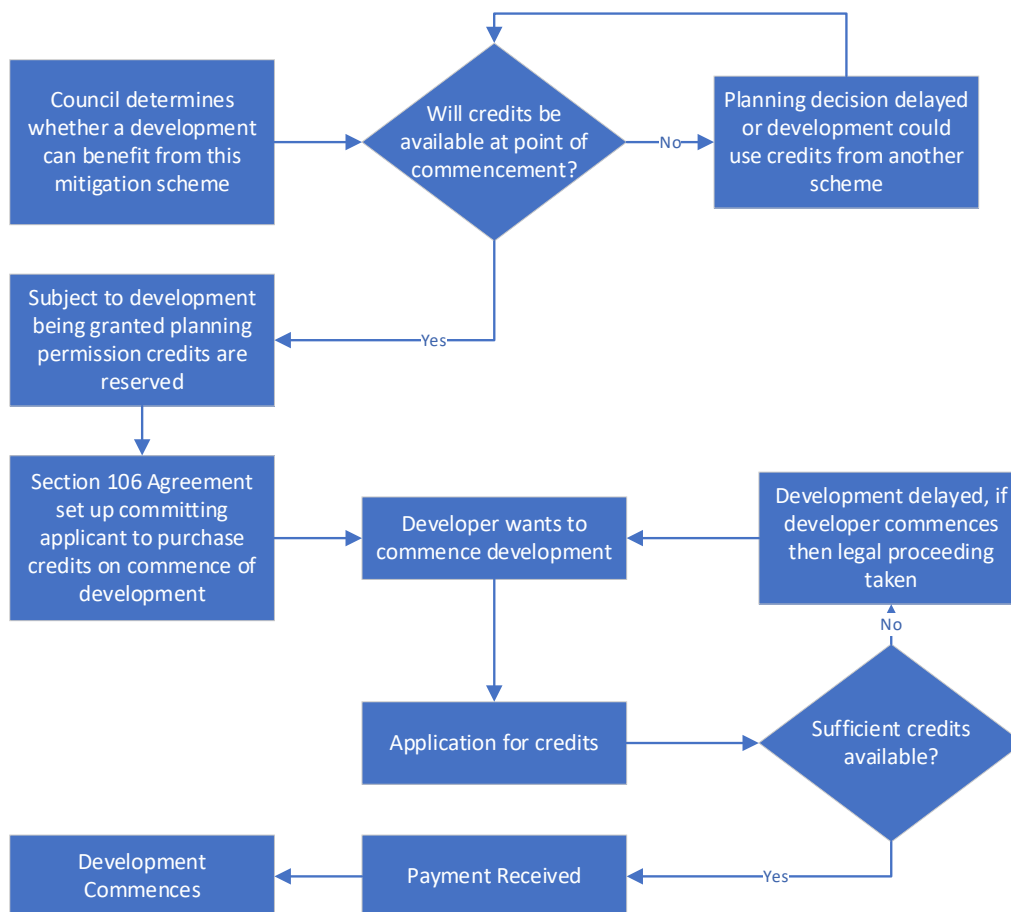
- Line 3 – nutrient neutral when considered alongside an additional application.
- Line 7 – material amendment to an extant consent where there was a reasonable likelihood of the original permission being implemented.

The agreed priority list therefore amounts to **1,353 dwellings**.

A revised table of the total stalled sites list, including additions and deletions, contains 50 sites with a total of 1,782 dwellings. It should be noted that the wider stalled sites list also includes 513 PBSA bed spaces, 94 hotel bed spaces and 10 care home spaces. The retrofit scheme does not contain a credit for these at the moment, but one could be worked out although the calculations would have to be done on a case-by-case basis based on tonnes of Phosphorous and Nitrogen rather than per unit due to the nature of the accommodation.

In theory, the retrofit scheme will create enough headroom to allow all these permissions to be released **BUT** over a 5-year period, release of consents has to be staged as the mitigation must be in place before development can commence.

The process for the reservation and allocation of credits is as follows:



At the point of granting planning permission the council would need to be satisfied that sufficient credits are projected to become available at the point of commencement of the development, if this is the case these credits will be reserved.

A S106 Obligation will secure the following:

- That at the point of grant of planning permission the council reserves sufficient mitigation credits for the development
- That development cannot commence until the council has confirmed that sufficient mitigation has been created through the mitigation scheme and the cost of that mitigation has been paid by the developer

When the developer wants to commence the development, they will be expected to purchase credits. If sufficient capacity is not available in the scheme the project would be delayed.

The council would take legal action to prevent the development from commencing if there was an indication that the developer had proceeded with the project before the credits are purchased. The legal remedy would be an injunction.

Any reserved credits would expire after a fixed time period, if the development had not commenced within this time the credits will be unreserved and reassigned to the general pool of credits.

It has been assumed that the retrofit scheme will deliver mitigation as follows:

	2022-2023	2023-2024	2024-2025	2025-2026	2026-2027	Total
No. of dwellings released for development	150	490	567	495	449	<b>2151</b>
Cumulative total	150	640	1207	1702	2151	

The table on the next page sets out the top priority sites (now 8 not 10) (totaling 1,353 dwellings) and when they are expected to commence development, based on developer feedback. As it stands, the entirety of the priority list cannot be totally mitigated until some point in FY 2025-2026.

Sites	2023/24				2024/25				2025/26				2026/27				2027/28				2028/29			
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
Anglia Square																								
Phase 1				264																				
Phase 2										89														
Phase 3														425										
Phase 4																							322	
Mile Cross Phase1			65																					
Sussex St				34																				
Three Score Phase 4					100																			
Land off Argyle Street			14																					
10-14 Ber Street			9																					
Earl of Leicester				9																				
126-128 Barrack Street					17																			
<b>Total per Q</b>			<b>88</b>	<b>307</b>	<b>117</b>					<b>89</b>				<b>425</b>									<b>322</b>	
<b>Accumulating total</b>			88	395	512					601				1026									1348	
Predicted dwellings off-set/year	150				490				567				495				449							
Cumulative total of off-set dwellings	640				1207				1702				2151											

The bulk of the priority list consists of Anglia Square, which will be delivered in phases over an 8-year period. From what we know of Anglia Square and the council's own projects that are on the list, the following units could need to be mitigated in 2023-2024:

<b>Scheme</b>	<b>No. of Dwellings</b>	<b>Cumulative</b>	<b>Commencement</b>
Anglia Square Phase 1	264		Jan 2024
Ber St	9	273	Nov 2023
Argyle St	14	287	Nov 2023
Mile Cross Depot	65	352	Dec 2023

The other 3, non-council, sites on the priority list account for another 60 units. We do not know if these sites will come forward in 2023-2024 but they are small, and developers will be able to mobilise quickly following the grant of consent.

If consent was granted for the priority list (all sites but only phase 1 of AS), and they came forward as anticipated, then mitigation would be required to off-set 512 dwellings by the end of Q1 24/25.

The retrofit scheme should have provided enough mitigation to enable us to release these consent sand for them to commence, but there is uncertainty over the scheme to deliver now. There is a possibility, for example, that some smaller sites (including the council's) will draw down credits before Anglia Square. If credits are not available through the retrofit scheme before commencement in January 2024, then Anglia Square will not be able to commence.

Until such time as we have this confidence, it is officers' recommendation that additional schemes should **not** be added to the priority list. It is suggested that we need at least 6 months monitoring data before doing so. The monitoring of the retrofit scheme, particularly in its early days, is therefore essential to give confidence that it is delivering as anticipated.

A detailed monitoring log has been developed and will be updated by both the Housing Operations Team and Planning to track accurately the retrofitting works undertaken and permissions granted and where commencements are notified. This has been circulated with this paper for information.

#### **4. Decisions required:**

1. Exec Director and Members are asked to endorse the final details of the retrofit scheme as set out in section 1 of this paper.
2. Agree the final costs of credits as set out in section 2 of this paper.
3. Agree that the top 8 priority sites have sufficient mitigation under the retrofit scheme.
4. Agree that 264 credits will be reserved for the Anglia Square application.
5. Agree that additional schemes should not be added to the priority list until monitoring has been undertaken and can provide assurance on delivery.