

Note

National Common Land Stakeholder Group

Monday, 2 Dec 2013

11:30, CLA office, Belgrave Square

Attendees	Apologies
Tom Surrey (Chair) (Defra) [REDACTED] (ACRA) [REDACTED] (Moorlands Association) [REDACTED] (Welsh Government) [REDACTED] (Natural Resources Wales) [REDACTED] (CLA) [REDACTED] (Countryside and Community Research Institute) [REDACTED] (Dartmoor Commoners) [REDACTED] (Foundation for Common Land) [REDACTED] (National Trust) [REDACTED] (OSS) [REDACTED] (Defra) [REDACTED] (Defra) [REDACTED] (Defra) [REDACTED] (Defra) [REDACTED] (Defra) [REDACTED] (NE) [REDACTED] (NE) [REDACTED] (BHS) [REDACTED] (NFU) [REDACTED] (RICS) [REDACTED] (HS2 Co) Mystery woman (?)	[REDACTED] (Friends of Lake District) [REDACTED] (Central Association of Agricultural Valuers) [REDACTED] (Solicitor) [REDACTED] (National Trust) [REDACTED] (NFU) [REDACTED] (RSPB) [REDACTED] (CLA)

1 Update on the commons and CAP reform working group

1.1 [REDACTED] said there had been no meeting since the last NCLSG; they were awaiting position on CAP reform key issues (the working group would meet after NCLSG). The working group had focused on dynamic allocation system, greening and role of commons associations. He said the group's remit was to commons-proof basic payments. [REDACTED] said there had been circa 4000 responses to the consultation, including criticism regarding the moorland rate. On the proposal of naturally kept land, it was too early to say what would be the impact on commons as it depends on how the test is implemented. The report on the consultation would be published before the New Year.

1.2 [REDACTED] also introduced the discussions of the working group on NELMS (new environmental land management scheme), which would replace the current environmental stewardship scheme. The move to 5 year agreements would not suit commons, 10 years would be better. And there should be secondary objective relating to the management of traditional landscapes such as commons. [REDACTED] said

flexibility is needed for commons. [REDACTED] agreed there should be as much flexibility as possible.

1.3 Tom asked to what extent the working group's discussions had informed responses to the CAP consultation and [REDACTED] said the proposals had not been specific enough and that they had discussed the need for secondary objectives. It was difficult to work out the effect on commons and there had been no unified submission to the consultation.

1.4 [REDACTED] said that without sufficient money in the CAP it would not be possible to get the best environmental outcome and suggested that the drivers for new CAP were simplicity and auditability, rather than outcomes. Schemes on commons needed to be tailored towards the needs of particular commons, whereas he sensed that the movement was in the opposite direction. [REDACTED] agreed, expressing concern about the landscape scale option which did not fit well with commons. She said NE could pilot the landscape scale but the costs of doing so would be taken from money for the schemes themselves. The mid-tier design did not fit particularly well with commons, and commons seemed likely to fit better within an upper tier offer. Facilitation funding needed to be paid in advance.

1.5 [REDACTED] said that the development of NELMS was proving very difficult she was disappointed with the lack of transparency in policy decisions e.g. the Defra team had proved unwilling to share a list of options. They had only just learned that there would be stocking restrictions at mid-tier, despite all the work on conducting case studies, which made it difficult to be effective and there was concern that decisions had been made first and communicated rather than developed together.

1.6 [REDACTED] said many commons had recently gone into HLS, and there would be no move to NELMS within its duration. There might therefore be time to work on the details. [REDACTED] said there were a number of commons with expiring agreements in the near future (Yorkshire Dales and Howgills). [REDACTED] said the group should argue for a flexible scheme: [REDACTED] and [REDACTED] suggested all commons should have a management plan.

1.7 Tom said that nothing had been locked down but that it would be soon and Government would need to get right the balance between audit and localism. [REDACTED] said it would be useful to be given a timeline of Defra's deadlines for making decisions and asked if all commons should go in the upper tier. [REDACTED] replied that there would not be enough money for that and there would be targeting as some commons were not a priority. [REDACTED] said the group should have an influence on options if there are any. [REDACTED] confirmed the proposals had to be finalised by 14 Feb. [REDACTED] said they had not seen any of the detail. Tom said he and [REDACTED] would take these messages back to the NELMS team.

ACTION: Tom and [REDACTED] to feed back to the NELMS team

1.8 [REDACTED] asked how scheme design was being done, if not through bodies such as the working group. [REDACTED] said it was being done primarily by Defra and Natural England but she could feed in any views. [REDACTED] asked whether there was an opportunity for trials; [REDACTED] said there was now some interest in wider scale facilitation; [REDACTED] questioned whether that was in fact trialling. [REDACTED] said money is

an issue and trialling meant less money for schemes, and she also said the new schemes should facilitate new business and new people.

1.9 [REDACTED] asked how the landscape scale aspiration would relate to a commoning landscape. What would it seek to achieve in that context? How would it relate to farmers whose existing agreements expire out of synchronisation with others in the area? [REDACTED] added she was concerned that farmers would be marginalised and asked what would happen where a farmer's agreement ended before others, would he need to do his own landscape scale assessment? Tom said that there was no obligation in relation to the landscape scale approach. [REDACTED] asked who decided whether a particular proposal should be promoted as part of a landscape scale approach. She asked what if the farmer has different outcomes in mind and [REDACTED] said the landscape scale scheme is about targets. [REDACTED] said that understanding of the landscape scale approach was better understood by conservation NGOs than farmers and it would be a mistake if this work was driven solely by NGOs when a partnership between them and farmers is actually required.

1.11 Tom questioned how best to ensure that views were fed back into the NELMS development work, and he would do his best to ensure maximum transparency.

ACTION – Tom to speak to the team about transparency with partners

2 Implementation of Part 1 of the Commons Act 2006

2.1 [REDACTED] told the group that the minister has made a decision and it would be announced via a Ministerial Statement in the House soon but Defra first has to clear some sums with the Dept for Communities and Local Government. [REDACTED] added that the announcement would hopefully happen before Christmas and Tom said he very much wanted that to happen.

3 Growth and Infrastructure Act 2013

3.1 [REDACTED] told the group that October saw the reduction of the period of grace from 2 years to 1 for applications where the use of the land as of right has ceased, and the introduction of the landowner statements and highways statements regulations. Defra had published guidance for local authorities but guidance for applicants is currently being discussed by a focus group of practitioners, which comprises some members of NCLSG. The plan is to publish that guidance before Christmas.

3.2 He also said that the Dept for Communities and Local Government will shortly lay an Order to amend the existing trigger and terminating events. The Order will set out a time limit for draft plans, Local Development Orders, Neighbourhood Development Orders and Transport and Works Act Orders. The plan is to lay the Order early next year though there has been some discussion about possibly laying it before then. [Update: the Order will be laid on 9 Dec.]

4 Part 3 of the Commons Act 2006: review of fees and exemptions

4.1 [REDACTED] summarised his paper and emphasised that the detail was there for illustration and further work with the Planning Inspectorate was required in relation to the figures. The number of section 16 and 38 applications had gone up over the years and few were refused. He said decisions for utility works amounted to about 25% of the total although often the works were for short periods. [REDACTED] asked group members to provide initial views by Christmas. The aim was to consult next year, probably February, and commence the legislation in October. [REDACTED] commended Defra for undertaking the review and suggested that if applications resulted in small amount of change then the fees should be reduced.

ACTION – Members to send their views to [REDACTED] before Xmas

4.2 [REDACTED] suggested that fencing for environmental schemes should be exempted. [REDACTED] disagreed adding that exemptions should not be extended to fencing because in such applications it is important to know the access points; every scheme is different and they do not always get the access points correct. [REDACTED] agreed that the process of consultation was very important and suggested that consultation should be a pre-requisite for all upper tier agreements, especially if an exemption for consent was applied. [REDACTED] that the position in Wales is that they do not have an exemption order and [REDACTED] confirmed this and said that no difficulties had been reported requiring a need for exemptions and there was no pressure for them to review this decision.

5 Commons councils

5.1 [REDACTED] told the group that the Brendon Order was laid on Monday 25 Nov and would come into force on 1 Jan 2014, but the Council itself would not come into existence until 1 April. The Secretary of State must appoint a returning officer to facilitate the first elections and appointments, so that the Council could be fully operational from day-one of its existence. Defra was waiting on a revised proposal from Bodmin, possibly Cumbria too. [REDACTED] confirmed that Cumbrian commons associations were asking whether they could get out of a commons council were it found not to work. [REDACTED] said that he had never come across an association on Dartmoor that wanted to leave the Council but commoners had to pay dues to exercise their grazing rights so the model was different.

5.2 [REDACTED] asked what did Defra see for the future of commons councils and [REDACTED] said it was not possible to say what the future held for the making of commons councils but it would depend on two factors: the availability of Defra resources versus other priorities and whether further proposals were submitted. However, having tested the process for making commons councils with Brendon he had learned the importance of starting and finishing work on drafting establishment orders without breaking, as happened with Brendon due to reform of greens, because the collective memory on decisions related to wording is short. [REDACTED] asked whether someone should assess whether the Council has worked in about 5 years' time. This would provide the evidence for future prioritisation. Tom agreed and said that we should record the baseline now against which to measure the success of Brendon. He also flagged that the longer it takes to bring forward proposals the greater the risk of loss of momentum.

6 TB livestock movement controls on commons

6.1 [REDACTED] told the group that Defra had begun to consult on a proposal to remove the current pre-movement testing exemption for movements (from higher TB risk herds) to and from common land. As part of that Defra has asked for views on whether the requirement to test before moving animals back to the farm should be waived, for example if the distance to travel is short. He said he would be happy to meet with group members to discuss further. [REDACTED] said there is no evidence that increased regulation would reduce TB and this would increase costs for farmers where there are frequent movements to and from the common, for example when cows go to the bull. [REDACTED] said that a practical difficulty with testing requirements is that vets are fully booked up to 7 or 8 months in advance and it is unpredictable when the cattle might need to go out onto the common. [REDACTED] said the proposal was trying to be proportionate without losing the benefits of disease control. [REDACTED] said there is no evidence that stock coming off the commons increases risk of infection. [REDACTED] added that the proposal would not prevent disease spread from stock in in-by land given its location between the farm and the pasture. Tom asked [REDACTED] to consider the question of proportionality – would cattle grazing common land be tested more frequently than cattle grazing other land and would this be proportionate to the disease risk evidence?

6.2 [REDACTED] was concerned that the proposals might mean that farmers would be unable to fulfil their grazing requirements under agri-environment schemes. Many commons are now being asked to graze cattle for conservation reasons, even where cattle have not been grazed there before. [REDACTED] confirmed that NE shared this concern, especially if it resulted in a move from grazing cattle to sheep. She also flagged that she would want to fund testing out of agri-environment.

6.3 [REDACTED] flagged a safety concern in terms of trying to test cattle on the open common – this would need to be resolved by having a post-movement test. [REDACTED] confirmed that this would be the intention.

7 HS2 update

7.1 [REDACTED] told the group that the hybrid Bill for the proposed scheme for Phase 1 (London to Birmingham) had been laid in Parliament along with the Environmental Statement (available online and at local authorities), which would open for consultation shortly and would run for 8 weeks. There had been lots of consultation at the local level. The final scheme would follow after the consultation which will be conducted by Parliament. [REDACTED] asked about access where the route splits parcels in two and [REDACTED] replied that the HS2 Co. would try to provide direct access from one side of the track to the other. He confirmed that normal CPO procedures apply and that the company recognised that the lengthy construction period (7 yrs) meant they had to take account of farmers practical needs between now and completion of the project. Phase 2 will follow in due course with a separate bill. [REDACTED] said only one common was affected by Phase 1.

8 Natural England stakeholder engagement

8.1 [REDACTED] said NE's bilaterals with group members had led to training modules for NE staff aimed at improving officer understanding of the various models and approaches for commons. One of the main objectives is to remove the lack of

consultation of user groups. OSS is providing training to NE staff this week. ■■■ said the Foundation had had no involvement in the training so far and offered to assist with a specialist module on grazing lowland commons. She also added that the training should be factored into NELMs.

9 Making ways for horses – ■■■

9.1 ■■■ had previously circulated the Equestrian Access Forum's publication 'Making ways for horses'...' at the last meeting. He said that commons can provide useful safe off road access especially as horse riders have access to only 22% of the public rights of way network. The publication outlines their aims for access for equestrians and he asked for comments from the group. ■■■ added he had recently met ■■■ who agreed to prioritise their 41 proposals as a starting point for further discussion.

10 The apportionment of agri-environment schemes monies on commons in England

10.1 ■■■ and then ■■■ summarised the intention and findings of the paper, which are respectively, the lack of empirical evidence on how scheme monies are dispersed and there is a big regional variation in allocation for no apparent reason but it could perhaps reflect the diversity of commons. ■■■ said active management of commons was being compromised by current arrangements and the development of NELMs meant it was timely to revisit the matter. The authors asked 3 questions: who receives the money, what do recipients do to manage the land to receive money, and are there regional variations.

10.2 Overall, active graziers take three-quarters of the money and do 89% of the work. The Internal Management Agreement (required by AE schemes) is critical because it determines the spread of money but it is not transparent. There was a big difference in the spread of monies between Cumbria, where active graziers get 95% of the pot, and Durham, where they receive 52% and the owner gets 46%. ■■■ suggested guidance would ensure consistency and it was also important that there was proper accountability of funds; ■■■ said it wasn't NE's job to dictate terms of allocation and should be mindful that the situation was more complicated – for example, some owners will take a large chunk of agri-environment moneys but reduce the rent on the in-bye. Tom said it wasn't something Government should involve itself in as a commercial arrangement.

11 Proposed date of next meeting

11.1 The Nobel House conference room is booked for Fri 6 June. ■■■ asked if the date could be changed from a Friday and Tom said Defra would try to find one. ■■■ mentioned the difficulty of finding rooms in Defra offices and Tom invited group members to offer alternative locations.

ACTION – members to offer alternative locations in early June but not a Friday

12 Any other business

12.1 [REDACTED] said that the application form for works on commons (s.38 of the 2006 Act) had been amended to remove the question related to what consultation had taken place prior to the application. She asked the group to let her know if this had been a problem for others. [REDACTED] said he would take the issue up with the Planning Inspectorate.

ACTION – [REDACTED] to take this matter up with PINS

12.2 As RPA had not attended the meeting, Tom asked for an update note from them on the mapping project to be provided and circulated to the group.

ACTION – circulate RPA paper to members

Update re RPA action point 12.2:

The mapping of all claimed registered commons is complete and work continues on the process of ratifying eligible areas within these and undertaking quality assurance of the mapping activity as a whole. Overall the process is 40% complete. Cumbria is 68%, N Yorkshire 62% and these are targeted to be completed by the end of December to enable the RPA to further assess and assure the changes in January 2014 with analysis of the mapping activity for these areas compared to that of the Biological Survey data.

RPA are also working toward developing a strategy for engagement with claimants with Defra in January 2014, once agreed and ready the RPA will circulate to stakeholders together with a high-level outline of timings of when and how maps will be able to be reviewed. A customer engagement campaign will precede use of the mapping data which is not intended to be used until the BPS in 2015 due to the timing and readiness of the mapping activity.

RPA will come back as soon as possible on their engagement strategy and with data on changes in areas as a result of the digitising compared with the Biological Survey data.