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The enablers and barriers to the delivery of natural flood management projects

Appendix D: Landowner deep dive

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Introduction

Without the consent, engagement and buy-in of landowners, ultimately, natural flood management (NFM) cannot go ahead. Whether a large country estate, a small farm holding or a public forest, landowners are key to NFM and can have a significant impact on the success of a scheme. During the interviewing process, it became clear that there are components of landownership that commonly arise which act as barriers to implementation or facilitate implementation of NFM projects. The following Section explores these issues in further depth based upon further focussed interviews and desk research with landowners including from small farm holdings, country estates ranging from 17 to 18,000 acres and public forestry agencies.

Method

The deep-dive analysis richly investigated the perspectives of the landowners interviewed. As crucial stakeholders in NFM schemes with a significant influence on their viability or success, it was important to ensure that the barriers and facilitators specific to landowners were identified and explored.

The findings in this report were informed by both desk-based research and 7 of the 58 interviews that were undertaken with landowners. These participants were from a range of organisations including utility companies and large country estates and had had varying levels of involvement with NFM, allowing for insight into the reasons why or why not NFM had been undertaken.

Maintenance and longevity

Introduction to the problem

Maintenance is crucial to NFM to ensure the longevity and functionality of any scheme implemented. Despite this, many funding pots focus heavily on the delivery of an NFM scheme and preclude funding for any maintenance later down the line. As a result, many landowners can find themselves in a situation where they are liable and responsible for the features, and also possibly associated liabilities, implemented on their land, but without any funding to cover this. This will inevitably make landowners more reluctant to get involved and therefore presents a barrier to NFM implementation.

Maintenance uncertainties

The uncertainty on the extent of maintenance required for NFM features appears to be a barrier in terms promoting implementation. Currently, the required long-term maintenance of these features is still somewhat uncertain. Alongside this uncertainty, a lack of funding specifically to support maintenance compounds any reluctances of landowners to implement NFM projects.

One participant spoke of their experience with this issue. A series of NFM features were implemented and there are now maintenance problems. The landowner's issue is that "*maintenance costs a lot*". In this case, the landowner is responsible for a large-scale scheme with many features that was 'semi-engineered'. This has led to high maintenance costs. While this landowner recognises that they can maintain the upkeep, it has left them considering if they would want to implement further measures. This not only limits the potential for future projects, but also limits any expansion of the original scheme.

With the larger schemes, a reputational and social pressure for large landowners to maintain features was identified. As one participant pointed out, they have worked hard to build a relationship with the local community and there is now an expectation placed on them "*to carry on the legacy of the project*". This additional pressure might leave some landowners reluctant to get involved.

Longevity of a scheme

The longevity of an NFM scheme is dependent on the upkeep and maintenance of features. To build the evidence base on NFM it is important that we can maintain the features as planned to monitor these to understand long-term impacts. This is in addition to providing continued flood risk benefits. This was expressed as a need to "*build on success*" to expand on implemented features.

The problem with ensuring the longevity of a scheme relates to funding. One participant that had implemented an NFM scheme were then unable to apply for the 'new' Defra £15m funding when it became available. New funding could not be used in an existing project, something which they thought hindered their ability to improve the legacy and longevity of the scheme.

Risk

When landowners begin considering implementing NFM features on their land, one of their concerns is the new risks associated with these features being on their land. These risks include those associated with the performance of the features and in turn any liabilities. This is also linked to maintenance responsibilities.

One participant in the study referred to a need to develop a project risk matrix which "*project managers can use, assess the risk, and apply a range of mitigation measures to*

reduce the risk of liability". This process they considered would allow large landowners/organisations to be able to look at the risk associated with a proposed scheme early on and either say yes, we're happy to take the responsibility, or go back and look at the mitigation options. The potential in this approach is that landowners are more likely to allow the features to be implemented if the risks are understood and there is a level of certainty around any risks.

Risk was commonly referred to throughout the research. References were often generalised such as those relating to a feature's overall flood benefit performance, but more often specific such as 'what happens if?' Liability, responsibility, quality control and standards were all issues referred to in interviews and similarly also in the literature research but were not explained with clarity or in great depth. This led the study to identify and consider landowner and project developers' responsibilities and liabilities in greater detail. Additional legal assistance was brought in to help with this and this is presented as a separate Section of this report.

Landowner motivations for implementing NFM

Introduction

As part of understanding the barriers and facilitators to NFM, it is important to understand the motivations behind implementing schemes. The seemingly obvious answer to this would be 'to reduce flood risk', however as the multiple benefits derived from NFM features become apparent, primary motivations may differ. Examining the variety of motivators enables further exploration of some of the key barriers and facilitators already identified and in particular funding and landowner engagement.

The multiple benefits of NFM

'Natural flood management' has benefits beyond managing flood risk. These benefits are considered in detail in the Environment Agency (EA)'s Working with Natural Processes (WwNP) evidence directory (Environment Agency, 2017) and includes:

- Water quality
- Habitat
- Climate regulation
- Low Flows
- Health Access
- Air Quality

- Flooding
- Aesthetic quality
- Cultural activity



Figure 1. The multiple benefits of NFM.

These multiple benefits can be seen as motivations for getting involved in NFM, and often projects are focused on achieving these multiple benefits. These different benefits have also proven "unlocking the multiple benefits helps to identify multiple beneficiaries and makes it possible to attract wider funding sources". For example, several participants in this project have implemented NFM features using funding that was not directly flood related, for example biodiversity funding. As a result, it is not surprising that these benefits are now sometimes used as primary motivations for schemes that also provide flood risk management benefits.

Water quality as a motivation

A benefit which is a common motivation behind NFM features is water quality improvement. This is particularly true for water companies for whom small land management changes can not only bring about environmental benefits but can save significant amounts of money in terms of water treatment works. Utility companies make up 18% of the top 50 UK Landowners, and own approximately 459,876 acres between them across the UK. On this land, they can utilise NFM features to make improvements to runoff and sedimentation, which will improve the water quality so there are less costs associated with treatment. Consequently, it can improve the capacity of the treatment works meaning there is reduced need for new treatment plants, and they are more resilient to increasing pressures such as population growth.

Despite the positive changes NFM can make for utility companies, it is important that they choose their primary motivation carefully in order to justify the spending of their customers' money and can "show how they are impacting their customers lives positively" through these features. Therefore, the multiple benefit approach outlined above can be particularly

useful to utility companies, and perhaps made more useful under a natural capital/ecosystem services approach.

Large estates implementing NFM

Large estates, single landowners of large tracts of land, are a feature of the UK landscape. Royalty and Nobility accounting for over 1 million acres of land across the UK. The National Trust alone owns over 600,000 acres (National Trust, 2019). The motivations of these landowners for involvement in NFM varies, ranging from flood risk management and water quality, through to nature conservation and biodiversity. Many large estates now have sustainable land management in their estate strategies and management plans and so NFM can be incorporated into this.

One common motivation to implement NFM is an identified funding source. All of the estates spoken with mentioned money in some way, and it was suggested that "*the main thing that stops a scheme is the funding due to the huge expense required for some work*". Another participant indicated that a lack of NFM features on the estate was not because the estate did not want to do this, but because "*generally, work like this on a water course is low down on the list when you have things like listed buildings to look at*" and so in this case it took an external funding opportunity to prioritise NFM implementation. There was a suggestion that a potential revenue stream style of funding might motivate estates to invest more of their own money into the initial costs of implementation.

In some instances, motivation to get involved in NFM might come from a personal interest by the estate landowner, for example the National Trust, in others it might arise from the estate tenant farmers. Multiple participants indicated that having good relationships with estate tenants is particularly important, and "*having a conversation with tenants about achieving what we both want to achieve*" was cited as valuable in promoting projects.

The needs and interests of landowners and tenant farmers need to be balanced to ensure the successful implementation of NFM. This could result in changes to the primary motivations for a project, depending on if there is a difference in interests, and what the landowners might respond to. For example, one participant suggested where a farmer might be more hesitant towards looking a pollution control, they might be more enthusiastic about flood preventions measures and therefore an NFM project could be designed with this in mind. This links back to the multiple benefits outlined earlier and utilising this approach could be beneficial to gaining the crucial buy-in from landowners.

The Commons

Introduction

Conversations with several key Natural Flood Management (NFM) stakeholders highlighted experiences where NFM has been complicated by the presence of common land, particularly in the Lake District National Park (LDNP) and the Yorkshire Dales National Park (YDNP) where a large proportion of common land is located. In particular, where an NFM measure requires fencing (e.g. woodland planting or riparian buffer strips) there is potentially a barrier to delivery in the form of resistance from stakeholder parties and delays due to the legislative requirements. An interrogation and spatial analysis of the Working with Natural Processes (WwNP) potential maps demonstrates that Registered Common Land is often found within a landscape that lends itself to NFM potential (Figure 2). However, in appraising the uptake of NFM across the UK it is notable that within areas designated as common land the number of NFM measures implemented is significantly below what would be anticipated based on the landscape characteristics.

"To many people the prospect of any fencing on the common is anathema. That is a perfectly tenable position, given that commons have remained unenclosed through history"

Finding Common Ground, Open Spaces Society

The evidence suggests that barriers to NFM implementation on common land are being overcome and that the under representation of NFM measures being implemented across common land is in part a time lag phenomenon. However, the regulatory barriers associated with common land are much more complex and require greater time to work through. There is evidence that points to these obstacles now being worked through and resolved.

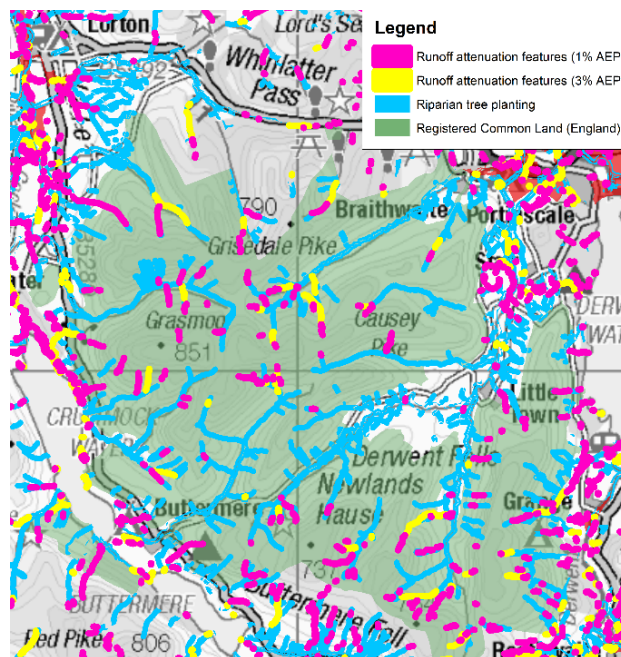


Figure 2. NFM Potential on Common Land

What are the Commons?

Once covering half of England, the Commons are older than Domesday (Natural England, 2012). Today the remaining 500,000 ha cover 12% of the total land area across England and Wales (see Figure 1). Individually, the commons cover 3% of England 8% of Wales.

In England, 35% of all common land is located in the North-west region, extensively in the Lake District (Figure 3 2). In many cases, particularly the northern regions, commons are contiguous and are managed as larger integrated systems rather than single packages of land (Foundation for Common Land, n.d.).

"[The commons] are a controversial topic and feels as though you are treading on hallowed ground"

In Wales, the majority of the commons are located in the uplands. Similar to England, many of the registered units form contiguous blocks and are managed together. The land types of the commons tend to include large areas of grassland, heath and bracken, with blanket bogs being found in Elenydd, Migneint, Berwyn and raised bogs in Cors Fochno near Borth.

The Commons & NFM

The location, land types and contiguous nature of the commons means that they are inevitably important areas to catchment scale management and the implementation of NFM across England and Wales (Figure 3).

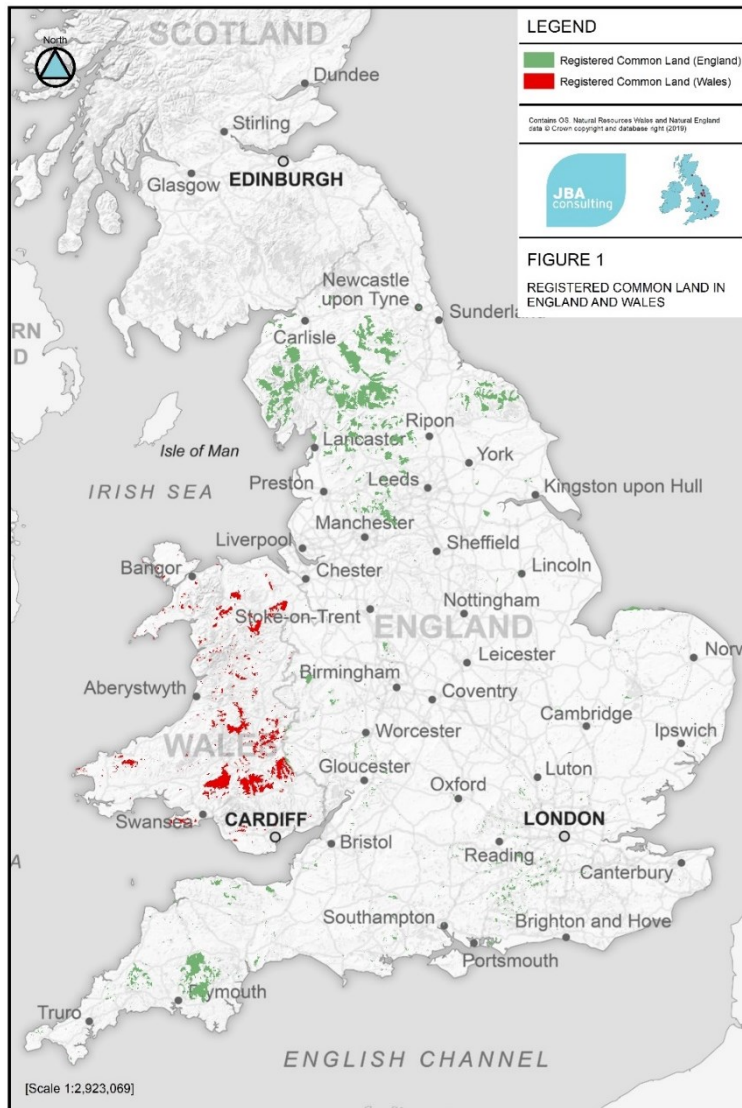


Figure 3. Registered common land in England and Wales

Interviews with landowners, land agents, farming facilitator organisations and farmers, however, have revealed that the Commons and their associated legislation, historic culture and emotional attachment can, in some cases, pose a barrier to the implementation of NFM. Despite registered common land making up 12% of the total area of England and Wales, only 6 NFM schemes appear to be in place or in progress in the commons across England and Wales, less than 3% of all NFM projects (total 247 NFM projects Figure 4).

“If you can get NFM to work on the Commons, you can get it to work anywhere”

The published NFM potential maps identify numerous NFM opportunities; riparian tree planting, leaky barriers and run off attenuation, across common land.

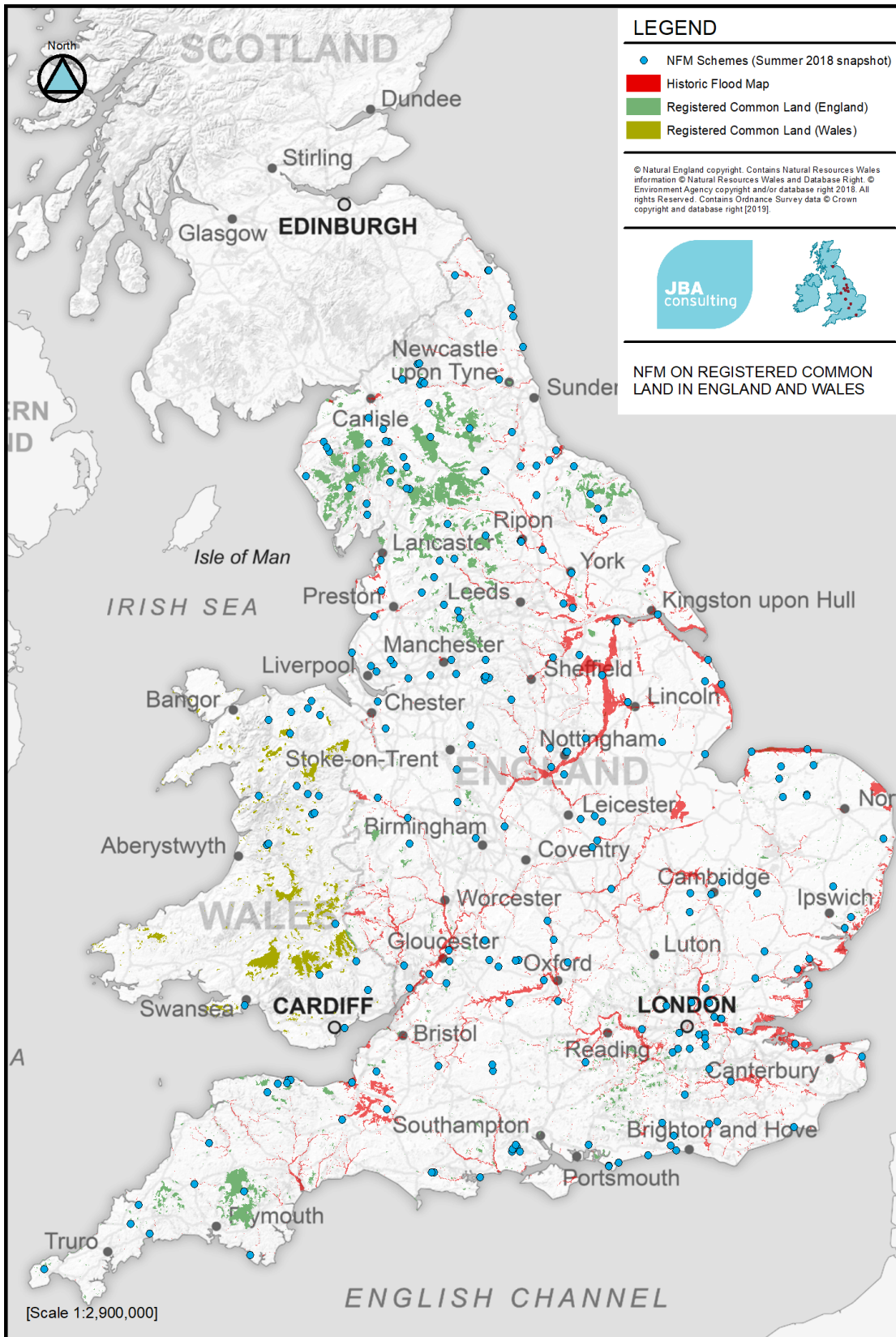


Figure 4. NFM on common land (Summer 2018)

Policy & legislation background

In 1965, the Commons Registration Act sought to register common land across the UK along with the ownership and rights over them, establishing definitive registers. The Act is criticised for its perceived negative impact upon the sustainable management of the commons due to potential 'over-registration' and resulting over-grazing of livestock (Rodgers, 2010). The Commons Act 2006 was the first statute since 1965 and aims to "*protect common land in a sustainable manner, deliver benefits for farming, public access and biodiversity*" (Foundation for Common Land, n.d.). A key element of the Act was the "*introduction of mechanisms for the sustainable management of common land*" (Rodgers, 2010). It provides strict protection for registered common land - their nature being unenclosed and open spaces.

Indeed, there are several organisations that are dedicated to the protection of these historic spaces and their associated culture including the Foundation for Common Land, the Open Spaces Society, the Uplands Alliance and local access forums amongst many others. NFM on common land is possible, but depending on the work that is being proposed, for example fencing off any common land, applications must be made to the Secretary of State under Section 38 of the Commons Act which, as with any planning and consents process, can be lengthy (up to 6 months). Just as with a 'normal' planning and consents process, early and wide consultation with statutory stakeholders is essential. Government guidance states that if a consensus can be reached with the interested parties, an application to carry out works on common land is more likely to succeed. A guidance document produced by Natural England entitled 'Our Common Purpose' which "*seeks to reduce the potential for controversy*" (Natural England, 2012) for those contemplating management on common land, suggests over 50 different stakeholder groups whose relevant interests may need to be carefully identified and represented. The obligation to notify all commoners or those with registered interest is complicated by the processes through which changes to ownership or leasing of commons grazing rights is recorded and registered. The 1965 Commons Registration Act does not require notification of any changes in ownership or tenure, rendering the process impracticable in some cases. The Commons Act 2006 has made provision for the 1965 registers to be amended and corrected to improve the ease with which owners of commons rights can be identified, however the process can still be problematic, particularly where there is transferring, leasing or licensing of common grazing rights. It has been suggested by several interviewees that the process of gaining consent does not lend itself to facilitating or encouraging NFM on common land and can in some cases lead to plans being abandoned altogether.

Following a campaign led by the OSS, in 2017 it was announced that the Government had agreed to apply environmental impact assessment (EIA) to common land, meaning that works on the commons such as fencing require an EIA screening decision in addition to applying to the Secretary of State under Section 38. A screening report typically requires:

- a full description of the project and its effect on the environment

- map and plans for the project and the area likely to be affected
- descriptions of the environmental sensitivity of the project
- landscape, biodiversity and archaeological assessments where required
- details of any mitigation that will lessen the effect of the project
- an appended collection of evidence

In the Lake District, following the award of UNESCO World Heritage Status, it is likely that works on the commons will, in addition to the above, require a comprehensive heritage impact assessment (HIA) to understand how a scheme could impact the 'outstanding universal value'. The status was awarded under the 'cultural landscape category', referring to the landscapes in the Lake District that have been shaped by farming, industry and the conservation movement (in reference to conserving the Lake District Way of life and farming).

"The distinctive communal farming system, including common land, hefting, the field systems, and drystone walls has evolved over at least one thousand years. This heritage and the landscape it has created are at the core of the Lake District's Special Qualities and its "Outstanding Universal Value" in its case for inscription as a World Heritage Site."

Lake District National Park Authority

Afforestation (in particular, commercial afforestation) in the Lake District has long been considered a threat to the open nature of its valleys and uplands, created by farming. It has been resisted, prevented and battled against on many occasions, according to the Nomination Document (Lake District National Park Partnership, 2015). Woodland planting for the purpose of NFM, whilst unlikely to be on the scale of commercial afforestation and using different species, may on this basis face scrutiny when considering the impact on the cultural landscape. In addition, where tree planting requires fencing, consent under Section 38 will be required on account of the implication to commons grazing rights (i.e. the land is being taken out of grazing) and implications for public access and the landscape.

Foundation for Common Land

Whilst there are evidently a number of potential 'barriers' to implementing NFM on common land in the form of legislation and consents requirements, collaborative efforts to maximise the public benefits from common land are in progress and in doing so, helping to overcome issues with gaining consents.

The Foundation for Common Land (FCL), a registered charity established to protect the public benefits from pastoral commoning, put forward a position statement on NFM in February 2018 in response to the increased interest in its contribution to the reduction of flooding across the UK. The statement seeks to set out the Foundation's views and "*highlight the opportunities offered and challenges presented on commoners and those who actively manage commons*". The FCL emphasises that it supports NFM as a new

addition to the flood risk management toolkit and that the challenges they identify in their position paper relate to “*how NFM is implemented rather than the techniques themselves*”.

The primary message that underpins this position statement is the need for the local stakeholders to be involved as early on in the process as possible to contribute their (arguably) unparalleled local knowledge to the design and development of an NFM scheme, most crucially those that own the commons (landowners) and those that have grazing rights (commoners). The FCL commends the use of a ‘charter’ as a means of ensuring that these key stakeholders are at the heart of efforts for upstream mitigation on common land and neighbouring farmland. This has been demonstrated in Cumbria.

NFM & the Commons in practice

Taking into account the recommended actions from a report written by the charity in 2014 entitled “*Better Outcomes in the Commons*”, the FCL arranged a meeting with organisations working on upstream mitigation in Cumbria and a ‘Charter for Collaborative Action’ was developed, refined by the wider Cumbria Flood Partnership, adopted in the Action Plan and is now being tested in pilot communities. The ‘Charter to Slow the Flow’ is summarised below:

- Charter to Slow the Flow: Plain English Version**
1. Floods can cause terrible damage: we need to reduce future impacts
 2. Cumbria & the Lake District is fantastic; we must look after what we love
 3. Slowing the Flow can help reduce flooding
 4. We will work to overcome the mistrust between people
 5. Slowing the Flow requires farmers and will need to be paid for
 6. We ask for a lead for flood protection and recovery while recognising other legal duties, responsibilities and rights
 7. Every place is different and requires its own solution
 8. Local schemes need to coordinate to make a difference at the large scale
 9. Scientists, communities, farmers, landowners and organisations will pool their knowledge
 10. We will address conflict between people-not just paper over the cracks
 11. We will now move from meetings to collective practical action
 12. We commit to action for flood mitigation in line with this Charter

The 2014 report used 5 case studies to “*draw out the characteristics of the successful delivery of multiple outcomes over the same area of land*” to inform the development of policies and programmes specific to the uplands (Aglionby and Morris, 2014). The report concludes with 10 attributes of successful management on upland commons, as summarised:

1. **Strong and adaptive leadership co-ordination** - a key individual who champions a scheme or upland area, going above and beyond to co-ordinate and negotiate relationships between parties

2. **Good and regular communication** - arranging meetings at a time that suits all parties (e.g. in the evening so commoners are able to attend)
3. **Effective and well-established networks** - to allow commoners to feel comfortable and confident in expressing their views and interacting with different organisations
4. **Respectful attitudes** - mutual respect for all parties' standpoints
5. **Clarity on rights and outcomes** - clear understanding on all stakeholders' rights and responsibilities to receive and deliver outcomes
6. **Trade-offs negotiated fairly** - identification and awareness of power imbalances, and identification of win-wins and non-conflicting outcomes to maximise common ground
7. **Fair and transparent administration of schemes** - impartial responsibility for distribution of funds to beneficiaries
8. **Payments that reflect contributions and benefits**
9. **Use of local knowledge and local discretion over prescriptions** - successful outcomes respect and use local knowledge that has been built up over decades and generations.
10. **Time** - for effective negotiations; the development of robust effective governance arrangements; and the continuity of service by committed individuals

Another example of NFM measures being implemented on common land is the project 'Our Common Cause: Our Upland Commons', which was commissioned by the Foundation for Common Land. It similarly builds on the 'Better Outcomes to Upland Commons' report with three aims:

- Enabling Collaborative Management
- Reconnecting People with Commons
- Improving Public Benefits

One element of this project is around peat restoration and aims to investigate opportunities for innovative peatland and wetland stabilisation and restoration on selected commons in the Lake District, Yorkshire Dales and Dartmoor. Whilst interested in the technical elements of peatland restoration, it also seeks to assess the practical implications to farm management.

Conclusion

As iterated above, whilst the barriers to carrying out NFM work on common land may seem a daunting, lengthy process with potential for failure, there is significant work being carried out by the likes of the FCL and its partners (including National Parks, AONBs, National Trust and more) to encourage collaboration amongst those who seek to achieve multiple outcomes on the commons (such as flood risk mitigation) and those who rely upon the commons for their livelihood and have done for generations. These proactive approaches spearheaded by the FCL are in their early stages and only time and experience will tell how effective they are.

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