

## DISPUTED CASE - CONTEXT OF CONSIDERATION.

The Forestry Commissioners' are not expected to take neutral position on a woodland creation proposal. The proposal should be considered in the context of the Forestry Commissioners general (forestry) duties, Part I of the Forestry Act 1967 and other applicable legislation, codes of practice and standards. More detail of these are given below.

### Forestry Legislation

The Commissioners are '*charged with the general duty of promoting the interests of forestry, the development of afforestation and the production and supply of timber and other forest products*' including '*promoting the establishment and maintenance of adequate reserves of growing trees*'.

In discharging their functions Commissioners '*shall, so far as may be consistent with the proper discharge of those functions, endeavour to achieve a reasonable balance between--*

- (a) *the development of afforestation, the management of forests and the production and supply of timber, and*
- (b) *the conservation and enhancement of natural beauty and the conservation of flora, fauna and geological or physiographical features of special interest.*

[Note: The text in italics is extracted from the Forestry Act, being that relevant to the matter under consideration]

### Other Legislation

#### National Parks

The Forestry Commissioners are also required to take 'Due Regard' to the purpose of the National Park under the provisions in: Section 11A(2) of the National Parks and Access to the Countryside Act (1949) as amended by Section 62(2) of the Environment Act (1995)

The purpose of the National Parks (under the Environment Act, 1995): to conserve and enhance the natural beauty, wildlife and cultural heritage of the area; and to promote opportunities for understanding and enjoyment by the public of the area's special qualities.

In cases where the purposes conflict irreconcilably, the first purpose takes precedence, commonly known as the 'Sandford principle'.

## Natural Environment and Rural Communities Act (Duty to conserve biodiversity)

It is the duty of any public authority in exercising its functions to have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity in respect to the United Nations Environmental Programme Convention on Biological Diversity of 1992. This replaces a similar requirement in the Countryside and Rights of Way Act 2000.

### **Codes of Practice and Standards**

The underlying standard against which the application must be judged is the UK Forestry Standard, for the application to have progressed to being a disputed case it will already have been judged as being compliant with the UK Forestry Standard. Non-compliant application would have been rejected at a much earlier stage.

Natural England (in 2010) published a practical guide to the duty of regard, in respect to statutory landscape designations, this is relevant as the case in question concerns land within a National Park. A copy of this publication is included with the case papers.

Forest Services have a range of criteria for assessing impact of a woodland creation scheme, (relating to UKFS) for example breeding bird guidance covered in the case papers.

### **Having regard for or due regard.**

This an essential requirement, what it means is that Commissioners must give fair consideration to and sufficient attention to all the facts of the case, including the views of the Minister (if the application is not rejected at the first stage).

Consideration should be in proportion to relevance and must be done in a conscious way with focus on the specific requirements of the applicable legislation, standards, directions etc.

It is very important that the issues are given conscious consideration because the final decision could be challenged on public law grounds (Judicial Review). If such a challenge materialises, which is not inconceivable, the Commissioners will need to be able to demonstrate that they have followed the correct process for making their decision, acted within their powers and not behaved irrationally.