

25 July 2022

DISPUTED WOODLAND CREATION APPLICATION – WALLSHIELD**1. Purpose**

The Commissioners are required to make a final decision on whether the Countryside Stewardship application for a woodland creation proposal at Wallshield in Northumberland should be rejected, sustaining the objection by the Northumberland National Park Authority, (NNPA) or allowed to progress to Forestry Commission approval.

2. Background/Introduction

A 'disputed case' arises when the Forestry Commission is willing to approve an application for woodland creation because it meets the rules of the scheme and is UK Forestry Standard compliant, but a consultee with a statutory role sustains an objection. Wallshield entered the disputed case process in December 2020.

Whilst the woodland creation application was compliant and approvable in December 2020, some standards, for example woodland creation on peat, and also afforestation proposed on or near nationally important upland breeding wader areas, have changed since that time. This means that the decision to allow the application to proceed should be taken against all the current standards.

The key events to date in the disputed case process have been:

- Consideration by the FWAC Sub-group (February 2021)
- Consideration by the full FWAC (March 2021) and report to Commissioners
- Initial consideration by Commissioners (April 2021)
- Second consideration (including site visit) by Commissioners (October 2021)

The context in which the Commissioners should consider the case was given in the Paper presented in April 2021 and is included again at Annex 1

3. Recap of consideration and decisions to date

Environmental Impact Assessment Regulations

The application was given due consideration under the Environmental Impact Assessment Regulations (EIA) and was assessed as not requiring consent under the regulations. EIA carries a relatively high threshold and the EIA decision does not invalidate an objection from a statutory consultee being sustained through the consultation process. The EIA decision stands for a period of up to five years and cannot be revisited or retaken unless there is a substantive change to the proposal. This means that the applicant could undertake the afforestation now if they were not seeking financial support.

Objection – Combined effect (with the previous afforestation project) on the landscape and heritage of the area.

At the meeting on 20 October, after the site/area visit, Commissioners concluded that distant landscape impact from the primary area of concern, the Hadrian's Wall World Heritage Site, was acceptable. This view was supported by the fact that Historic England had not objected to the proposals. In terms of landscape in the immediate vicinity of neighbouring property it was noted that some adjustments had been made to the initial plans and that impact would be limited, taking into account the existing groups of trees and the terrain in the area. The conclusion was that the impact on the landscape was acceptable and was not a reason to reject the application.

Decision: Not supporting the objection

Objection – overplanting and obstruction of rights of way and loss of Access Land

Once the definitive routes of the rights of way had been identified the proposal had been adjusted to take these into account. No planting will take place on the lines of the public rights of way and they will not be obstructed.

Commissioners recognised at the meeting on 20 October that Access Land (open country under the CRoW Act) was a designation reflecting the land use at the time of mapping, not a designation that placed a constraint on future land use. The land in question being open access land was not a reason to reject the application. The Joint Local Access Forum (JLAF) have not objected to the proposal.

Decision: Not supporting the objection

Commissioners are asked to confirm that the two decisions above that relate to the Objection by the statutory consultee are an accurate reflection of their collective view.

Objection (non-statutory consultee – but also to be taken into account)
Detrimental effect on the neighbouring property (Scotch Coulthard) including in relation to the water supply

The applicant had provided an independent report on the water issues and the Environmental Agency also provided their views which stated that the proposal is unlikely to have a significant impact on the water supply to the neighbouring property.

In regard to landscape impact on the neighbouring property (also considered in the terms of wider landscape and heritage) it was noted that the bed and breakfast business was based in an area with significant existing tree cover and the new planting would not enclose it substantially more than it was already, with open land remaining. The impact on the business was considered and it was agreed that the planting is unlikely to have an unacceptable impact.

Decision: Not supporting the objection

4. Remaining (undecided) issue – the impact on breeding birds, particularly waders (with the emphasis placed on curlew) and skylark.

The impact on breeding birds, which included in the NPA Objection, was augmented by a detailed submission from the RSPB (a non-statutory consultee). Natural England, also a non-statutory consultee as the land in question is not a protected area relating to biodiversity, did not object to the planting proposal but equally it did not support it, this position was taken at the time because of insufficient survey work undertaken to determine the likely impact on curlew and other breeding wader populations. For completeness the letters received (and previously provided to Commissioners) are included with this Paper.

- The letter from the NNPA is at Annex 2 (grounds for objection c and d)
- The letter from the RSPB is at Annex 3
- The letters from Natural England at Annex 4.1 & 4.2

At the meeting on 20 October Commissioners concluded that as there were some legitimate questions on the extent of bird data available and noted that the survey standards had been updated and that new policy guidance was due. Mindful that the final decision should be made against current standards Commissioners concluded that a further bird survey should be undertaken to the latest standards and that the entire breeding bird issue would be looked at afresh as soon as possible after the survey report was available.

5. Breeding birds in and around the Wallshield area and issues to be taken into account.

Policy

At the meeting on 20 October 2021 Commissioners concluded that a new bird survey should be undertaken in 2022, taking into account the latest survey guidance so that uncertainty over the possible impacts of the proposal on breeding waders could be reduced.

At this time it was also noted that policy guidance was being refreshed, which would give the context in which the outcome of the new survey should be considered. It was also anticipated that the guidance would be in place by the end of the year, but this has not been achieved, and whilst the guidance has been progressed by the FC, Defra and Natural England it has not been finalised.

Defra consulted key stakeholders in November 2021 on proposals to introduce wader zonal maps (developed by the BTO) to guide wader conservation and forest expansion. This Defra consultation highlighted concerns over proposals to introduce a guideline threshold number of breeding pairs for applicants and decision makers to understand the significance of impact. It remains the case that we do not have a number set on what is or is not an acceptable impact of afforestation on breeding waders, either in terms of absolute numbers (per scheme) or impact relative to area.

However, it is worth taking note of the position in Scotland (although devolved) with the site being only about 15 miles from the border. In Scotland, the displacement of Curlew would need to be 5 or more pairs to be considered an unacceptable impact. This is in the context of the same UK Forestry Standard that we work to and the same international agreements on species conservation applying.

Survey findings

The full breeding bird survey report is at Annex 5. Lisa Kerslake, Area Ecologist for Yorkshire and North East England has provided a summary and evaluation at Annex 6

A near final version of the report was shared with Natural England because it cited lack of information as being reason for not being able to provide an informed view (letters of 1 and 20 October 2010). Natural England have now provided a view (focusing on the negative aspects of the scheme) within days of seeing the Report. We have now asked if it can also consider any benefits from the scheme, and at this time they have not responded to that request.

The letter from Natural England is at Annex 7

The views of Natural England, as the government's adviser for the natural environment in England, carry considerable weight when balancing the issues that should be taken into account when making the decision in this case.

Additional issues to be taken into account

As noted in the introduction the decision needed is whether or not to uphold the objection from the NNPA, it is not the decision to approve the scheme. This is because Countryside Stewardship, the original grant applied for, has been replaced with England Woodland Creation Offer (EWCO) and the applicant has been given the opportunity to migrate across to this new grant if the Commissioners do not uphold the National Park Authorities objections.

The local Area team will then need to ensure that all the relevant scheme rules are met and guidance has been followed before scheme approval. This change of grant scheme does not materially affect the substance of the proposal on the ground or the issues raised in the objection.

The land in question is within the Curlew LIFE RSPB Geltsdale & Hadrian's Wall Project area, more details of this project is given in the bird survey evaluation and Natural England letter. The project describes itself as "*[the] project site covers 15,000 hectares along the Northumberland and Cumbria border. The area includes RSPB Geltsdale reserve, a patchwork of blanket bog, heath grassland, meadows and woodland habitats. The remaining area includes the South Tyne Valley and Hadrian's Wall corridor – areas which remain a 'hotspot' for breeding curlew.*"

Whilst this case must be considered on its own merits it is also necessary to take into account the bigger picture and wider impacts, consistent with the Commissioners' duties etc. (at Annex 1). This includes the Government's ambitious woodland creation objectives, locally expressed through the promotion of the Great Northumberland Forest, where Ministers have identified Northumberland as a high priority area for woodland creation, the vital role played by woodland creation in increasing carbon sequestration as the Government strives to meet the net zero target by 2050. Noting that the increased funding for woodland creation is largely in order to help achieve this net zero target.

6. Views of the Minister

Before making their final decision, Commissioners are required to take into account the views (if any) of the Minister. Commissioners agreed that the views of the Minister should be sought whilst the breeding bird survey was being undertaken so that the final decision would not be further delayed.

In order to ensure clear separation between the interest of the Forestry Commission (which by the very nature of the Commissioners statutory responsibilities are pro forestry) and the views of the Minister, these views have been sought via Defra policy officials.

Full details of the case, including the Commissioners deliberations to date, were provided to Defra officials handling the request in February 2022, followed by a number of further exchanges and clarifications.

The Chairman has received a letter from the Minister, at Annex 8. This letter reiterates two key ambitions of Government, the tree planting targets and halting nature's decline, and the need for these to complement each other, with neither being more important. This leaves the assessment of all the relevant factors and judgement in the hands of the Commissioners.

The second factor in the letter is the confirmation that the policy revisions are still underway and updated guidance is expected later this year. This means that the decision taken in this case should not be taken as setting a precedent. The decision must be taken on the individual merits of this case, taking into account the factors that have been set out through this entire disputed case process.

7. Action Required

Commissioners should confirm that the two decisions (in the recap section of this Paper) are an accurate reflection of their collective view.

Commissioners need to make a judgement, after taking all the relevant factors into account, on the significance of the likely impact of this afforestation proposal on breeding waders, (halting nature's decline ambitions), balanced against the benefits for other species, delivery of Government policy ambitions of woodland creation, carbon capture and the wider role of the Forestry Commissioners, in the 'context' advice at Annex 1

Commissioners are required to either:

- Support the sustained objection and refuse to support the woodland creation proposal.
- or
- Dismiss the objection so that the application can be approved by the Forestry Commission subject to meeting the updated requirements of EWCO.

Richard Barker, Secretary to the Commissioners
20 July 2022