

Ref: FCDAG 11/2023

**DAG Minutes:** 23/11/2023**Location:** Webinar/teleconference**Chair:** Joe Watts**Secretary:** Sarah Lawson**Attendees****DAG Members:**

Neil Douglas (RSPB) **ND**  
Graham Garratt (ICF) **GG**  
Poppy Sherborne (NFU) **PS**  
James Russell (Community Forests) **JR**  
Julian Ohlsen (SW AFG) **JO**  
Nick Phillips (Woodland Trust) **NP**  
Simon James (Small Woods) **SJ**

Jackie Dunne (Confor) **JD**  
Cheryl Lundberg (RFS) **CL**  
Adrian Jowitt (Natural England) **AJ**  
John Bruce (Confor) **JB**  
Luke Hemmings (NPFPG) **LH**  
Neville Elstone (ICF) **NE**  
Claire Douglas (RPA) **CD**

**FC/Defra:**

Joe Watts (FC) **JW**  
Sarah Lawson (FC) **SL**  
Heather Gibbard (FC) **HG**  
Stephanie Rhodes (FC) **SR**  
David Waines (FC) **DW**  
James Murdoch (FC) **JM**  
Penny Oliver (FC) **PO**

Alex Lawrence (FC) **(Observer)**  
Robert Munroe (Defra) **RM**  
Rosie Morgan (Defra) **RMo**  
Melanie Jane Edgar (Defra) **ME**  
Jonathan Marsden (Defra) **JMa**  
Fjolla Morina (FC) **FM**

**Apologies:**

Graham Clark (CLA)  
John Blessington (Local Gov)  
Steve Scott (FC)  
Anna Brown (FC)

Paul Orsi (Sylva)  
David Lewis (RICS)  
Clive Thomas (Soil Association)

## DAG Minutes

### Welcome

**JW** opened the session and welcomed all.

### Felling Licence Online Version 2

**DW** (Strategy & Transformation Development Manager) presented slides.

**JO** commented they have been pushing for a system like this for WCPG that seamlessly takes you to EWCO so asked if this platform would help on that. Also, a plea that this is linked to the permissions within the RPA and do away with Agent Authority forms.

**DW** responded that at the moment there is no integration with grant systems planned, but the new service will have greater flexibility for expansion so it could happen in the future. In terms of linkage to RPA and Agent Authority form this has been a tricky area due to the challenges around the other systems that the forms are dependent upon (not just FLAs). It is still being looked at currently and hoping to come up with a final design solution but it won't be significantly different to existing form. Understand frustrations around the Agent Authority form but needs to be looked at as a separate matter.

**JD** commented that historically the system has been quite clunky so it sounds positive in terms of the mapping integration and making it more streamlined. One thing that would be good to see is a portal system which can be accessed by us and landowners to help application discussions, as currently there isn't a digital way to have those discussions. Also, would be good for 10-year plan of operations to be integrated into the portal and the maps created for the plans to be part of that portal. In terms of terminology, it would be appreciated to have some guidance behind the terms as people have different interpretations. Also raised fears around the migration from FLO1 to FLO2 as have concerns about information disappearing. Commented that the old system hasn't been able to cope with field/single/roadside trees. Asked if inspections team will have access to see all licences as Woodland Officers currently don't seem to have all of the information to hand. Asked why over the last couple of years there has been a clamp down on the use of variants for restocking species.

**DW** responded that it will be a portal-led system so multiple people can go in and view the information. Currently looking at the 10-year inventory plan of operations and that's being further refined as to what the integration will be there. The terminology has been picked up in some of the user research and trying to put in drop down guidance within certain areas to assist. On the migration side this is a complex area and FC are currently

looking at the essential transfer of Agents Authority forms, previous licences, accounts and information that will be carried over so that mapping will not have to be re-done.

**LH** commented that if looking for testers then there would be plenty within the Northern Professionals Group that would be happy to help. Also commented that it has felt previously that the system didn't really flow so hoping that this has been looked at. Wondered whether RPA field data will be utilised as a way of speeding up mapping.

**DW** welcomed the offer of help with testing. Noted comments about design improvements needed and commented that tried to make this a user led design as much as possible and have worked with internal and external users. Lessons have been learnt from version 1 which can be applied to version 2. Advised that he will come back regarding the RPA field data.

**NP** asked whether there were types of test user that were being targeted as in different contexts there will be different people with different skills and knowledge.

**DW** responded that in terms of testing so far it has been largely around persona types not necessarily urban versus farm, but more landowner versus agent. So would be useful to have a follow up conversation to talk around these different types to ensure that a variety of scenarios are being covered.

**DW** (comment from chat): I have noted key points raised and will take these back to the project team. If you have further questions and feedback, or would like to take an active part in future testing and engagement on improvements, please contact me [david.waines@forestrycommission.gov.uk](mailto:david.waines@forestrycommission.gov.uk)

We will continue to engage with you and update on the new platform, and the project milestones and timelines as things progress.

## Definition of trees and woodlands

**JM** (Head of Woodland Regulation Implementation) presented slides. Minutes have been updated with further information provided by James after the meeting.

**JB** asked if the definition was going to be adopted across the UK not just in England. Also feels that the term 'forest' needs to be clarified as well.

**JM** responded that this is England only. The purpose of the document is to define the terms in relation to the Forestry Commission's regulatory duties taking place under the Forestry Act 1967 and Forestry EIA Regs 1999. It is therefore an England only level document. That said, it draws upon some UK level definitions of a woodland, not least

UKFS. We're not aware of the other nations having similar documents, but we do keep in touch with them and would be content for them to adopt similar documents. That said, the document largely reflects previous thinking on these topics and I'm not aware of other nations adopting significantly different definitions / interpretations to date – even if they haven't published this in a document as yet.

Regarding the term 'forest' the document sets out that we consider these two terms to be synonymous / interchangeable. The interpretation therefore applies equally to 'forests' and 'woodlands'.

**NP** commented it makes sense to look at species rather than phenotype. It was raised that the Ancient Woodland Inventory update includes sites as low as 0.25ha and it might be worth referencing to avoid confusion over woodland and add as a caveat. Also asked at what point would natural regeneration or new planting be considered a woodland for the purpose of EIA and deforestation.

**JM** responded regarding the Ancient Woodland Inventory that it was a very useful point and we may look to include a tweak to the current draft on this point. We'll take it away.

Regarding natural regeneration We often say, a little in jest, 'we don't regulate mother nature'. The EIA regulations require a 'project' to be undertaken. We largely therefore take the approach that two elements need to be present. 1) an action by humans. That may be as simple as just erecting a deer fence around a piece of land, but a 'project' has to have some sort of (human initiated) action associated with it. 2) there needs to be an intent, or what a reasonable person might expect to result in, to create woodland. It would be reasonable to expect land encircled by a deer fence and left to its own devices to evolve into woodland (gross simplification, but I hope illustrates the point).

Land purely evolving into woodland of its own accord is outside of the scope of the EIA regs. There's no individual who's undertaken a 'project'.

**NE** asked about scrub creation and also would welcome further comment regarding the robust discussions with Natural England.

**JM** commented that it is useful to hear some support for the more species-based tree approach. Clearly the tweak in definition of 'tree' to be more species-based rather than phenotype-based has the *potential* to draw more 'scrub' creation projects located in difficult growing conditions (uplands for example) into the definition of a woodland. Natural England have made this point to us, and I think it is fair to summarise those discussions as NE expressing a concern that such proposals may be drawn into the scope of the Forestry EIA regulations, and thus slow down application processes for all concerned – which we fully accept is a legitimate challenge.

However, FC is of the opinion that regardless of what we call a project, all environmental due diligence should have been carried out by both applicant and government bodies involved prior to the release of any public funds – and that this should already be happening now. Couple this with the fact that ‘stage 1’ Forestry EIAs are largely optional, and there ought to be little need (in light of the due diligence undertaken) to routinely refer cases to the FC to give a ‘stage 1’ EIA decision on.

FC can only take enforcement action under EIA where a project is both ‘afforestation’ and has had a ‘significant effect on the environment’. ‘Stage 1’ EIA applications exist to give assurance where there is uncertainty if there will be a ‘significant effect’ or not. However, in assessing ‘significant effect’ we carry out the same checks that we would solely in relation to grant scheme due diligence. So, if delivery partners are comfortable handing out public funds on the back of their due diligence (i.e. they’re comfortable that there will not be environmental harm / UKFS compliance), there should be little likelihood of a project having a ‘significant effect’.

Only projects that are ‘likely to have a significant effect on the environment’ require ‘stage 2’ Forestry EIA Consent (which incorporates the need for the production of an Environmental Statement). If there is a ‘significant effect’ the project either needs ‘stage 2’ Consent from FC, or FC can enforce if the project has already been undertaken.

However, we do acknowledge that this is a *small* additional risk that applicants will have to shoulder in terms of liabilities under the EIA regulations, and delivery partners in terms of reputational risk. However, we feel that this is acceptable in terms of the much larger risk of FC continuing to apply a phenotype-based interpretation of ‘tree’ which the courts have already largely rejected / ignored.

**JR** commented that this is welcome as there has been a variation in the understanding regarding low density planting and what the triggers are for EIAs. Feel there is a grey area in terms of canopy cover and feel this needs more clarification rather than leaving it so open for interpretation.

**JM** responded regarding low density planting that the current draft sets out not only an interpretation for this, but also some diagrams to help provide worked examples of these. Our feedback to date is that these are helpful and help get the concept across. We will be mindful of future feedback on this point though – but we’re mindful that there are as many different permutations of low-density planting plans as you can think of and that massively extending the document to cater for as many worked examples as we can think of may in fact be counter-productive in terms of communicating the core principles at play.

In terms of canopy cover we've used the example of cricket bat willow as essentially the species with the lowest density planting that is used in commercial (typical) forestry. However, similar to the above point, we either set out the principle, or we set a specific threshold for each tree species – we don't see much of a middle ground. With that in mind, we've opted for brevity. It does admittedly leave a little wiggle room, but this may end up being to the benefit of applicants and there was a keen desire to retain that among some of our delivery partners.

**JO** commented that one of concerns over this is the Forestry Commission definition against the definition when we were going through the CROW Act [Countryside Rights of Way Act] and hope that this will help if they ever review the CROW Act and look at Open Access.

**JM** responded to his knowledge, the CROW Act does not define woodland, rather it sets out the land types to which open access applies (mountain, moor, heath and down and registered Common land and coastal margin land). As such we're not anticipating any conflicts. FC does regularly attend NE's Open Access forum and have these kinds of discussions with them. The FC's document is also clear that it only applies to the Forestry Act and EIA regs, so if there is a conflict, it would be resolved in favour of CROW Act.

**ND** asked about work with natural regeneration, grazing management and areas that are self-seeding and open habitats. Noted that it covers heathlands but nothing about grasslands or peatlands. Also seeking further clarification on what is meant in terms of manual pulling. Also in terms of the exceptions mentioned, wondering how these will be used and how that's coordinated with the Woodland Carbon Code.

**JM** responded as with some of the other responses above, Forestry Commission has had to be judicious with the examples given, as to attempt to 'legislate' for all scenarios is problematic. Generally speaking, when it comes to regulation, we like to take more of a 'principles'-based approach, and then apply those principles to the peculiarities of any given scenario. We find that tends to be a little more fruitful and clearer in the long run.

In terms of the Carbon Code, this is a really good point, however I think the current draft deals with it already in terms of recognising that woodland can be harvested and then restocked and considered to remain woodland throughout this period. We would apply the same principle to other harvesting techniques such as CCF [continuous cover forestry].

**JD** worry about woodlands that don't meet the minimum definition and size and thinking about how these will be looked after/managed. 20% canopy cover is important if think of

development of woodland and moving to high forest. Would like to see a separation of parkland and wood pasture being thrown together as terms.

**JM** responding in terms of the minimum definition, this is something that FC are very alive to. We are fortunate that we have the joint protections of EIA and Felling Licences. You're right to identify that woodlands below 0.5ha in size do not benefit from protection under EIA; however, we would look to enforce the FL regime – which goes down to the individual tree level (subject to 5m<sup>3</sup> allowance for land owners – and all other exemptions of course). FC takes an especially dim view of illegal felling on ancient woodland – and I'd point out our record fine that we achieved in court recently of £34,000 as evidence of progress in this area as well. Also worth noting that Local Authorities have a part to play in protecting these smaller sites through the use of TPOs.

**GG** asked if this was being put out within the context of what the Forestry Commission does within England or does it relate to the broader governmental and statutory reference to trees and woodland in England.

**JM** responded as above, this is an England only level document – and specifically only applies to the FC's interpretation of the Forestry Act 1967 and the Forestry EIA Regs 1999. It has no wider scope than this and is explicit on that point on its face. This comes back to my point that we're not trying to define the English word 'tree', we're trying to define the legal concept that Felling Licences attach to – which just happens to have the same name: 'tree'. I fear that the FC's ability to influence a cross Westminster definition of the term 'tree' when used in any and every scenario would be limited.

**SJ** (comment from chat): would be keen to hear reassurances that grant eligibility will ignore these definitions to allow small woodlands to benefit from incentives going forward.

**JM** responded the document is explicit on its face that it does not apply to anything other than the FA67 and EIA99. We explicitly cite both grant scheme eligibility and the planning regime as not being in scope.

## ELM Update

**RM, JM and ME** presented slides.

It has been requested that this topic is not detailed in the minutes due to sensitivity.

## AOB

**LH** commented that there is a case that has been sat with the Secretary of State for nearly a year regarding a small native woodland, Southfield, on the edge of the North Pennines AONB. There is no indication of when a decision will be reached and we are not doing anything in those types of areas until we have a decision. It would be good to have clear timeframes or resolution understanding.

Also, there is some concern within the Forestry Professionals group about the new priority habitat guidance and would like to discuss this at a future meeting and the concern that forestry woodland is being treated in a different way to other land use types.

Changes to WCPG have been welcomed and would be great if we could do some more on the process and rates. Also feel that following the ELM discussion it is a good opportunity to think a bit more innovatively and in a more agile way.

**ND** requested clear timings when available regarding consultation changes and definitions of trees and woodlands. It would be good to know when we can share with colleagues.

**JD** commented that she would like the Forestry Commission and James Murdoch to come back and talk to the group around variants for restock species. Also timber and access is another key one that needs some thought as currently the farm offer is much better.

**JW** advised the group that the next meeting is 25<sup>th</sup> January, thanked all for their contributions and wished everyone a Merry Christmas.

Meeting ended 12:29

### Items requested for future meetings:

- Priority habitat guidance – requested by Luke Hemmings
- WCPG – process and rates – requested by Luke Hemmings
- Clear timings on when regulatory changes are available to share – requested by Neil Douglas
- Variants for restocking species – requested by Jackie Dunne
- Timber & Access – requested by Jackie Dunne