

Ref: FCDAG 03/2024

DAG Minutes: 07/03/2024**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**Clive Thomas (Soil Association) **CT**Brian Fraser (HTA) **BF**Jackie Dunne (Confor) **JD**Adrian Jowitt (Natural England) **AJ**David Lewis (RICS) **DL**John Bruce (Confor) **JB**Luke Hemmings (NPFG) **LH**Neville Elstone (ICF) **NE**Simon James (Small Woods) **SJ**John Blessington (Local Gov) **JB**Julian Ohlsen (SW AFG) **JO**Paul Orsi (Sylva) **POr****FC/Defra:**Joe Watts (FC) **JW**Sarah Lawson (FC) **SL**Stephanie Rhodes (FC) **SR**Alex Holsgrove (FC) **AH**Ann Weddle (FC) **AW**Evelina Budrike (FC) **EB**Ellie Littlejohn (FC) **EL**Evelyn Toalster (FC) **ET**James Murdoch (FC) **JM**Mark Broadmeadow (FC) **MB**Penny Oliver (FC) **PO**Melanie Jane Edgar (Defra) **MJE****Apologies:**

Anna Brown (FC)

Steve Scott (FC)

Cheryl Lundberg (RFS)

Claire Douglas (RPA)

DAG Minutes

Welcome

JW opened the session and welcomed all.

'Varying' of Felling Licences

JM (Head of Woodland Regulation Implementation, Forestry Commission) presented slides.

JO commented that he has concerns over where there have been requests to covert recent felling or recent restock to open ground. Keen to avoid an increase in amendments where we see a reduction in the woodland cover. Asked if there a register that is kept whenever land is converted to open ground so we're not breaching guidelines.

JM advised that there is no bespoke register but any changes will be accounted for through the National Forestry Inventory which will be updated periodically to account for changes. Unlikely to agree a variation to a licence to remove restocking entirely as set out in our duties under the open habitats policy to ensure no net loss of woodland.

JD commented on concerns over change of species. In the current culture there is a lot of information about different species that clients are looking at. Some of the changes that are being requested are so minor, subtle changes to species, particularly shade tolerant versus light demanders. Often reviewing the site after felling is really the only time you can assess properly the amount you want to restock. These minor changes have become long debates that have made grant applications go on for months. This may be due to a number of new staff unaware of the subtlety but if we don't have the room to make these woodlands work then the Act isn't doing what it set out to do. Questioned how the Woodland Management Plan relates to the Act because there is a case in law that says the two are intertwined. If looking at different species then this is trying to bring more resilience into woods and that in law would be part of the decision making process.

JM commented that Woodland Management Plans have an awkward position in law. They have grant scheme rules attached to them some of which do exist in law. Generally speaking woodland management plans don't carry a lot of weight in law and don't exist under the Forestry Act and are generally good practice that we put in place. Agreed that there is a need for greater flexibility and we do want to amend the Forestry Act. Would also say that we do apply some common sense in our site inspections and can apply discretion.

DL commented that he welcomes that there is greater flexibility prior to felling but after felling there may be good reasons why you want to change the species. Asked if you did change the species slightly, bearing in mind that the Forestry Commission have the discretion to decide when they enforce the breach of conditions, could you enforce removal and restocking with species from original condition. Also asked if there are plans to provide greater flexibility to variation of felling conditions even once the trees have been felled.

JM commented that failure to comply with your conditions for a felling licence results in a service of an enforcement notice rather than prosecution and in theory could ask you to remove all of the wrong species and put in the correct ones. We can use discretion and in all likelihood if the existing trees are growing well it is unlikely we would enforce this. In terms of greater flexibility in the future this is something we would like to see and we are pushing Defra for legislative change but unfortunately it is not something we can make happen overnight.

ND asked if the guidance appears somewhere online, as guidance found says simply that conditions cannot be amended or withdrawn. In terms of the reasons for varying it sounds like species choice for restocking is a key issue being discussed, but in terms of other approaches around the country from different forestry agencies and that some of these are about variations for environmental protection reasons, asked about Forestry Commissions take on these other approaches. Also asked what does it mean for conditions attached to novel species where it's about securing controls and are they affected by the same varying policy.

JM commented that guidance online is tricky as can't explicitly go out and tell people it's ok not to comply with legally binding conditions that we have put in place. There is internal guidance to deal reactively with requests in this space but we don't have anything proactive in this space at this point, however we will keep it under review. The solution is legislative change and we are limited what we can do. Varying novel species, as with open space, it is unlikely we are going to agree with variations as that would raise requirements for additional consultation and additional considerations that weren't part of the original licence.

JR commented regarding people's legal position and compliance with insurance. The notion of a persisting breach of the law and regulations and saying we won't prosecute or enforce may need to be looked in terms of invalidating people's insurance. Might be a base principle which is trying to accommodate requests that may create downstream challenges around legal position and compliance.

JM commented that this is part of the risk approach to this. We are engaging in some appetite for risk. It is not a risk free approach and it's not within our gift to change this. The legal position is you would be in breach of your licence. You are insulated against being served an enforcement notice by virtue of having that letter from the Forestry Commission but it's for you to manage your own risk appetite and any knock on effects.

POr (in chat): do you know if Forestry Regs in Scotland have provided more flexibility?

JM response (in chat): I believe they do have more flexibility in this area, and indeed Wales have recently brought in some legislative change as well - but the experts on the details of this are NRW and SF respectively I'm afraid - I wouldn't want to misrepresent their positions. Goes without saying though that we will be looking at those amendments in more details when an Environmental Bill presents itself and leveraging them as examples of positive legislative change in the UK as an argument for extending to England.

ND commented that he is not a lawyer and cannot comment on legal implications of the approach or offer a concerted LINK or RSPB view on without being able to share with others who hold this sort of expertise. He suggested for Forestry Commission to get in touch separately about this if feedback from LINK or RSPB is sought.

JW commented that there is a limit to how explicit we can be and if we were more explicit we would probably end up being less flexible in individual cases.

Woodland Creation Fast Track

EB (Head of Operations (Forest Services), Forestry Commission) presented slides.

JO commented that 100% complete application was subjective. There was no mention of whether there is any issue over scale or species being proposed. Also mentioned in terms of working in collaboration with Natural England and AONBs, asked if they had been consulted prior to this being released because they have the opportunity to change their minds on some applications. Also queried why there isn't a different application process or a separate form that goes to a different team straight away.

EB commented that a new application form would have been ideal but wanted to get the initiative out as soon as possible and so had to compromise on some of the things that would be nice to have, however it is something that we can work on and it is a good idea that we can take away.

MB commented that in terms of species, the native primary and secondary should all be ok. If they are emerging forestry species there will be a rapid referral by the team. If

there are concerns from the resilience officers, then it will be put on hold. In terms of AONBs these are excluded from the low sensitivity mapping.

JD commented that the woodland creation low risk areas on LIS can say the opposite to the sensitivity maps. If the sensitivity is saying high and the low risk is showing it is confusing. Also think it would be helpful to have a block of all the woodland creation layers as it is quite confusing finding the right ones. Also, would say as someone doing the work, don't necessarily want to present a fully completed application without having an initial conversation and knowing that someone has looked over the data. Having to re-do maps and spreadsheets is time consuming and so want to make sure it's right. This Expression of Interest would provide an opportunity to put up desk data and there currently isn't that option for any woodland creation so may be worth looking at as a more general thing.

MB commented that in terms of low risk versus low sensitivity we can't change the low risk map until there is a legislative change so there will be discrepancies. The low sensitivity map represents the most recent thinking so should be the one to use. Regarding the woodland creation layers being together, I agree and is one to take back to the mapping team.

ND asked about the role of on the ground surveying in the new approach taking on board that it's not necessarily any particular type or size of project. Asked how Waders and Peat guidance will fit into the new approach. Some of low risk layers and some of the different species wader layers don't line up and just wondering about this.

MB confirmed that the exclusions are for golden plover and curlew so those are the two species used from the wader maps, working on the basis that many of the others are very widespread.

JR asked regarding references within the mapping to agricultural land classification 3A and looking for some reassurance that it isn't being excluded from consideration for planting as within those broad classifications there will be field corners, wet areas that farmers want to plant which have no impact on agricultural productivity. Want to make sure that we're not building something which prevents the integration of trees and woodland on farmland.

EB responded that classification 3A will be part of the proposal. So if it's not more than 10% it will form an area off the woodland planting and will be treated as one.

LH echo **JD**'s points that having that Expression of Interest is really useful, before you develop too far. It would be useful to have that initial conversation with a Woodland

Officer and agree a list of consultees and essentially having that starting point that we are all working from.

EB commented that in terms of concerns about the consultation, low sensitivity means we do not have to consult with statutory consultees. In terms of having an initial visit, if you submit your application and it was missing something you aren't going to be thrown to the bottom of the pile. The clock will stop and we will work together and resolve. Once it's back with us we will restart the clock so you won't miss out.

JB commented that looking at the low sensitivity mapping and thinking about Local Nature Recovery Strategies, as these get developed need to consider how the mapping fits in.

MB commented that we will have to look at the way the two integrate and there may be areas removed where LNRS are identifying some land use changes rather than woodland as the priority and in reverse LNRS might identify areas in non low sensitivity land where there is relaxation because there is a desire for more woodland.

JD reiterated that the Expression of Interest, perhaps not for this scheme, but for general woodland creation would help agents keep timelines shorter and feel it is something that should be considered.

JW commented that it is a thought that would be taken away.

EWCO and WCPG Updates

AW (Incentives Development Manager, Forestry Commission) presented slides.

JD asked if there is a delay from the end of the Woodland Creation Planning Grant to applying for EWCO, what is the timeline used to decide that no further consultation is required.

AW advised that she would take this away and discuss with Regs team.

JW added that it may depend on what changes had occurred and the substantiality of those guidance changes and therefore it may well be on a case by case basis rather than being able to advise on a set timescale.

SR commented that we need to try and talk about these things before they are implemented where we can. May need to discuss with the Regs team the way we propose for it to be implemented at a FCDAG meeting and to put it to the test with a few real life scenarios because there is real value in that.

ND asked about the relative rates for EWCO and if they going to change across the piece in terms of how they will stack up or if it is a universal change to pricing. Also, in terms of the Green Channel asked how this differs and what it adds in comparison to the Woodland Creation Fast Track.

AW commented that the additional contribution rates have not all been increased proportionately to one another. We've looked at uptake amongst some other bits there as well.

SR commented that by and large the approach taken is that where there has been a good uptake to date of initial contributions we propose to raise the rates less and when there's not been a good uptake we're trying to encourage it by raising the additional contribution more. Will want to cover this and talk through what's been done, why and how next time.

AW commented regarding the Green Channel and wonder if it's just a case of terminology and it's looking at implementing similar sorts of ideas but in a different grant. So may need to think about the terminology and is one to take away for the next meeting.

JO commented that he would still be keen to see whether the Woodland Creation Planning Grant could go on to an online platform. It would be helpful if we could see it online and see that it is going forward as aware there is a lot of work going on in the background and think it would be a really good step forward.

JW commented that it's a desirable. We need to get up and running and although from the applicants point of view you may not see a direct change it will be massively supporting the effectiveness of our administration and processing. We would like to be online but we are not there yet.

SR commented that although we are not able to offer a fully accessible online portal we need to keep applicants informed and updated. This needs to be something that we focus on going forward.

LH echo **JO**'s comments around the online platform and would be useful to have greater visibility of the process. There are so many moving parts and it can be difficult to keep track. Sometimes clients can get quite frustrated at having to wait and greater visibility would help with that. Also commented around there being nothing around timber and more diversity in timber production would be great.

JW commented that his comments regarding timber are noted and there is a continuous review of what levers we need to be pulling to get the right mix of agreements. We will pick this up further in the next meeting in April.

NE made an overarching point regarding the group and its purpose and seems to have moved from co-design to preannouncement committee. Utilising this group and their viewpoints in the design stage is really important.

SR commented that our default position regarding co-design hasn't changed, however we cannot always control the timing. We need to be more transparent but also more pro-active in planning. We will look to do a forward look and map out what is expected to be decided when and when we would like to engage with you. We won't get it right all the time but this will help in terms of visibility and we will work on this ahead of next FCDAG meeting.

ELM Announcement

MJE (Technical Policy Advisor, Defra) presented slides.

NE asked if premium payments are sitting outside income forgone plus costs.

MJE responded that the premium payments and their relationship to the income foregone plus cost model is that they are calculated as a movement up along the cost curve, so paying at a higher percentile.

CT asked about timings of the next steps, specifically the capital grants for the infield agroforestry.

MJE advised that regarding the timings, we are aiming to publish further detail as quickly as we can. Apologies that don't have a firm deadline but will note the volume of participants on today's call that have raised this and take that back.

GG commented that he is getting anxious about April WD2 applications and understands that the application process and window may be different this year but would appreciate clarification.

PO advised that there hasn't been any announcement as yet regarding when it will open so would encourage people to work on plans. Unfortunately, can't say anymore at the moment about when the process will start. However, also to note that when it does open it will be a rolling window so there will not be a limited time.

JD commented that timber is missing. Farming and Forestry are separated from the top and are not brought together often enough. Production of food is so high on the agenda but need to look at timber production. Also echo the comments regarding CS Higher Tier this year as not able to plan and lack of information coming through. Also commented that the payment for WD2 is very low. At the moment don't know how all the supplements are going to stack up but fear that over a 10 year agreement it's going to be quite complex.

MJE responded regarding timber that the frustration with the focus on food production is noted. Will take this back to the Communications and senior team as think it is fair and the frustration is noted with the imbalance and how these things are expressed.

LH queried regarding capital items on agroforestry as unclear whether the full table of rates and densities and criteria has been announced and don't recall seeing actual densities published for agroforestry. Also would be good to know where we stand with the application window. Would be good to use some of these options that are in Higher Tier now but having some issues as being told the land use codes are wrong and having to give up to prevent delaying agreements being issued. Also commented that the management of ancient woodland is still not worth the money for the extra work.

MJE asked **LH** to send across examples of issues with the land use codes. Advised that currently working with the RPA on some of the deliverability of this stuff going forward and this is an opportunity to flag issues so would be grateful if you could provide further details and can look into these to check there is nothing underlying on the system.

JB echo other's comments, especially about timber. Question around the detail for some of these actions. In terms of the species management information is the detail written down anywhere that we can share. Also with Resilience, is there information behind that in terms of what that actually means for that action.

DL commented that it is positive that the SFI is now going to open to people that weren't currently in receipt of BPS payments, however they can't apply for them at the moment so asked when they will be able to apply for the SFI? Also those people that are already in WD2 arrangements, it's great to see the new increase rates and additional supplements but understand that you aren't able to apply for these supplements. Also if you are half way through a ten year management plan and you want to apply for a new WD2 plus the supplements you have a change over period which puts in quite a few complications.

MJE commented that more detail on how those people enter the schemes will be published later this year but there is an intention that those people will be able to access schemes this year where possible. In terms of WD2 now and how to access all of the

new stuff going forwards, this is part of the work in terms of working with RPA as well as other bodies to make sure that everybody who needs to access new things can do so, whether new or existing scheme applicants.

AOB

JW reminded the group that the next meeting would be face-to-face meeting on 18th April at the Birmingham & Midland Institute.

Meeting ended 12:34