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Natural England
Land Use Operations Team
Cromwell House
15 Andover Road
Winchester SO23 7BT

Copied to: Julie Hunt NE legal

Your ref: JAL/LEG01-012-011

Our ref: MCF1-001/LF

31 January 2013

Dear Sirs

Latchmore Brook Restoration Project (High Level Stewardship ref AG0030016)

We are instructed by Friends of Latchmore Brook and have previously written to your legal team about the Latchmore Brook Restoration Project (the Latchmore Project).

1. The present position is that the Forestry Commission (FC) is seeking planning consent from the New Forest National Park Authority (NFNPA) for the Latchmore Project which involves over 50 hectares of land area (and is part of a wider project covering 4,000ha). It involves the movement of over 5,000 cubic metres of earth in the New Forest Special Area of Conservation NF SAC. The works will have direct effects on the Latchmore Brook section of the NF SAC. In November 2012 the FC sought an EIA screening direction from the NFNPA under the Town and Country Planning (England) Regulations 2011 (T&CP EIA regulations).
2. Natural England (NE) was consulted on NFNPA's draft screening opinion, which reached the view that the project falls outside the T&CP EIA regulations as not being a schedule 2 project. On this basis the NFNPA reached the view that it has no duty to screen for EIA and as a result has no power to require the applicant to do an environmental assessment to implement the EIA Directive 85/337/EEC. NE agreed with this conclusion in a brief email exchange (copy enclosed). We have further considered the matter with the advice of counsel and are of the opinion that this cannot be right for this scale of project to fall outside the EIA regime.
3. As this project is funded under the Common Agricultural Payments from the EU to DEFRA, and NE agrees with the NFNPA that is not a schedule 2 project under the T&CP EIA regulations, it must therefore fall to be screened by NE as an agricultural scheme under the Environmental Impact Assessment (Agriculture)(England) No 2 Regulations 2006 (Agriculture EIA Regulations). Under regulation 5(5) the Latchmore Project fits the definitions of both a restructuring project and an uncultivated land project. It is located within the National Park and so falls to be screened as a sensitive area. Schedule 1 Column 3 sets out thresholds for uncultivated land projects and restructuring projects in a sensitive area. Given the project scale set out above at para 2, these works exceed the thresholds for either or both categories needed to trigger a screening under Reg 5(5) (ie uncultivated land project covering an area in excess of 2 hectares and restructuring project involving addition of



earth/gravel in excess of 5,000 cubic m). We are surprised this was not considered in the NE email response to the NFNPA draft screening opinion.

4. We now seek your assurance that NE will screen the project under Agricultural EIA regulation 4(1). Further, for reasons set out below, our view is that the project has the potential for significant environmental effects under the criteria set out in Schedule 2 (reg 8(1)) and requires an environmental statement and formal consent from NE before work can lawfully commence. We invite NE to reach this conclusion for the reasons set out below.

Characteristics of the Development

5. The Latchmore Project is part of a much wider series of restoration projects covering circa 4,000 hectares of the New Forest with direct effects on the NF SAC. As such the screening opinion must deal with the cumulative effects of these related projects which are before you or which may come forward as part of the wider New Forest HLS scheme. In particular our clients have been informed that the Forestry Commission plans to undertake related works not described in this application and upstream in the same catchment area.
6. In this regard we refer you to the recent screening directions from the Secretary of State in a matter where we are acting for the local community in Kenninghall, Norfolk (copies enclosed). The Secretary of State in that case when considering EIA screening made specific reference to the need to take a precautionary approach where multiple developments are planned, and directed that four separate schedule 2 applications were EIA development because of the cumulative impacts. We would expect you to take a similar precautionary approach to consider the cumulative impacts in your screening opinion. Our view is that, once the cumulative effects are considered, this application is EIA development.
7. In addition on a stand-alone basis the project involves the movement of approximately 10,000 tonnes of imported gravel and clay, requiring a significant use of natural resources, the disturbance associated with approximately 1,000 heavy truck movements over inadequate forest lanes and tracks, and pollution of downstream waters (Hucklesbrook and the Hampshire Avon) by suspended particulate materials remobilised and introduced by the works, which may smother fish and invertebrates including EU-protected species.

Location of the Development

8. The project affects an EU designated SAC as well as being classified as a SSSI. Under criteria 2(v) to Schedule 3 this is an extremely sensitive area and that factor alone should trigger the requirement to carry out a full ES in relation to biodiversity and habitat effects.
9. In addition, in relation to EIA Schedule 3 2(vii), this requires you to consider the impact on the local landscape. Our understanding is that this is an important historical landscape with significant archaeological features dating from the Bronze Age through to World War II, and that it is of considerable historical, recreational, landscape, touristic and cultural significance, being one of the best known subjects in the vicinity for landscape artists and photographers since the 19th century.

Characteristics of the potential impact

10. Specifically in relation to the sensitive SAC habitat the works will cause permanent damage to the ecosystems of those parts of the existing stream that are filled in, and short-term damage to adjacent vegetation and its associated fauna. It will by design cause long-term changes to the hydrological status of both the stream and the adjacent vegetated areas. The effects on fish, birds, and invertebrates as described below and on vegetation will be significant, with benefits for some species and adverse effects on others.
11. The magnitude of the development (when considering the whole of the project within the same catchment) makes it plain that this development is of such a scale as to require a full environmental assessment.
12. There is a real probability of significant adverse impact arising from the direct disturbance on populations of kingfishers (*Alcedo atthis*), sea trout (*Salmo trutta morpha trutta*) and on damselflies including the Beautiful Demoiselle (*Calopteryx virgo*), the Southern Damselfly (*Coenagrion mercurial*) and the Scarce Blue-tailed Damselfly (*Ischnura pumilio*) and of other adverse effects on the biodiversity and sensitive habitats of the area.
13. As a result of the above, which plainly demonstrates that the project gives rise to the possibility of significant effects, the screening opinion in our view must reach a decision to treat the development as EIA development and require the submission by the applicant of a comprehensive environmental statement.
14. When making a screening decision NE must also consider the wider project of which this is one part and in particular include the area affected by work upstream in the Inclosures whose scale is as yet unknown and involves very significant works across the Latchmore Brook catchment area.

Habitats Directive issues

15. The Agricultural EIA regulations are closely linked with the duties arising under the Habitats Directive. Regulation 8(2) provides:

“If Natural England decides that a project is likely to have a significant effect on a European site (either alone or in combination with other projects), and the project is not directly connected with or necessary for the management of the site, the project shall be treated as being likely to have significant effects on the environment.”
16. There has been a great deal of correspondence from Natural England in relation to Habitats Directive issues (see eg. letters dated 25 March 2011 and 30 March 2012 relating to the Land Drainage Consents). However on 15 June 2012 NE responded to a letter before action and adopted the view that the Latchmore Project is “directly connected with or necessary to the management of the New Forest SAC/SPA/RAMSAR site for nature conservation and therefore does not require appropriate assessment [under the regulations]”.
17. We do not agree with this conclusion based on the information we have seen. The Latchmore Project plainly falls outside the day-to-day operation of the site and as such is not “directly connected with or necessary to the management of the site”. In this regard see Advocate General’s decision in Case C-258/11 (copy enclosed). We

also draw your attention to para 49 which reaffirms the low threshold for triggering an appropriate assessment.

18. We seek your assurance that NE will carry out an AA before giving consent for the Latchmore Project to proceed.
19. Further, and without prejudice to the position that the Latchmore Project is not connected to the management of the site and therefore requires an AA, even if no AA is required the Agricultural EIA regulations continue to apply and the project will give rise to significant environmental effects and must have an environmental statement and NE must give consent to the project under the Agricultural EIA regulations.

Conclusion

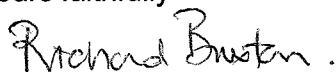
20. Our clients remain deeply concerned, as we are, that they are in effect having to consider legal proceedings against NE, and the other authorities tasked with protecting the environment, so that they adopt a precautionary approach and implement the precautionary measures of EIA and AA designed to fully assess the environmental impacts of the Latchmore Project. NE's letter of 15 June 2012 clearly recognises the high environmental value of this SAC:

“The New Forest is an exceptionally important site for nature conservation. It supports a wealth of wildlife including a large number of very scarce plants, animals, invertebrates, birds and fungi. The New Forest is the second largest terrestrial Site of Special Scientific Interest (SSSI) and its international importance is recognised through the additional [EU designations]. These afford the New Forest the highest level of statutory protection from damaging activities and development.”

21. The current reluctance to afford these protections remains unexplained. At a minimum NE should be insisting on the EIA and AA assessments being carried out under the precautionary principle which underpins the European Union's environmental policy. It then needs to consider this environmental information and decided whether to give consent for it to proceed under the Agricultural EIA regulations.
22. If NE does not agree to require an EIA and to carry out an AA, our clients remain committed to raising these matters with DEFRA under its supervisory role of NE, and if necessary, on application to the Court through the judicial review process to ensure that proper environmental safeguards are robustly followed.

We look forward to your response to these points.

Yours faithfully



Richard Buxton

- cc. New Forest National Park Authority (Attn: Julie Mutlow and Steve Avery)
Environment Agency (Attn: Christopher Hayball)
Forestry Commission (Attn: Michael Seddon)
Verderers of the New Forest (Attn: Dominic May)
Natural England (Attn: Andrew Wood)

Steve Avery

From: Steve Avery
Sent: 14 December 2012 12:21
To: 'Wallace, Adam (NE)'
Subject: Response to FC request for Screening Opinion - Latchmore
Attachments: Request for Screening Opinion - Latchmore Brook.pdf; Flow chart pdf; Letter to FC - Dec 2012.doc

Hi Adam,

Just to keep you in the loop, I've attached my intended response to the FC re their request for a screening opinion, which I plan to send out on Monday. The works are clearly outside the scope of the regulations. Do let me know if you have any queries.

Kind regards,

Steve

Steve Avery
Director of Park Services
New Forest National Park Authority
Tel: 01590 646659
Email: steve.avery@newforestnpa.gov.uk

Steve Avery

From: Thompson, Simon (NE) [Simon.Thompson@naturalengland.org.uk]
Sent: 18 December 2012 09:59
To: Steve Avery
Cc: Wallace, Adam (NE)
Subject: Latchmore EIA Screening Opinion

Dear Mr Avery,

Thank you for copying Natural England in on the EIA Screening Opinion for the engineering works at Latchmore. I thought it would be helpful to drop you a quick line to confirm that Natural England agree with the National Park Authority's view on this matter.

Please note that should you need any advice with regard to the forthcoming planning application, I as the local Land Use officer would be more than happy to help.

Best regards,

Simon

Simon Thompson

Lead Adviser

Land-Use Operations Team
Natural England

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