

New Forest National Park Authority
Lymington Town Hall
Avenue Road
Hampshire SO41 9ZG

Attn. Steve Avery

(Copy by email)

Our ref: FRR1-001/LF

Email: lfoster@richardbuxton.co.uk

11 November 2016

URGENT LETTER

Dear Sir/Madam

Latchmore Brook Restoration Project (Higher Level Stewardship ref AG0030016) + planning no/ref 16/00571 PART OF THE CATCHMENT AREA OF THE LATCHMORE BROOK INCLUDING STUDLEY WOOD, ISLANDS THORNS INCLOSURE, AMBERWOOD INCLOSURE, ALDERHILL INCLOSURE, SLODENS INCLOSURE AND LATCHMORE BOTTOM. CENTRAL GRID REFERENCE SU 2121113830

National Audit Investigation

1. We draw your attention to the letter from the National Audit Office (NAO) dated 28 October 2016 (copy enclosed) which confirms that the NAO will be investigating the financial concerns raised by Desmond Swayne MP relating to the potentially unlawful use of EU funding by the Forestry Commission and/or Natural England (NE) and that an update is expected 30 November. These are serious matters and would extend to a large number of sites within the New Forest SAC/SSSI. For present purposes please confirm your agreement to defer determination of the application pending the NAO report.

Natural England Assurance report

2. Our client continues its objection to this application being determined without the recently published NE Assurance Report being treated as further environmental information and formally consulted on, a point we raised in an email exchange with the Council (Ms Braid) on 26 October. We now find that the Officer Report to the Development Control Committee (the OR), provided to us by email from Mr Avery on 4 November 2016, specifically relies on the new scientific information contained in the Assurance Report to support his advice to the committee that the proposals are acceptable on ecological grounds. The relevant paragraphs from the OR are set out below:

"8.4 Regarding NE's Chief Scientist's recent Assurance Report:

- *Natural England, and its partners, can be assured that the restoration approaches being used in the Forest are entirely consistent with best practice.*
- *Evidence collected to date proves that completed restorations are beneficial in delivering positive hydrological and biodiversity outcomes.*
- *It is important that the design of any future restoration programme should seek to incorporate a more comprehensive approach to pre and post-restoration monitoring including a more widespread assessment of species recovery in restored areas. In this regard, Natural England has developed a strategic monitoring plan for the New Forest restorations, with partners.*
- *The Assurance Report does not affect NE's position stated in previous consultation responses for this application dated 18th August and 26th September. NE continues to have no objection to the scheme.*

11.64 Balancing the widely conflicting views and opinions on the merits or otherwise of the proposal

11.65 This has been a challenging and difficult application to consider as there are very real concerns in the community about the impact of the proposed works and whether they will actually deliver the claimed biodiversity and ecological outcomes (with some claiming that the works will have the opposite effect). Objectors to the proposal have commissioned their own scientific and specialist reports which questions Natural England's advice. Solicitors acting for the Friends of Latchmore have asked for a further period of public consultation to consider the NE Assurance Report dated 19 October 2016. Natural England maintain that the Assessment of Evidence was commenced prior to and was not prompted by or directly connected to the current Latchmore planning application. This additional information has not been submitted voluntarily by the applicant (FC) and whilst it has relevance to the application (the reason for deferring consideration of the application until now) it is not considered to be of a substantive nature requiring a further round of formal public consultation under the EIA regulations.

11.66 Having considered the matter carefully, officers have concluded that it would not be possible to sustain a refusal on ecological grounds in light of the clear advice from Natural England, which includes the aforementioned Assurance Report from their Chief Scientist who concludes "that Natural England, and our partners, can be assured that the restoration approaches being used in the New Forest are entirely consistent with best practice...I am also confident that the restoration works are, or will prove to be, beneficial in delivering positive hydrological and biodiversity outcomes."

Preliminary Observations on the Assurance Report

3. The statement at 8.4 is materially misleading. The quote is not from the Assurance Report itself but from the covering letter from NE to NFNPA dated 21 October 2016. There are significant differences of emphasis, serious omissions and at least one important factual error.
4. The Assurance Report states (pg 9)

"Consequently, this leads me to reach a clear conclusion that Natural England, and our partners, can be assured that the restoration approaches being used in the New Forest are entirely consistent with best practice, as represented by the principles set out in the broader Narrative for Conserving Freshwater and Wetland Habitats. I also note that this Narrative has recently received further support (Addy et al., 2016),

adding to my confidence in this approach. Given the evidence collected to date, I am also confident that the restoration works are, or will prove to be, beneficial in delivering positive hydrological and biodiversity outcomes. Notwithstanding these conclusions, it is also important that the design of any future restoration programme should seek to incorporate a more comprehensive approach to pre- and postrestoration monitoring, including a more widespread assessment of species recovery in restored areas. In this regard I am pleased to note that we are working to develop a strategic monitoring plan for the New Forest restorations, with partners. Gathering good quality evidence that properly characterises both successes and any failures is essential in evaluating and adapting our approaches to these sorts of large-scale and long-term restoration works."

5. It is plain that the OR is misleading by advising the committee that "NE has developed a strategic monitoring plan..." when the situation is quite different, with the Assurance Report confirming that no such monitoring plan is in fact in place and that all that has happened is that NE "are working to develop a strategic monitoring plan."
6. Friends of Latchmore's (FoL's) ecological advisor has noted a significant error on the face of the report in relation to the work being done and has concluded that the Assurance Report is not fit for purpose because it has been looking at the wrong issue by incorrectly focusing on "mire restorations"¹. Our instructions are that this Assurance Report is misconstrued because mire habitat cannot be influenced by stream work, due to natural topography and gradient.
7. There are only three mires covered by the proposed works on the Latchmore catchment, but these mire habitats are only minimally affected by the major part of the works in the upper catchment and the stream itself. In particular:

(i) **Ogdens Mire (SSSI Unit 50)** is totally separated from Latchmore Brook until it joins the brook outside the open forest and is thus a stand-alone project.

(ii) **Thompsons Castle Mire (TCM) (SSSI Unit 43)** and (iii) **Latchmore Mire (LM) (SSSI Unit 44)** both of which are free standing perched mires below Hampton Ridge, much higher than the valley floor, and will not be improved by infilling the 7 km of Latchmore Brook.

TCM is a perched, funnel shaped mire, dropping 25 metres from top to bottom, narrowing into a valley mire for 250 metres within the natural confines of the valley. Restoration in 2001 failed almost immediately but the bottom of the mire has continued to re-establish the mire communities as the gravity flow down the steep valley again builds up behind the natural headland across its path at the boundary of the SSSI. The proposal to infill the outflow stream below the mire will have no effect on the mire itself, and will destroy existing Southern Damselfly habitat and other established wildlife. The elevation changes from the bottom of the mire to Latchmore

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- ¹ See pg 6 and the questions therein: Are the approaches being used to restore wetland (particularly mire) systems in the New Forest, as described in 'The Assessment', consistent with the evidence-based principles set out in the published report: "A narrative for conserving freshwater and wetland habitats in England" (Mainstone et al., 2016)? (emphasis added)
 - Is 'The Assessment's' conclusion that the New Forest wetland (particularly mire) restorations carried out in recent years are delivering beneficial biodiversity and water outcomes consistent with the available evidence? (emphasis added)

Brook is 15 metres over only 450 metres, and the stream will quickly erode away the proposed hoggin and clay infill due to the steep slope.

The proposed works on Latchmore Mire are superficial, if not cosmetic. Restoration work is limited to the "Gulley Area" which was previously restored and had probably improved (NE Report NECR141 Annex R (JBA - 2014)). Apart from "Infill main knickpoints using heather bales" there is no indication why this work is necessary or why it will be more successful.

8. Moreover, infilling of the whole 7km of Latchmore Brook will have a minimal effect on the scattered mire and wet heath habitats along the valley. At the head of the Latchmore catchment, below the B3080 'Roger Penny Way', the natural headwater topography contains mire and wet heath habitats draining into Claypits Bottom and on into Latchmore Brook. Claypits Bottom was restored in 2011 but there is no indication that these mire habitat have been improved. As with TCM stream, infilling work at the stream base can have no influence on higher ground in terms of retaining water levels or attenuation. It will simply accelerate the rainfall run-off speed in the main channel and probably (as it has done when this was tried before) erode it back to its natural shape, washing the infill as pollution downstream.
9. In summary, there is almost nothing aimed at or likely to achieve restoring mires in the massive Latchmore Brook application made by the Forestry Commission. For this reason our clients maintain that the author of the Assurance Report does not provide any assurance in relation to the issues because the report has focused on the wrong issues, as can be seen in the questions raised on page 6.

Southern Damselfly

10. The Assurance Report fails to identify the risk of Southern Damselfly extinction from stream infilling. This issue was raised in considerable detail in FoL's objection and the Assurance Report fails to address the matter.

Studley Wood SSSI geological interest feature

11. The Assurance Report fails to evaluate the potential damaging effects to SSSI geological interest features, such as Studley Wood, despite several members of the scientific community, including leading scientists from the Natural History Museum, raising compelling objections. This site is recognised as being of both national and international importance for both its Tertiary sediments and its rich fossil faunas, and is currently in favourable condition due to these exposures. The Environmental Statement itself states at para 6.111 of "Chapter 6 - Hydrology and Geology" that the proposed infill of the SSSI geological interest feature "...will therefore lead to the features being in unfavourable condition", counter to one of the stated key objectives of these New Forest projects.

Conclusion

12. As these preliminary observations demonstrate, there are serious failings with the Assurance Report and the FoL repeat their request for the matter to be deferred so that they can make substantive detailed submissions on the Assurance Report prior to the committee determining the application. The officer plainly relies on the report to form her advice to the committee and it is fundamentally unfair and a breach of natural justice and the EIA regulations that a matter which has been before the NFNPA since 2012 is

rushed to committee on the basis of further scientific information used to back up the work reported in the Environmental Statement without proper consultation.

Yours faithfully

Richard Buxton.

Richard Buxton Environmental & Public Law

Copy by email to:

Forestry Commission (Attn. Bruce Rothnie)
Natural England (Attn. Julie Lunt)
Environment Agency (Attn. Tim Sykes)
Verderers of the New Forest (Attn. Dominic May)
Desmond Swayne MP
Gavin Barwell MP



National Audit Office

Comptroller and Auditor General
Sir Amyas Morse KCB

Rt. Hon. Sir Desmond Swayne TD MP
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Reference GF/1639/16
Date 28 October 2016

Dear Sir Desmond,

NEW FOREST HIGHER LEVEL STEWARDSHIP SCHEME

Thank you for your letter raising your concerns over how EU funding under the Higher Level Stewardship scheme has been administered by Natural England for a partnership between the New Forest Verderers, the New Forest National Park Authority and the Forestry Commission. Your correspondence raised particular concerns regarding the eligibility of this partnership arrangement to receive this funding, as well as the quality of the work performed on wetland restorations, which is a requirement within the Higher Level Stewardship scheme agreement.

I have asked my team with responsibility for the audit of Natural England to review the information you have provided. They have identified two areas that we will examine further:

- whether this arrangement gives rise to any issues of dual funding given the Forestry Commission's existing statutory obligations for which it already receives government funding; and
- the procedures in place to ensure that work performed under the HLS scheme is appropriately controlled and monitored.

Given Natural England's role as the scheme administrator we will initially make enquiries with them to understand the role they perform in this specific scheme, ascertain how they ensure the scheme meets the requirements attached to this funding, including any issues around dual funding, and the oversight they perform on the New Forest Higher Level Stewardship scheme.

Due to the complex nature of the funding and administrative arrangements surrounding the delivery of the Higher Level Stewardship scheme, as well as the number of stakeholders involved, we will widen our enquiries to include relevant parties as required.

We will provide you with an update on progress of our work by 30 November 2016.


AMYAS C E MORSE

