

**GENERAL COMMITTEE OF COUNCIL**

**UNCONFIRMED MINUTES OF THE TWENTY FOURTH MEETING OF THE  
GENERAL COMMITTEE OF COUNCIL HELD AT CARRINGTON HOUSE  
HOTEL, BOURNEMOUTH ON 25 SEPTEMBER 2002**

**Present:** Sir Martin Doughty (Chair)  
Ms M. Appleby  
Dr A. Brown (Acting Chief Executive)  
Dr A. Clements (Director)  
Ms S. Collins (Director)  
Dr K. Duff (Director)  
Prof. E. Gallagher  
Prof. M. Hart  
Mr S. Hockman  
Mr D. Hulyer  
Mrs A. Kelaart  
Prof. G. Lucas  
Dr M. Moser  
Dr A. Powell  
Mr H. van Cutsem  
Ms C. Wood (Director)

**In attendance** Ms F. O' Mahony (Head Top Management Unit, English Nature)  
Mr R. Barlow (Browne Jacobson)  
Ms L. Mitten (Browne Jacobson)  
Ms A. Barnes (Item 4, English Nature)  
Dr J. Larwood (Item 5, English Nature)  
Dr R. Wolton (Item 6, English Nature)  
Mr A. Gordon (Item 6, English Nature)  
Ms G. Hamersley (Item 6, English Nature)  
Mr R. Lloyd (Item 6, English Nature)

**1. Apologies and welcomes**

1.1 The Chair welcomed the Committee and general public. Apologies were received from Dr Susan Gubbay and Mr Tom Burke.

**2. Minutes of the twenty third meeting of the General Committee of Council held on 26 June 2002 (GCM02 2)**

2.1 The minutes were **confirmed** without modifications.

3. **Matters arising**

- 3.1 Chair referred to 8.8 of the minutes and informed Committee that a letter would be written to Mr Elliot Morley MP (as he now has English Nature in his portfolio) once the designation has been processed.
- 3.2 Ms Wood referred to 11.2 (a) of the minutes and informed Committee that the “other” category used in the report was wording recommended by the Race Relations Employment Advisory Service. Committee **agreed** to their retention.
- 3.3 Mr Hockman referred to 14.3 (a) of the minutes and informed Committee that progress was being made and a meeting planned with Ms Wood.

4. **Draft Position Statement on Local Biodiversity Action Plans (GC P02 34)**

- 4.1 Dr Duff introduced the paper, which set out progress with the position statement since Council last considered it in July 2001. It had been decided that delays in the Government’s Planning Policy Guidance note 9 should not prevent progress with the statement as it was important to link with the emerging England Biodiversity Strategy (EBS). The Association of Local Government Ecologists and the Local Government Association had been consulted, and links made with the developing People and Wildlife agenda. The paper had been considered by the Executive Committee the previous week where it was agreed that the statement needs to be retitled, and refocused to deal with local delivery and biodiversity, bringing outcomes to the fore and clarifying the priorities and contributions for English Nature. The statement also needs to provide clear guidance for staff, and shift the effort from process to delivery, highlighting links with community strategies and how English Nature should engage with the local biodiversity process. Overall the statement needs to be shorter and punchier.
- 4.2 The Committee **raised** the following issues in discussion:
  - (a) There is a concern over the validation of data through the National Biodiversity Network and Local Records Centres. A coherent network, with a clear validation process, needs to be developed to underpin the LBAP process. The Government needs to send a clear message to local authorities on the need for this;

**Action:** Janette Ward to raise this need with the Regional Development Agencies through the Regional General Managers network.

- (b) Following assessment of how communities are involved, English Nature needs to take a lead role in ensuring that communities are put at the heart of the process;
  - (c) English Nature's role in the EBS should be made clearer;
  - (d) Reference needs to be made to climate change when referring to species and habitats;
  - (e) Given the tight resources within English Nature, we need to concentrate on guidance and linking of good practice.
- 4.3 The Committee **agreed** the revised statement should be brought back to the December Council Meeting.

**Action:** Keith Duff

**5. English Nature's involvement with the Dorset & East Devon Coast World Heritage Site (GC P02 35)**

- 5.1 Dr Duff introduced the paper, which outlined the background, progress to date, and future proposals for English Nature's involvement with the World Heritage Site (WHS). The Committee had visited the site during the previous two days .
- 5.2 The Committee raised the following issues in discussion:
- (a) Resources need to be harnessed for environmental actions. This will require close working with other key partners;
  - (b) That the statutory protection resulting from English Nature's designation of much of the coastline had been an important consideration in the awarding of WHS status. Involvement must continue, taking forward this wonderful opportunity to embed geological heritage as part of our national heritage;
  - (c) This provides an excellent educational opportunity .
  - (d) The Scientific Advisory Network meets for the first time next week, and as the site has been designated due to its scientific interest it is important to continue to maintain and strengthen this link with conservation through the work of the Group;
  - (e) This provides a superb platform and opportunity for linking the maritime and terrestrial environments.
  - (f) More work needs to be done to prepare for future nominations, in particular encouraging government to establish a clear responsibility for, and better engagement with, those who deal

with environmental WHSs. The Joint Nature Conservation Committee (JNCC) might consider our involvement in the area.

**Action:** Mike Moser to explore with the JNCC the need to engage further in this area.

- 5.3 The Committee **noted** that Professor Michael House, who had done much to assist the bid for WHS status, sadly had died during the summer following a short illness.

## 6. **SSSI Cases**

- 6.1 Chair introduced this Item and stated this item was to be dealt with as a meeting of the Council (not the General Committee). He outlined the process which would be followed, including a presentation from the English Nature Team, a presentation from objectors, each with an opportunity for Council to ask questions, followed by a discussion amongst Council Members leading to a summary by Dr Clements and a decision by Council.

### 6.2 **Cranmore Common (GCP02 32)**

- 6.2.1 Dr Clements introduced Dr Wolton from the Hampshire and Isle of Wight Team. Dr Wolton gave a presentation which described the location and interest of the site, and outlined the outstanding objections and English Nature's responses. Six owners and occupiers had been notified, and there were two outstanding objections
- 6.2.2 Chair thanked Dr Wolton for his presentation and invited questions from the Council. Council asked whether the full geographical distribution of the moth in the Isle of Wight, or land adjacent to Cranmore Common was known. It was confirmed that there had been an extensive programme of trapping and survey for the moth. Habitats with large quantities of saw-wort were very restricted, so that it was highly improbable that there were large populations of the moth in existence on the island or the mainland.
- 6.2.3 Chair welcomed Mr Nick Bosbury, who reinforced the following objections on behalf of his parents Mr and Mrs Bosbury. The moth was not evident on his parent's land. The Table on page 17 of the package did not record any moth. Late additions to this Table indicated the presence of the moth on 3 June 2001, although the English Nature survey was not conducted until 20 June 2001 when no mention of a moth capture was made. It was not possible to identify the location or site from the video evidence. Saw-wort was rare on the site. Only one plant was identified on 20 September 2002, and introduction of new plants had failed. The site was isolated and

not linked by heathy grassland as stated at page 9 of the package. The report of 2001 by Paul Waring was inaccurate in its description of the adjacent site. The sites to the north were barred from the south, and subdivided by their layout. The range of the moth did not appear to be limited to the Hamstead Beds. Reporting had been confused with regard to the notified area itself.

- 6.2.4 Dr Clements clarified that the Table at page 17 referred to by Mr Bosbury was a draft sent out erroneously with the papers for Council, which had subsequently been replaced by the correct table.
- 6.2.5 Council asked Mr Bosbury if the saw-wort plant referred to was one planted this year. Mr Bosbury replied that it was not.
- 6.2.6 Chair welcomed Mr Bartholomew and his agent Mr Rawlinson. Mr Bartholomew raised the following points: The SSSI was imposed and English Nature now had control over his land without compensation. The designation would adversely affect the value of the property. Clearance of blackthorn would increase the value of the land. There were wider considerations than the scientific nature of the land, including Mr Bartholomew's right to own and enjoy his land. The moth was already well protected by law. It would not be possible to protect surviving site conditions in anything but the short term. It appeared that a desire by English Nature to control a large field to the south of Mr Bartholomew's land in order to link up with plots of land to the north was a reason for the designation. The use of the name Cranmore Common by English Nature was a concern when the "right to roam" was linked with common land. Mr Rawlinson on behalf of Mr Bartholomew stated that the notification of the SSSI could not be considered in the absence of evidence that the area notified existed in fact as "Cranmore Common". According to the Countryside Agency's latest draft map produced further to the provisions for mapping of common land and open country under the Countryside & Rights of Way Act 2000, there was no such place as Cranmore Common.
- 6.2.7 Mr Barlow advised Council that the authorising legislation placed a duty on English Nature to notify where they were of the opinion that any area of land was of special interest. The papers before Council identified the land which had been notified as being of special interest. The name given to an SSSI was simply to distinguish it from any other SSSI.
- 6.2.8 Council asked for clarification from Mr Bartholomew on the issue of the alleged potential increase in the value of the property should the blackthorn be cleared. Mr Bartholomew

replied that the area concerned was 2 acres and the figure of £25-30,000 had not been provided by a professional estate agent or land valuer.

- 6.2.9 In discussion Council noted that Mrs Kelaart had visited Mr Bartholomew's land, and commended him for the manner in which he had managed the land to date for the benefit of the moth. The remit was to look at the scientific proof and that this is incontrovertible. All areas where the moth was present should be included. It would be preferable to alter the name to avoid any confusion which might arise.
- 6.2.10 Council adjourned to enable discussion between the landowners and the officers over the name of the SSSI.
- 6.2.11 Council reconvened.
- 6.2.12 Mr Barlow provided clarification on Human Rights aspects, referring members of Council to the guidance in the Corporate Governance Manual, the need to consider the effect of confirmation on the human rights of all owners and occupiers, and the need to satisfy themselves that English Nature had acted fairly. The judgement of the High Court in the Bramshill case did not obviate the need for Council to consider the fairness of each case afresh. Owners and occupiers were entitled to respect for their private and family life, and Council should consider the extent to which this right had been applied through the SSSI selection. Those with interest in land and property were entitled that any interference which the SSSI would be likely to have upon their use of the land in the public and general interest should be proportionate and in accordance with the law.
- 6.2.13 Council noted that a management agreement might be entered into and that blackthorn and saw-wort could both be managed on the site.
- 6.2.14 Dr Clements summarised the key issues raised in the officers' report, the representations and objections made, and Council's deliberations including: the presence of the reddish buff moth and saw-wort on the land; the 10 year involvement of the specialist consultant Paul Waring, with the species; Paul Waring had provided a signed statement agreeing the accuracy of the officer recommendation, including confirmation that the video had been taken on Mr and Mrs Bosbury's land, and confirmed presence of both the moth and the food plant; that the notification was necessary to ensure the long term security of the species; the concerns of both objectors as to the loss of control over their land was understood; there was little evidence available as to the impact of SSSI notifications on the value of

land in general; the list of operations requiring consent enabled a dialogue with owners and occupiers; the potential for English Nature funding to enable further management of the site; the impact on the human rights of owners and occupiers had been considered; and no agreement had been reached on the name of the site during the adjournment. Dr Clements reminded Council of the recommendation to confirm the notification with one modification regarding the name of the SSSI.

6.2.15 Chair suggested that the name be changed to Cranmore SSSI.

6.2.16 The Council **confirmed** the designation with one modification, and agreed that the name be changed to Cranmore SSSI.

### 6.3 Lower Coombe and Ferne Brook Meadows SSSI

6.3.1 Dr Clements introduced Mr Hamersley from the Wiltshire Team. Mr Hamersley gave a presentation, which described the location and interest of the site and outlined the three outstanding objections and officers' responses. Four owners and occupiers had been notified. Council did not seek clarification on any points from the team at this point.

6.3.2 Chair welcomed Mr Garran who raised two initial points on behalf of his clients Mr Coward and Mr McLean: Firstly, English Nature had agreed to remove the words “species rich” from the citation but these had not been fully removed. Secondly, a complaint had been made in relation to this notification. Although it did not form part of the papers it was understood that it had been made available to Council Members. A section relating to SSSI Guidelines would help with one of the matters to be raised.

6.3.3 Mr Garran then raised the following objections: The 1996 survey had been carried out by the same surveyor who had co-ordinated the 1995 survey. The selection of the site was deeply flawed in concept and in practice. The SSSI was not safe then or now. Council was right to withdraw the first notification and to have had misgivings that the scientific interest was secure. It was not secure now. Concern was expressed as to whether the decision to withdraw the previous notification was *ultra vires*. If that decision was unlawful all subsequent actions would be unlawful. The agreement to a re-survey was conditional, and the objectors' letter of 8 March 2002 showing this had never been answered. No one at English Nature had re-thought the proposed SSSI through, or reconsidered the guidelines for selection under the area of search. English Nature officers used the 1996 survey to draw up a survey contract and direct surveyors on the site. There were no best examples, apart from

a small patch of MG8 on Coward's Ferne Brook field. There was a lack of basic homework, for example the land alongside the river coming in from the north west had never been surveyed, and that if it had the archipelago might be different. English Nature had claimed that the individual fields follow SSSI guidelines. Mr Garran queried why English Nature had used the archipelago principle when it was clear from the guidelines and Jefferson that small areas were not generally viable. English Nature's claim that there was no minimum area for fen meadows was at odds with the previous notification. The justification for invoking the archipelago was unsound, and consequently the notification and citation were fundamentally flawed. The action to enforce the resurvey was overbearing and insensitive as the land was never under threat. The resurvey was not objective and was full of inaccuracies. Apart from the very small patch of MG8 in Ferne Brook, this was a very average site. Every field struggled to meet the criteria.

6.3.4 Mr Barlow advised Council that with respect to Council withdrawing the previous notification and asking for a further survey of the site, Council had not taken any decision on the special interest of the land and had not reached an opinion that the land was not then of special interest. Regarding the complaint: A previous complaint had been determined and the matter had been concluded. Members should note that a further complaint had been made. This was not something which was for Council's determination. Mr Garran had drawn one aspect of the complaint to members' attention relating to the guidelines. It would be right in considering the objection for members to consider the guidelines. The complaint should be treated separately from the objections to the notification, and it would be handled in accordance with English Nature's normal complaints handling process.

6.3.5 Council did not seek clarification on any points from Mr Garran.

6.3.6 Chair welcomed Mr and Mrs Boyd. Mr Boyd raised the following objections: Grove Farm did not have the size or quality to warrant a designation, and it could not be linked with other meadows as far away as 2km (at Ferne Brook) to form an SSSI. The guidelines were specific that special interest lay within the upper part of the quality range. To be a good example of special interest the species content should therefore be above average. The evidence was not clear. Mr Boyd queried whether the site was worth having if it was too impoverished a version of its kind. The four small fragments were all below average species count. They could never achieve a favourable assessment short of planting seeds because the species had never been present and the stands were



too small to be viable. At Ferne Brook the condition of the MG8 was unfavourable, and it did not qualify for selection as a grassland on its own. The sample taken was below average and highly selective. The SSSI was a misconception and without justification. English Nature did not recognise the binding agreement in place by virtue of the planning permission granted for change of use of the lower meadow. The planning permission gave it all the protection that was reasonably required. Grove Farm had nothing that was rare or of limited distribution. The relevant types of fen and grassland were well represented within the area of search. Many of the representations made to English Nature remained outstanding and responses lacked substance, in particular in relation to the boundaries. The citation and notification package created a false impression. Proposed amendments did not address all the points made or fully correct them. The synopsis was still misleading and misinterpreted the facts. The objection had not been fully discussed. At Lower Coombe, there was no Gault Clay whatsoever, especially on Mr Boyd's farm. The geology was Upper Greensand.

- 6.3.7 Council did not seek clarification on any points from Mr Boyd.
- 6.3.8 In discussion Council noted that both Professor Hart and Professor Lucas had had detailed discussion with the area team regarding this case. It was noted that drainage at the boundary between the Upper Greensand at the Gault clay is complex, and could result in peculiarly small areas of a particular type of drainage so that it was not surprising to find a fragmented archipelago of stands of different plants in the region. Council was content with the area team's approach to boundary issues. It was appropriate to look at the interest as a collection rather than individual areas. Mrs Kelaart and Professor Lucas had visited the site and had been impressed with the Boyd's knowledge and regretted that there had been difficulties between English Nature and people who were such committed conservationists. Council sought clarification on whether the site was the only relevant area in the area of search, and were reminded that the site was identified as a potential site from the Vale of Wardour 1995 survey, and considered to be one of the best sites identified in that survey. Council also sought clarification on whether the fourth stream had been considered and were informed that it had not. Council was reminded that whilst it was important for English Nature to be well informed, it was not necessary to have an exhaustive knowledge of species and habitat distribution in order to make decisions on the notification of special interest. Council was reminded of the duty to notify areas where English Nature had information that they were of special interest. Council noted that the National Vegetation Classification (NVC) system was a tool

which assisted Council's decision making by providing a standard means of classification. Council noted that members needed to weigh up the scientific assessment against all the other factors, in particular the rights of the objectors (of which Council had been reminded earlier), and strike a balance between the weight of scientific advice given and the degree of intrusion that a confirmation decision would involve so far as the objectors were concerned.

6.3.9 Dr Clements summarised the key issues raised in the officers' report, the representations and objections made, and Council's deliberations, including: the area of search; fen meadows, which were not in officers' view required to reach a minimum size threshold under the guidelines; that the words 'species rich' had been removed from the citation only where officers considered them to be misleading; that the NVC was just a tool; the archipelago concept; the geology; the distinction between the special interest of a site by virtue of its communities and the favourable or unfavourable condition of those communities; the boundary; planning consent issues; and the use of the powers of entry. Dr Clements reminded Council of the recommendation to confirm the notification with modifications to the boundary and to the citation. Dr Clements advised Council that should it choose to confirm, it should be confirmed on or before 24<sup>th</sup> October 2002.

6.3.10 Council **confirmed** the designation with modifications as recommended.

## 7. **SSSI Condition Annual Report (GC P02 36)**

7.1 Dr Clements introduced the paper, which reported on the favourable condition of SSSIs, the six year condition assessment cycle, and overall progress towards DEFRA's Public Service Agreement (PSA) target. The report showed that by the end of this year all assessments should be completed as part of the six year cycle, and that as this process is completed a clearer picture emerges of the overall condition of the site series. However, in line with previous concerns it remains our view that without additional resources, policy changes and further work with s28G bodies, it is highly unlikely that the Government will reach its target of 95% of SSSIs in favourable condition by 2010. We are working closely with DEFRA on producing a delivery plan for achieving the PSA target.

7.2 The Committee raised the following issues in discussion:

- (a) This was an excellent report, the contents of which should be more widely disseminated. In particular, its use as a platform for enabling English Nature to tell where we are at this point in

time, and what the barriers for the Government are in reaching its PSA target by 2010;

**Action:** Andy Clements to produce a document in line with the comments above, and explore the possibility of an article in the *New Scientist* magazine.

- (b) More work needs to be done in improving the understanding of what is required in order to achieve favourable condition.

- (c) Figure 2 is unclear.

**Action:** Andy Clements to disseminate a clearer graph to all members

- (d) It was helpful for the reasons for adverse condition to be broken down into detailed categories, as this enabled a better understanding of what needs to be done to address change. However, it is recognised that diffuse pollution, although a significant element in the condition of sites, is difficult to attribute and track.

- (e) Much welcomed resources granted in the Spending Review are insufficient for us to assist the Government achieve its target by the specified date.

- (f) It was unclear what freshwater drainage meant in the context of a reason for adverse condition.

**Action:** Andy Clements to circulate a note to clarify this figure.

## 8. **Proposals for Acquisition-Alkborough Flats, Yorkshire and Humberside (GC P02 40)**

- 8.1 Ms Wood introduced the report, which set out a proposal to purchase a block of land adjacent to the Humber for a large innovative, managed realignment project. Although this purchase is within the scope of the Treasury approved Capital Modernisation Fund programme of Projects – Nature for People it was considered that, given the scale and nature of the work, the views of Committee and its approval would be of benefit.

- 8.2 The Committee raised the following points in discussion.

- (a) It was most helpful to receive such papers in advance to enable a thorough examination;

- (b) The proactive stance was welcomed;
- (c) There did not appear to be funds specified for research and monitoring;

**Action:** Caroline Wood to amend the table at Annex 1 to show the amount allocated to research.

- (d) Yorkshire Forward has shown enormous commitment to this project;
- (e) The amount allocated for visitor facilities appears to be very low.

**Action:** Caroline Wood to ensure the project board consider the needs in this area further.

- 8.3 The Committee **approved** the expenditure for the acquisition of the land at Alkborough

## 9. **Grants Annual Report (GC P02 33)**

- 9.1 Ms Collins introduced the paper, which set out our expenditure on grants over the period 2001/02. This report would act as a prelude to discussions in December on the strategic review of the grants programme.
- 9.2 The Committee noted the paper.

## 10. **Chair and Directors Topical Report (GC P02 38)**

- 10.1 Chair introduced the paper.
- 10.2 The following topics were **raised** in discussion:
  - a) The Chair advised that he had taken no part in the Peak Park decision relating to Linshaw's Quarry;
  - b) A letter had been received from P&O/Shell confirming their willingness to accept that the proposal at London Gateway (Shellhaven) would cause adverse effect, and that discussions are ongoing regarding compensatory measures;
  - c) A notification for the Humber was likely to be considered by the Executive Committee in September 2003;
  - d) Turf moving has commenced at the White Horse site in Kent;

- e) The High Court has granted leave to appeal under two additional grounds to the Hon Patrick Fisher in the Brecklands case;
- f) With respect to SAC moderation the European Commission has concluded that there are 11 habitats and species where England is insufficiently covered. Additional sites are being considered;
- g) Mr Hockman would welcome involvement in production of the People and Wildlife Statement;
- h) Whole farm plans are useful but need to have environmental issues fully integrated;
- i) Work is on-going regarding the distribution of marine work between the Joint Nature Conservation Committee and English Nature;
- j) English Nature's involvement in the Environment Agency's fourth Asset Management Plan process is an important opportunity and to be welcomed;
- k) There was some concern regarding DEFRA's Water Environment Strategy, but an excellent response had been sent from English Nature;
- l) Although much innovative restoration work is being undertaken in the Norfolk Broads, the scale of the work needs to be substantially increased;
- m) A productive meeting had been held with Treasury on the issue of environmental taxation;
- n) Care needs to be taken to ensure that the international geological conservation conference planned for 2004 does not clash with the International Geological Congress which is to be held in Florence in mid-late August 2004;
- o) Applications are now being approved and grants paid under the Aggregates Levy Sustainability Fund.

## 11. **Council Dates for 2003/04 (GC P02 39)**

- 11.1 The Committee **agreed** the dates for 2003 as submitted. It was agreed to visit Norfolk later in 2004, and to seek an alternative venue for the March 2004 visit.

12. **Any Other Business**

- 12.1 Mr van Cutsem raised the issue of the lack of sheep grazing in Suffolk and Bedfordshire.

**Action:** Sue Collins to bring a paper on undergrazing to a future meeting.

13. **Closed Session**

- 13.1 *There was no closed session business*