

General Committee of Council

Confirmed minutes of the Thirty-first meeting of the General Committee of Council held on 30 June 2004 at the Ramada Jarvis Hotel, Norwich.

Present: Dr M Moser (Deputy Chair)
Dr A Brown (Chief Executive)
Mr T Burke
Mr R Clarke
Dr A Clements (Director)
Dr K Duff (Director)
Ms S Fowler
Prof E Gallagher
Prof M Hart
Mr S Hockman (Items 12 & 13)
Mr D Hulyer
Mrs A Kelaart
Dr D Macdonald
Dr A Powell
Mr H van Cutsem (Items 1-11)

In attendance: Mr J Wray (Corporate Business Team, Minuting Secretary)
Mr J Marsden
Mr S Gabrynowicz (Item 7)
Mr C Edwards (Item 11)
Ms L Hutchby (Item 11)
Ms K Mitchell (Items 12 & 13)
Mr R Barlow (Solicitor, Browne Jacobson)
Mr B Harding (Defra)
Ms O Muirhead (Defra)

1. Apologies and welcomes

- 1.1 Dr Moser welcomed everyone to the meeting and in particular Mr Clarke and Ms Fowler, as new Council Members, to their first meeting. Dr Moser also congratulated Ms Fowler on being awarded an OBE, in The Queen's Birthday Honours, for services to marine conservation.
- 1.2 Apologies were received from Mr Hockman who was not able to attend the mornings business and from Ms S Collins. Apologies were also received from Sir Martin Doughty who was convalescing after a recent operation.
- 1.3 On behalf of the Committee Dr Moser **thanked** the Area Team and the partner organisations for the excellent field trip the previous day, and also **thanked**

Mr van Cutsem for hosting the Committee to dinner and showing them round his estate.

2. Minutes of the Thirtieth meeting of the General Committee held on 17 March 2004 (GC MO4 01)

- 2.1 The Minutes were **confirmed**.

3. Matters arising

- 3.1 Paragraph 4.2.2 – There had been a successful meeting of the Natural Science Advisory Group in May. Dr Duff was organising a meeting with College Departments in September to explore closer co-operation over MSc projects and other co-operative work..
- 3.2 Paragraph 5.2.3 – Mr van Cutsem felt it was important that information about access land was made available and the land be clearly identified.
- 3.3 Paragraph 14.3, Action Point 12 – Designated Sites Programme Board had a project, led by Tom Tew, looking at designations issues. A paper was planned to come to Council in due course.

4. Performance Report: April 2003 – March 2004 (CG PO4 18)

- 4.1 Dr Brown introduced the paper. There had been a lot of good work done and overall the organisational performance was excellent.
- 4.2 The Committee **discussed** the report and noted the following points:
- 4.2.1 Finances had been well managed, especially as there were now several funding sources, and clear accounting was taking place. There had been an accruals deficit of £500,000 but this had been covered by a carry-over from the previous year. The accounts for 2003/2004 had been signed and cleared by the NAO. In future they will be published with the Annual Report. This year there will be a special publication for stakeholders outlining English Nature's work during the year.
- 4.2.2 Only six organisational targets had been missed. Of these it had been agreed in year that three would be changed. The Committee **noted** that the Modernising Rural Delivery Programme had required considerable input in time and resources. It would be helpful if some idea of the costs could be given.
- 4.2.3 Staff costs had increased significantly. This was largely due to the three year pay settlement. Recently agreed changes to budgets had already been addressed and the pay progression costs built into forward budgeting. The pay bill was being carefully managed and no staffing cuts were being sought.
- 4.2.4 The Committee **noted** that the move to join the Principal Civil Service Pension Scheme had been Treasury funded, but that the future English Nature contributions into the scheme would increase and would come from overall grant in aid.

- 4.2.5 Defra were still reviewing the Aggregate Levy Sustainability Fund and so far only one extra year was funded for terrestrial grants. Several outcomes of the review were possible - English Nature, Countryside Agency (and ultimately the Integrated Agency) could be distribution bodies, alternatively distribution could be done at regional level. English Nature would continue to distribute funds for maritime projects and was in dialogue with Defra over future terrestrial grants.
- 4.2.6 The Committee **congratulated** staff, particularly Area Teams, on their performance, particularly in the light of the MRDP.

5. Agricultural Sector Analysis: Revised Priority Actions (GC PO4 24)

- 5.1 Mr Marsden introduced the paper which had been deferred from December. A full review of all sector analyses would come to the December 2004 meeting.
- 5.2 The Committee **discussed** the paper and raised the following points:
- 5.2.1 The Committee **noted** that shortfalls in funding from the Mid-Term Review would cause problems in several areas including delivering on catchment sensitive farming (diffuse pollution). Funding shortfall would also affect the guidance to Area Teams on targeting high-level schemes.
- 5.2.2 It was important that English Nature showed Government that existing money was better targeted through modulation.
- 5.2.3 There needed to be more emphasis on integrating a farm's context to its environmental performance. This would be best done as part of Priority Action 3. Catchment sensitive farming needed more emphasis in Priority Action 5.
- 5.2.4 Agriculture was a complicated and fast moving sector and had to keep up with other English Nature programmes. English Nature had to keep close relationships with the Countryside Agency and others, particularly regarding Integrated Agency issues, especially with a new ERDP post 2007. The paper should be more specific where integration will be particularly important and where close cooperation with groups such as NFU and CLA will occur. The Committee **agreed** that a joint paper by the Heads of Agriculture for English Nature and Countryside Agency would be circulated.

AP1: Mr Marsden to circulate the joint English Nature/Countryside Agency paper on joint working to the General Committee.

Action: Mr Marsden

- 5.2.5 Climate change would be a major driver of agricultural land use change at a landscape scale over the next thirty years and needed including.
- 5.2.6 There were too many priority actions in the paper as a whole. More sense of the relevant urgency of the actions was needed.

- 5.3 The committee **agreed** that the paper should be amended in the light of the discussion and signed off by Dr Moser.

AP 2: Mr Marsden to amend the paper and Dr Moser to sign it off.

Action: Dr Moser and Mr Marsden

6. Joint Nature Conservation Committee (JNCC) Financial Management Policy Review: Changes to JNCC Administrative Arrangements (GC PO4 20)

- 6.1 Ms Wood introduced the paper which carried part of the recommendations from the JNCC's FMPR. By law, the JNCC cannot itself employ staff or place its own contracts. The FMPR recognised this and this paper proposes the creation of a Company Limited by Guarantee to serve the support functions of the JNCC.
- 6.2 The Committee **discussed** the paper, **noted** the process for managing the development of the FMPR work and raised the following points:
- 6.2.1 The proposed Regulatory Reform Order would remove the burden from the country agencies to employ JNCC staff and issue contracts. They would still grant aid the JNCC however. The JNCC's staff would have their own terms and conditions. English Nature had discussed with the JNCC the issue of competition over pay rates and the potential for the poaching of staff, especially in Peterborough. JNCC pay proposals will still come to the country agencies for approval.
- 6.2.2 Concern had been raised about potential conflicts of interest between the Directors of the Company and the representatives of the country agencies on the JNCC. This was considered unlikely as the degree of potential overlap was low. In any event the company was there to support the JNCC in carrying out its special functions. However there was an issue about indemnifying English Nature representatives on the JNCC. The Government should indemnify the independent members of the JNCC. The JNCC will also develop its own Schedule of Delegations. The Articles of Association would come to Council in September.
- 6.2.3 The Committee **noted** that in future the relationships in deciding JNCC's funding would change. Currently there had been a three-way discussion between the country agencies. In future Defra would decide the funding after consulting the country agencies and devolved administrations.
- 6.3 The Committee **noted** that JNCC had approved the proposals and **endorsed** the proposed changes. Dr Moser **thanked** Ms Wood for her work.

7. Advancing the UK Sustainable Development Strategy – the Role of Environmental Management and Regulation in Economic Development (GC PO4 19)

- 7.1 Mr Marsden introduced the paper which provided a high-level review of improved environmental performance as part of sustainable development (SD). It would form part of English Nature's response to the Government's review of its SD Strategy and had been subject to external peer review. The paper challenged the view that environmentalism had a negative effect on productivity and SD had emphasised the positive aspects of minimum environmental standards.
- 7.2 The Committee **discussed** the paper and raised the following points:
- 7.2.1 The paper was designed to stimulate thought and discussion, as well as to raise awareness. However care was needed with the *vires* as English Nature had no economic authority base. English Nature needed to concentrate on biodiversity, in the broader context of achieving progress towards SD, and engage in resource productivity issues only where these impinge on biodiversity outcomes. The paper was a valuable addition to the debate but should not be taken as a Council position. There was also a danger that the paper was straying from evaluation to advocacy.
- 7.2.2 It was important to show the benefits of biodiversity regulation eg Habitats Regulations, the clarity of the framework and its ease of approval. The fact that the paper spoke in language the Treasury understood was helpful. More information on the costs of malfunctioning systems, such as soil erosion due to poor agricultural practice was needed. Climate change effects needed to be explored more.
- 7.2.3 Nature conservation will only become sustainable and of more importance if it is considered more central to the economy. The paper needed more emphasis on different ways of measuring economic growth and how to stimulate environmental innovation.
- 7.2.4 English Nature should not take a lead role in this area but it should work closely with others who have greater leverage and influence to seek to get our views across. The Council **agreed** that the paper needed some revision in the light of the discussions, and that it did not fully endorse the recommendations, but would look at the broad issue again after English Nature had contributed to the government's SD Review.

8. SSSI cases

- 8.1 Dr Moser reminded everyone that this item was to be dealt with as a meeting of the Council (not the General Committee) and outlined the procedure which would be followed. Dr Moser mentioned figures on the rate of objections given the numbers of SSSI owners and occupiers notified. In the period 1 July 2003 to 30 June 2004, 11 sites were considered for confirmation with 273 owner/occupiers involved. From those 11 sites 3 were considered by Council with unresolved objections from 6 owner/occupiers. This low figure was a credit to the work of Area Teams in resolving initial concerns and objections to SSSI notification, and was in line with Defra's Code of Guidance, *Sites of Special Scientific Interests: Encouraging Positive Partnerships*.

8.2 Ebernoe Common SSSI West Sussex (GC PO4 15)

Dr Andy Clements introduced representatives of the Sussex and Surrey Area Team who made a presentation about the special interest of the SSSI.

- 8.2.1 The site had been notified in 1972 and re-notified in 1987. In 1997 colonies of Barbastelle and Bechstein's bats were discovered – both species were nationally rare – and this necessitated the current SSSI notification.
- 8.2.2 The site is a large woodland complex, the boundaries of which have been selected to provide alternative roosts and to include known foraging areas and flight lines. In-depth surveys have provided a wealth of relevant data.
- 8.2.3 One owner had objected to the inclusion of Siblands Barn and their small woodland ownership within the SSSI. They had suggested that they would remove their objection to the inclusion of their woodland if the barn were removed from the notification.
- 8.2.4 Siblands Barn is important as a Barbastelle winter roost site and is integral to the special interest of the SSSI. The bats clearly used both the winter and summer roosts and the whole site would be less special without the barn.
- 8.3 The Council **discussed** the presentation and raised the following points:
- 8.3.1 It was not clear what the owners suggested mitigation measures would be.
- 8.3.2 In terms of the ecology of the bats Council were advised of the high quality of the evidence provided in this case. Barbastelles had a wide-ranging feeding territory flying up to 25km from the wood. Bechstein's bats fed in the wood. In setting the site boundaries it was not possible to take account of the long flight lines outside of the wood for barbastelle, but it was important to take account of flight lines for both species within the wood.
- 8.3.3 Siblands Barn was traditionally constructed. The woodland complex surrounding it was important.
- 8.3.4 It was important to ensure that the barn could be maintained if its use was restricted by the notification. English Nature could help with some aspects of this.
- 8.3.5 Ebernoe Church Porch was now known to be used by the bats, but this information had only come to light after the SSSI was notified and it did not affect the importance of Siblands Barn, nor materially affect the decision of Council on whether or not to confirm this SSSI.
- 8.4 The owner Mr Lloyd-Jones had sent Council a letter outlining his objections. This was read out to the meeting (Annex 1). Dr Moser **thanked** Mr Lloyd-Jones for his letter which would help Council in its deliberations. It was clear Mr Lloyd-Jones was a natural ally. Council was **grateful** for Mr Lloyd-Jones' continuing dialogue with English Nature. Council **thanked** the Sussex and Surrey Team, together with Dr Clements for their efforts to achieve a sustainable outcome.
- 8.5 The Council then **discussed** the objection and the following points were raised:

- 8.5.1 Council **received** legal advice that the primary issue was whether or not the extended SSSI was of special interest and that the SSSI Guidelines should be taken into account. In Human Rights terms the likely level of interference with the owner's use of the land and barn had to be taken into account, but was likely to be justifiable. The barn may not have been specifically referred to in the notification but it was clearly part of the notified site and Council had been told of its importance to the special interest. With regard to future uses of the barn, if an application is made for an operation requiring English Nature's consent, or an application to the Local Authority for development then it would be considered in the normal way.
- 8.5.2 There was clear evidence that the barn and surrounding woodland are used by the bats. Tagging of bats showed the barn was in low-level but regular use. Barbastelle bats do not hibernate fully and so are active all year. Omitting the barn and woodland would therefore affect the site. Bat roosts are selected on a national basis and there were only eight sites for Barbastelle bats, of which five were SSSIs.
- 8.5.3 It was in English Nature's interest to ensure the barn would not fall into disrepair and help should be given to Mr Lloyd-Jones, with the planning issues, to try and achieve assurance over its future use.
- 8.6 Council were unanimous in their view that the whole site was of special interest, and were **minded** to confirm the notification of the site but **delegated** the final decision to Dr Moser so that further discussions could be held with Mr Lloyd-Jones to seek resolution of his objection before 20 August.

AP3: Dr Moser was delegated authority to make the final decision by 20 August to allow further discussions with the SSSI owners to seek resolution to their objection.

- 8.7 Council **congratulated** Mr Lloyd-Jones and his family on their actions for nature conservation over thirty years.

9. The Audit and Risk Management Committee's Annual Report to Council (GC PO4 23)

- 9.1 Professor Gallagher introduced the paper which included the Internal Audit report and a letter from the National Audit Office.
- 9.2 The Committee **noted** the paper and the following points were raised:
- 9.2.1 English Nature was considered to be well above acceptable audit standards and could afford to reduce some of its effort on developing its risk management processes without losing this standard. However there was no room for complacency as there was always pressure to maintain its performance.
- 9.2.2 The NAO was happy with next year's plans for auditing risk management, external projects and Modernising Rural Delivery Programme work. Professor Gallagher highlighted the challenge of carrying out the MRDP process this year at a time of tight budgets and considerable demands on English Nature to deliver its basic programme.

- 9.2.3 It was important to recognise the knowledge held by staff across English Nature. This was particularly so for Conservation Officers when they retired or moved location. It was essential to try and capture this latent knowledge and pass it on using knowledge management and "buddy" schemes.
- 9.3 The Committee **congratulated** everyone involved in the audit process and the organisation as a whole for such good performance.

10. Revised Corporate Risks 2004/05 CGC PO4 25)

- 10.1 Ms Wood introduced the paper. The Executive Committee had looked at the Corporate Risks in the light of the Modernising Rural Delivery Programme (MRDP) and concluded that the criteria/method by which to measure the risks needed to be tougher. Risk 5 was totally new, all the remainder had been revised and discussed with the Audit and Risk Management Committee.
- 10.2 Council **approved** the revised corporate risks for 2004/05.

11. Other Business

11.1 Chair, Chief Executives and Directors' Topical Reports (GC PO4 26).

- 11.1.1 Paragraph 2.12.1 – Little Cheyne Court, Kent.
A letter from Mr Merricks to Dr Clements was tabled for Council Members at Mr Merricks request. A meeting of English Nature Officers was due to take place shortly to determine English Nature's position.
- 11.1.2 Paragraph 2.5 – Dibden Bay
The Dibden Bay decision reflected well on the whole organisation, especially as relations with ABP remained good.
- 11.1.3 Paragraph 31.2 – The plans to work with the BBC were a superb opportunity to get the biodiversity message into media and to the general public. It will be good for conservation and not just wildlife.
- 11.1.4 The Committee **noted** the amount of senior management time that had been devoted to the MRDP. The workload would continue to be high for the foreseeable future and stressful for all.

11.2 Annual Report on National Nature Reserves (GC PO4 21)

- 11.2.1 Some mention of the research being carried out on NNRs was needed.
- 11.2.2 Overall there had been remarkable achievements on NNRs including favourable condition achievement, a successful NNR conference, the people agenda and spotlight NNRs. The Committee **congratulated** all the staff involved.

11.3 Human Resources Annual Report 2003/04 (GC PO4 17)

11.3.1 The Committee **requested** that this paper be brought back to the September meeting to ensure that a full debate could be held on it.

AP4: The Human Resources Annual Report would be brought back to the September meeting for a full discussion.

Action: Ms Wood

11.4 Unconfirmed minutes of the Joint Nature Conservation Committee (GC PO4 22)

11.4.1 The Committee **noted** that the JNCC minutes had now been confirmed.

SignedMike Moser, Deputy Chair.....

Date ...21 September 2004...

Annex 1

29 June 2004

Without Prejudice

Statement and Report to the Council of English Nature – meeting of 30 June 2004

Siblands Farm

Ebernoe Common – Site of Special Scientific Interest (SSSI) and candidate Special Area of Conservation (cSAC) – Proposed Extension

I wish to send my apologies for not attending in person the thirty-first meeting of the General Council, as I would have wished. The decision not to attend was taken reluctantly after careful consideration that was influenced by the amount of time allocated. I felt that to be given only 10 minutes to put forward the objections, given the distance needed to travel for such an engagement, was not appropriate.

The decision not to attend should not been seen as an acceptance on my behalf of the proposed SSSI extension, nor as a retraction of the objection, as noted below.

I would therefore request that the following statement relating to my objection and that of my family, which should take 10 minutes, be read before the Council without prejudice to our overall rights in this matter.

To begin with I wish to state our support for the work the Council does in championing the conservation of wildlife though, as will be clear below, we have more than a few reservations and reasons to be concerned with the micro management principles, and this impacts on principles relating to the proposed extension of the SSSI.

I would refer the Council to the detailed objections raised in the letter to the Sussex and Surrey team dated 13 May 2004 and to other correspondence that is enclosed in Section 3 (Index and key correspondence) of the report of the Director.

Executive Summary

We appreciate better than many that Ebernoe Common SSSI, as notified prior to your proposed extension, is indeed an important area of ancient woodland. We would like the Council to be aware that it was only saved from being sold, and a large part of it clear-cut, by what to us was a substantial financial contribution made by ourselves in 1978 / 1979.

We can therefore confirm that we supported the Council's action when the area of general woodland received the protection of SSSI in 1987, and it should be noted that we did not make an objection.

We also appreciate that Ebernoe Common contains a wide range of native trees that support a diverse woodland bird and mammal assemblage. However, we wish to

draw the Council's attention to the fact that it is the management of this diverse assemblage, rather than the priority to focused management given to certain birds or mammals, that is vital in order to protect the future of this important site. We do not feel that the overall management focus of the proposed extension supports this.

We would like the Council to be aware that we are the only inhabitants located within, as opposed to adjacent to, Ebernoe Common, and that as such the proposals set out in the notification affect us directly rather than indirectly. We have lived at Siblands Farm for 30 years.

We wish the Council to note that in our objection we put forward a compromise proposal that we believed was in keeping with the notification and, had it been accepted, would have allowed the notification to go through without objection. However this was rejected.

We would like to reaffirm that our compromise proposal remains, and we confirm that we would remove our objection to the SSSI extension, if at today's meeting the Council agrees to the compromise. We do not feel that this would prejudice the focused management, as stated below, as the compromise would continue to support the diverse assemblage plan.

Objections and responses

- i) We pointed out in our objection that in the previous SSSI notification did not include the two areas of our land that you now propose to include.

The response was that the new inclusion of these two areas was exclusively to ensure the survival of one species of mammal, namely the Barbastelle bat, knowledge of which had improved since 1987.

We can in the future commission research to establish the level of importance of these two areas; however, as the Council will appreciate, this will take a considerable amount of time, something that could not have been done conclusively within the ten minute period allotted for our objections.

We would also contend that, even if we were given the supporting evidence, the areas need to be important for more than just one individual management reason as is set out in the notification.

- ii) We pointed out in our objection that we were aware that all species of bats are protected under legislation from the EU and under Schedule 5 of the Wildlife and Countryside Act 1981.

In response we were informed that the notification would give English Nature officers enhanced management of the site over and above that of the current legislation.

We would contend yet again that the management of the overall site should take into consideration all the species and not that of a single one, particularly when such a species is already protected by legislation.

We note that in the evidence, two other local buildings have not been nominated as SSSI sites, despite the presence of Barbastelle bats.

- iii) We therefore contend that our land did not meet the overall criteria, as your given reasons supported only one criterion. The written responses have not answered these objections.
- iv) We contend that if the areas, including our barn, were of such importance they should have been included within the notification together with the supporting evidence for their inclusion.

We continue to note that no reasonable answer or supporting information has been given, although we have been provided with evidence giving opinions as to the importance of the barns since 1987.

We note that we were told in the response that Barbastelle bats (and five other species) used Siblands Barn and the adjacent woodland as a winter roost. We would like the Council to be aware of the fact that the adjacent woodland is already protected under the SSSI, 1987 and is not part of our property.

Therefore we consider the response to be ambiguous as to the actual use of our barn by the bats, as it is not specific, and moreover confusing to our objection.

- v) We noted that the inclusion did not accord with policy, legislation and research relating to Barbastelle bats in the Species Recovery Programme.

We have accepted the responses given by English Nature at a meeting with Dr Andy Clements, with regard to this objection. Accordingly this objection no longer applies.

- vi) We noted that the proposals could seriously affect the future use of the barn to generate a satisfactory livelihood.

In response we were advised that a list of operations requiring English Nature's consent should not be seen as a set of restrictions.

We would confirm that, in response to our objections, we had a productive meeting with Dr Andy Clements and his colleague from the Sussex and Surrey Team.

Since the meeting, which took place only last week, we are currently working jointly with the Sussex and Surrey team to prepare a list of potential operations that may be required to ensure that the barns can be preserved in the future.

If such an operations list were approved, then we would like the Council to be aware that this would go a long way to assuring us that the management practices to be employed by English Nature at the site were in the interests of creating an overall diverse assemblage, not a focused one.

We wish to continue to work with the local team on this matter and until we have reached the conclusion of this process we cannot remove our objection.

However we have observed that this does not accord with the actions and management practices in the past. The Council and its Chief Executive will be aware

that in Norfolk 2002, the list of operations certainly affected the ability of the owner's of Paston Great Barn to generate an income to preserve the barn.

In a joint statement with English Nature they commented "The Trust is disappointed that its proposal for the Paston complex as an interpretation centre for local interests is unable to go ahead at this time..."

We therefore have every reason to be apprehensive that we will in fact be prevented from looking at all the options for alternative uses to preserve the barns in the future.

Summary

Subsequent to my letter of objection, as referred to above, a meeting was arranged with Dr Andy Clements, Louise Hutchby and my elder son in order to establish whether we could remove our objection prior to the meeting of the Council.

In one sense I am disappointed not to be able to remove our objection, though I believe that a process has been agreed that could be acceptable and lead to its removal at a later date.

I can confirm that we had a productive meeting, which pinpointed the main area of concern as being that of the future use of our barns based on our experience of the general management practices employed by English Nature.

We agreed that in order to remove our objection, I would require a greater level of confidence as to my family's ability to use the barns in the future.

I have already confirmed to English Nature the importance that my family attaches to the Siblands barn. In an ideal world, the best method of preserving the barn would have been for it to continue in agriculture, the use that it was originally built for. However I am mindful of the changes that have occurred in agriculture that have meant that this building can become uneconomic and redundant to modern farming needs; therefore new uses are essential for its continued existence.

There has not been time for me today to say what these new uses may be and, as stated above, we have now agreed a process to set out potential uses. However, an assurance from the Council members at today's meeting, in the form of a minute, that new uses would be considered would go a long way to help me have the confidence that the SSSI as proposed is in the best interest of everyone, and would allow me to remove my objections.

Finally I would like to thank the members of the Council for listening to the objections I have made. Given my knowledge, experience and love of Ebernoe Common, I believe that they have been put forward with the best interests of the overall management of the site in mind.

Yours sincerely,

David Lloyd-Jones