



**Advice Note to Local Planning Authorities
regarding the consideration of effects on the breeding
population of nightjar and woodlark
in the Sherwood Forest region**

11 July 2011

This advice note updates and replaces the previous note dated 28 June 2010.

Natural England recommends that those Local Planning Authorities within and in close proximity to the Sherwood Forest region of Nottinghamshire, in the course of exercising their statutory functions, are mindful of the outcome of the Public Inquiry into the proposed Rufford Energy Recovery Facility (ERF) development and the matter arising as to whether the substantial breeding population of nightjar and woodlark in the Sherwood Forest region warrants its classification as a Special Protection Area ("SPA") under the EU Birds Directive, or at least its identification as a potential SPA ("pSPA").

The Inquiry Inspector recommended that planning permission be refused for the Rufford ERF and on 26 May 2011 the Secretary of State agreed and decided to refuse permission. The Secretary of State cited the nature conservation matter outlined above as one of the key material considerations in his decision and concluded that the potential for harm to the integrity of habitats used by woodlark and nightjar weighed significantly against the ERF proposal (see <http://www.communities.gov.uk/planningandbuilding/decisionsplanning/secretarystate/recentsecretary/>).

It is current Government policy (expressed in PPS9 paragraph 6) that pSPAs should be treated as if they had already been fully classified as SPAs. This has the result, in the case of planning applications in the vicinity of pSPAs, that the provisions of the Conservation of Habitats and Species Regulations 2010 ('the Habitats Regulations') are applicable. The Regulations impose duties on all public bodies, including local planning authorities, to follow strict regulatory procedures based on a precautionary approach in order to protect European Sites such as SPAs from significant adverse effects. This includes the undertaking of a retrospective review by local planning authorities of those extant planning consents which may affect the site.

It is presently Natural England's view that based on Government's previous practice, the Sherwood Forest region is not a pSPA and therefore the provisions of the 2010 Regulations do not presently apply. Natural England has not so far provided any advice to the Secretary of State on the selection of any SPA in the Sherwood Forest area. Given that it is Natural England's view that current practice would be not to treat the Sherwood area as a pSPA, we are therefore bound to advise your authority to that effect.

However it is also our view that there currently remains a possibility of an area of Sherwood Forest being recommended for future classification as a SPA on the basis of the evidence from recent national nightjar and woodlark surveys and the interpretation of that data. It remains under consideration as part of a UK-wide SPA Review Programme led by Defra and due to be completed by 2012 (see <http://archive.defra.gov.uk/rural/documents/protected/spareview-tor.pdf>).

We recognise that this uncertainty and the consequences of a possible future classification of an SPA in the Sherwood Forest area places a difficulty on Local Planning Authorities with

regard to how they should consider land allocations and policies in forward plans and how they should consider individual planning applications within the Sherwood Forest area. How local authorities choose to confront this issue is a matter for them. However, in the circumstances, Natural England would advise that they may wish to adopt a 'risk based approach' or similar to provide decision-making with a degree of future-proofing until such a time that there is more certainty on whether the Sherwood Forest area is to be afforded pSPA or SPA status and whether the provisions of the 2010 Regulations are to take effect.

This approach advocated by Natural England has been endorsed by the Secretary of State in coming to his decision on the Rufford ERF, when he stated that whilst the Sherwood Forest area is not currently identified as a SPA, there was "merit" in following this risk-based approach in considering the effects of the proposed development on the breeding populations of nightjar and woodlark.

We therefore advise that Local Planning Authorities should seek to satisfy themselves that planning applications contain sufficient objective information to ensure that all potential impacts on the breeding nightjar and woodlark population have been adequately avoided or minimised as far as is possible using appropriate measures and safeguards, at this stage, in order to ensure that any future need to review outstanding permissions under the 2010 Regulations is met with a robust set of measures in place.

Natural England suggest that as part of a risk-based approach to forward planning and decision-making, development plans and proposals are accompanied by an additional and robust assessment of the likely impacts arising from the proposals on breeding nightjar and woodlark in the Sherwood Forest area. This should ideally cover the potential direct, indirect and cumulative impacts which may include, but may not be limited to, the following;

- disturbance to breeding birds from people, their pets, noise, traffic and/or artificial lighting
- loss, fragmentation and/or damage to breeding and/or feeding habitat
- bird mortality arising from domestic pets and/or predatory mammals and birds
- bird mortality arising from road traffic and/or wind turbines
- pollution and/or nutrient enrichment of breeding habitats

No formal assessments of the boundary of any future SPA have been made; therefore we cannot definitely say whether individual application sites would fall inside or outside any possible future designated area. However, maps which highlight the areas of greatest ornithological interest for breeding nightjar and woodlark were submitted as evidence to the Rufford ERF Public Inquiry and could be of assistance to your Authority in this regard (see <http://www.nottinghamshire.gov.uk/home/environment/planningmatters/homepage-newpage/efrcoredocuments/efrrepresentations.htm>). It is worth noting that the Inspector of the Rufford ERF Inquiry decided it appropriate to consider both boundaries to inform his recommendations.

Natural England is of the view that taking such the approach outlined above represents good planning practice. It will assist your Authority should the site be classified as SPA in limiting the number of plans and projects which would need to be re-considered as part of the review of consents process required by the 2010 Regulations. It will also assist your Authority fulfil its statutory duty to conserve biodiversity, as it is already critical to consider the impact of development on nightjar and woodlark owing to their inclusion as Priority Species within the UK Biodiversity Action Plan. Both species therefore already represent a material consideration when considering planning applications, regardless of whether the Sherwood area is put forward for classification as SPA in due course.

Whilst Natural England will continue to comment on the potential effects of proposals in the context of wildlife and biodiversity legislation, our role relating to development plans or projects that may affect any future European site can only be advisory at this stage. As Sherwood has not yet been formally proposed as an SPA, Natural England will therefore not formally object to proposals that have the potential to affect a future European site that is not yet proposed.

Similarly Natural England will not give detailed advice on each proposal, so the development of a risk based approach to decision making is therefore encouraged. Your authority should ensure applicants provide sufficient information to inform the consideration of risks and we recommend your authority seeks independent ecological advice where appropriate.

Should Natural England be in a position to revise these views and advice, we will do so and notify you accordingly.

If you have any queries about this advice please contact your local Natural England Planning Adviser:

- Rachel Hoskin 0300 060 2343 Bolsover Councils
- Elizabeth Newman 0300 060 0789 for Newark & Sherwood,
- Caroline Harrison 0300 060 0730 for Ashfield, Bassetlaw, Broxtowe, City of Nottingham, Gedling, Mansfield, and Rushcliffe Councils

Natural England
Midlands Land Use Services
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