



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
ENVIRONMENT
Directorate D - Implementation, Governance & Semester
ENV.D.3 - Enforcement, Cohesion Policy & European Semester, Cluster 3

Brussels, **27. 09. 2013**
CHAP(2013)113
ENV.D.3/JLL/sw

Dongria Kondh
treeresponsibility@yahoo.co.uk

Aidan E. Foley
aidan.foley@eggconsult.co.uk

Dear Ms Kondh and Mr Foley,

Subject: CHAP(2013)113 – management of Walshaw Moor

Thank you for your email of 23 August 2013 asking to inform you about the progress of your complaint about burning on blanket bogs and inform on the replies sent by the UK authorities to the EU pilot request.

The Commission services, before receiving your complaint, registered a complaint on the same matter from another complainant. The said complaint was transferred to the EU Pilot system with questions to the Member State concerned.

Since 2008 the Commission has agreed with a number of Member States to work to improve the speed and efficiency of the information-exchange and problem-resolution process through a project, 'EU Pilot'. The Commission aims to ensure that you receive a complete response as quickly as possible through this process. It usually takes ten weeks for a Member State to reply to the Commission. The Commission in turn has ten weeks to analyse the reply proposed by the national authorities concerned. Once the investigation of the reference EU pilot is finalised, that complainant is informed about the outcome of the investigation and our conclusions on the matter.

In our request we have asked the UK authorities for additional information on the 43 grounds of alleged damage Natural England was prosecuting the Walshaw Moor Estate Ltd. (hereinafter – WMEL) over and how the restoration of that alleged damage will be secured now that Natural England has abandoned its prosecution. The Commission also asked for information on burning rotations permitted on SAC management units containing blanket bog elsewhere in England and about any possible wider implications of the management agreement entered by Natural England and WMEL for other management agreements entered into on upland sites, in particular with regard to moorland burning activities. Furthermore the EU Pilot included a question on how the SSSI Consent 2012 is reconciled with the objective of tackling the key pressures identified in the Natura 2000 form of the South Pennine Moors SAC. Finally, a number of questions were addressed to the UK authorities through the EU pilot in order to clarify whether any EU Agri-environment funding has been or is being allocated for the

European Commission, B-1049 Brussels - Belgium. Telephone: (32-2) 299 11 11. Office: BU5 – 00/179. Telephone: direct line: (32-2) 296 41 35. Fax: (32-2) 297 96 89.

E-mail: Paul.Speight@ec.europa.eu

damaging management activities such as burning both with regard to WMEL Estate and more widely in the uplands.

I would like to use this opportunity also to inform you about the discussion on the EU pilot request in question that took place during the package meeting with the UK authorities on 22 January 2013. During this meeting the UK authorities explained that a management agreement was drawn up and seen as a better approach to achieving the desired improvements in management on the ground. We were also told that Natural England is now carrying out a wider review of moorland estates and burning regimes. The UK authorities expected this review to be finalised by the end of March 2013. According to the UK authorities, there are 71 estates within domestic protected sites many of which also carry Natura 2000 designations. The UK authorities also explained that the new management regime agreed with the Walshaw Moor Estate with regard to burning was now more restrictive than on other estates.

The Commission services have now also received the replies of the UK competent authorities to the above mentioned questions. Since the first complainant, on the basis of whose complaint an EU pilot request was launched, has expressed a wish to comment on the replies provided by the UK authorities, I would like to give you the same opportunity. Below you'll find the UK replies on each of the above mentioned questions:

1) On the 43 grounds of alleged damage Natural England was prosecuting the WMEL over, the UK replied that WMEL were charged with 45 offences. This consisted of 30 incidences of moor gripping, the construction of 5 tracks, the construction of 5 car parks, the creation of 2 ponds by peat extraction, the construction of earthworks (shooting butts) in 2 locations, and 1 incident of using vehicles likely to damage the site. In Natural England's view, restoration of the alleged damage would include the removal of damaging infrastructure from the site, the filling in of moor grips and ponds and re-profiling and re-vegetation of the affected areas.

In reply to the question on how the restoration of that alleged damage will be secured now that Natural England has abandoned its prosecution, the UK explained that the 2012 management agreement reached with the WMEL has resulted in improved conservation management for the SAC and SPA, placing the sites' blanket bog habitats on a trajectory that will move these towards favourable conservation status. Among other things, according to UK authorities, the management agreement places significant restrictions on burning, grazing and vehicle use on the site and also includes a substantial programme of grip blocking across the WMEL estate, which will raise water levels on the sites and have a beneficial effect on blanket bog habitat.

The achievement of this management agreement on a voluntary basis with WMEL, in a manner that satisfies the requirements of the Birds and Habitats Directive, in the view of the UK competent authorities, is considered to be a more favourable outcome for the conservation of the sites than the pursuit of the criminal proceedings. Even though some of the alleged damage may not ultimately be restored, the management agreement ensures that the overall ecology integrity of the site is secured and moving towards favourable condition.

2) As to burning rotations permitted on SAC management units containing blanket bog elsewhere in England, the UK authorities clarified that burning rotations that have been permitted range from rotations of (a) between 8 and 12 years to (b) 25 years or more, with most burning rotations (more than 90% of those permitted) ranging from rotations

of (c) between 15 and 20 years to (d) 25 years or more. All of these permissions relate to grouse moors.

3) With regard to any possible wider implications of the management agreement entered by Natural England and WMEL for other management agreements entered into on upland sites, in particular with regard to moorland burning activities, the UK clarified that the 2012 management agreement achieves a number of important conservation benefits for the site: a) the 1995 consent from English Nature allowed to arguably pursue unrestricted burning, grazing and other management activities on the site in perpetuity, while the 2012 management agreement implemented a number of significant restrictions in relation to these activities, e.g. fixed burning rotations on dry heath and blanket bog in limited areas and required methods of burning that are consistent with the Heather and Grass Burning Code 2007; b) other management activities on the site, such as grazing, have been set at sustainable levels that will not undermine the sites' conservation objectives or integrity; c) a "re-wetting" scheme, which includes the blocking of grips across a substantial part of the estate has been agreed and will be implemented; this will raise water levels on the site with objective of benefitting degraded blanket bog habitat; and d) the 2012 consent for burning, grazing and other management activities is limited to a period of 25 years, after which WMEL will not be able to carry on these activities, without Natural England's further consent. Any future determinations at that time will be made in view of the best available science.

Further the UK stressed that the 2012 management agreement was subject to an Appropriate Assessment, which concluded that the limited activities permitted would not have an adverse effect on the integrity of the SAC and SPA.

Given the specific circumstances of the WMEL matter and the particular way in which it has been resolved, UK competent authorities noted that they do not consider that the agreement with WMEL will set a precedent. Natural England assesses each management proposal made to it on its own merits and in view of the particular facts of the case.

As the UK explained, Natural England is conducting a comprehensive review of the evidence on the impacts of burning on upland habitats, which has been the subject of debate among Natural England's stakeholders. According to the UK authorities, this evidence review will ensure that the most recent and best available science is given regard to by Natural England in relation conservation management decisions, and will lead to operational guidance and a wider stakeholder dialogue on the basis of which historic consents can be reviewed.

4) In reply to the question on how the SSSI Consent 2012 is reconciled with the objective of tackling the key pressures identified in the Natura 2000 form of the South Pennine Moors SAC, the UK explained that the March 2012 management agreement tackles the pressures referred to in the statement by placing management controls on the site (as referred to in the response to Question 3) which will enable the habitats on the site to move towards favourable conservation status.

5) In reply to the question whether any EU Agri-environment funding has been or is being allocated for the damaging management activities such as burning both with regard to WMEL Estate, the UK explained that the agreement reached with WMEL Estate withdraws the 1995 consent and places substantial restrictions on certain management activities such as burning. Accordingly, payments made to the WMEL Estate pursuant to the agreement, including payments under the Higher Level Stewardship ('HLS') agreement (which is part-EU funded) are made as compensation for the restriction of

those activities, not to enable those activities. However, the aforementioned grip-blocking programme, which will have a beneficial effect on the sites' blanket bog habitats, will be funded through the HLS agreement.

In reply to the question is any EU Agri-environment funding being allocated for burning more widely in the uplands, the UK clarified that the HLS scheme has specific options related to the management and restoration of moorlands with a burning supplement option, e.g. burning in the uplands is also a conservation management tool with respect to some Annex I habitats, such as dry heath, which occurs extensively in the uplands.

We are continuing our investigations. However, if you have any comments on the replies provided by the competent UK authorities, please could I ask you to provide these within one month of your receipt of this letter.

Yours sincerely,

A handwritten signature in black ink that reads "Paul Speight". The signature is written in a cursive, slightly slanted style.

Paul Speight
Head of Unit