



Penwith Moors SSSI Notification

Natural England Consultation

Date: 7 February 2023

Introduction

1. The Country Land and Business Association (CLA) is the membership organisation for owners of land, property and businesses in rural England and Wales. The CLA and the members we represent recognise the current ecological crisis and are committed to the goal of nature recovery. Rural landowners are in a strong position to support the government in meeting these goals; however, they face complex demands for environmental responsibility, climate action and sustainable food production, alongside the need to remain financially viable. CLA members own and manage a large proportion of England's protected sites. Our experience shows that too often, the current system fails for both nature and land managers.
2. **This response is submitted to object to the notification of Penwith Moors as a Site of Special Scientific Interest.**

Key points

3. The evidence used to justify the notification of Penwith Moors is flawed, undermining Natural England's right to notify the area as a Site of Special Scientific Interest (SSSI). Affected land managers have had to commission ecologists and hydrologists to independently review the evidence at cost to themselves.
4. The current state of SSSIs and other protected areas demonstrates that designating land does not automatically result in favourable outcomes for nature. These outcomes could be delivered by working with land managers, and providing appropriate advice and funding.
5. There needs to be more acknowledgement of the multi-functional nature of land, and the trade-offs and tensions between nature recovery and other goals. At the moment, social and economic factors are not taken into account, when in fact all three are interdependent. This has to change.
6. There must be a more joined up approach between protection through designation and other measures that incentivise the creation, maintenance and improvements to wildlife habitats and biodiversity. Designations need to be accompanied by expert advice and appropriate financial incentives to be fully effective.
7. Compensation should be available to land managers to replace income lost as a result of Natural England denying consent to carry out activities on their land.

8. Before designation commences, funding plans should be in place and land managers should have consents from Natural England so that they have certainty over which activities they will be prohibited from carrying out.

Response

Evidence

9. The evidence used to justify the designation of the land is flawed. A series of issues highlight methodological problems, particularly around the use of outdated information and failure to comply with JNCC guidelines for selection of SSSIs. For example, 16% of the ecological surveys were conducted out of season, which does not comply with Section 6 of the JNCC Lowland Grassland Selection Guidelines ¹.
10. CLA members who have commissioned their own surveys have found further errors in the evidence provided by Natural England. We expect details of the issues to be provided in their individual consultation responses.

Modelling

11. Much of the scientific evidence used to justify designation uses modelling and roadside surveys. While modelling is effective in predicting the effects of activities, it relies on assumptions and generalisations, and therefore cannot reflect the true condition of the land as accurately as surveys carried out in situ can. For better validity, modelling should have been verified using on the ground surveys.
12. In particular, the hydrological surveys conducted by Atkins were largely desk based. Land managers were not asked about flooding regime, nor were automatic water level sensors installed.

Historic survey data

13. The Chartered Institute of Ecology and Environmental Management (CIEEM) published an advice note on the lifespan of ecological reports ², which states that evidence which is more than three years old is unlikely to still be valid. By this standard, the majority of the ecological evidence used to justify the designation of Penwith Moors is no longer likely to be valid, with 60% of the surveys conducted to justify the designation of Penwith Moors as an SSSI are more than nine years old, and 40% being more than a decade old.
14. The failure to comply with industry standards by using up to date ecological information makes it impossible to determine whether Natural England have the evidence required to designate the land as a SSSI. In the time between the surveys being conducted and the area being notified, there could have been significant changes in the abundance of species, meaning that the JNCC criteria for designation may not be met.

¹ [Chapter 3 \(Lowland Grasslands\) – JNCC Guidelines for the Selection of Sites of Special Scientific Interest.](#)

² [CIEEM Advice Note on the Lifespan of Ecological Reports and Surveys](#)

15. The revalidation surveys carried out in 2019 cover only a small part of the total SSSI area, as demonstrated in Map 1 of the Supporting Information document. Resurveying a larger area would give more reliability to the ecological evidence used to justify designation and demonstrate that the thresholds for designation are still being met.

Example: the Dartford Warbler

16. The evidence used to justify the designation on the grounds of protecting the Dartford Warbler is one example of how the use of outdated surveys results in inaccurate ecological evidence.
17. The surveys on the number of breeding pairs of Dartford Warblers were carried out in 2014 and 2015. To meet the SSSI designation threshold set by the JNCC, the number of breeding pairs in the area must exceed 1% of the total British breeding population, which would require 32 breeding pairs of Dartford Warblers to be present in the SSSI area.
18. While this threshold was exceeded when the surveys were carried out in 2014-15, Dartford Warblers have a life span of up to 5 years ³, meaning that the surveys may no longer accurately reflect the number of breeding pairs of Dartford Warblers found in the SSSI area, and that Natural England do not have evidence to show that the SSSI area currently supports 32 breeding pairs of Dartford Warblers.
19. The survey should have been conducted more recently and over several breeding seasons, to demonstrate that the locality regularly supports 1% or more of the British breeding population, in line with the JNCC guidelines for the selection of SSSIs.

Hydrological surveys

20. The Penwith Moors area has been significantly impacted by years of intensive mining, which influences topography and hydrogeology. Natural England told the CLA that a hydrologist was consulted, who stated that that hydrological surveys were not necessary. This information was not published.
21. The extensive mining in the area has the potential to have a significant influence on the topography of the area through land subsidence. Topographical changes can result in changes in the direction of run off and therefore in catchment zones.
22. Given the importance of catchment zones in determining how farming activity impacts the notified species and habitats, an extensive survey should have been commissioned to assess how above-ground and below-ground changes to the landscape from historical mining have influenced surface and groundwater flows.

ADAS Farmscoper analysis

23. ADAS Farmscoper analysis was used to investigate the impact of farming activities on nitrate run off, and identify the holdings with more intensive farming systems. There are

³ <https://www.wildlifetrusts.org/wildlife-explorer/birds/tits-crests-and-warblers/dartford-warbler>

methodological issues with the Farmscoper analysis which undermine the ability of the software to accurately determine these high impact farming activities and their impacts.

24. Farmscoper has three soil types, which vary only in permeability. The Penwith Moors area has a diverse range of soil types, including free draining soils and shallow peat. The Farmscoper software cannot accurately map the pathways by which water and nitrates move without having a more comprehensive range of soil types. Accurate mapping of the movement of nitrates would give more reliable data on how farming activity impacts nitrate levels in waterways.
25. These flaws in the Farmscoper methodology undermine its usefulness in determining how harmful farming activity is in terms of nitrate run off. The use of on the grounds surveys, rather than modelling, would be a more accurate way to explore whether voluntary options could be sufficient in managing nitrogen pollution.

Boundary location

26. The evidence used to justify the boundary should be made explicitly clear to landowners, to provide confidence and certainty. It is unclear how the boundaries for the SSSI area have been determined by Natural England. The Notification Document explains how the boundary was drawn on a small scale through the use of field boundaries and historic boundaries, but not how the boundary was determined for the whole area.
27. CLA members have reported areas on their land where field boundaries have been used as the border of the SSSI area, resulting in the inclusion of the whole field within the SSSI area, despite their only being ecological evidence to justify the designation of part of the parcel of land. This means that landowners are required by law to obtain Natural England's consent, or risk being taken to court, for activities on land which is not of special scientific interest, which raises concerns over the legality of the designation of these areas.
28. The only report on how the zone of hydrological influence was mapped is for the Bostraze Bog area, which makes up a very small part of the SSSI. Despite the lack of evidence to justify the decision, Natural England have selected a site boundary that incorporates the wider hydrological unit.

Restrictions on activities

Operations Requiring Natural England's Consent (ORNECs)

29. The flawed process of designating the area first, then giving details of what the designation means in practice, means that land managers do not know whether or not they will be granted permission to continue their activities, making it impossible to plan for the future. Communications should be timely enough to give land managers certainty, and avoid stress.
30. Despite the evidence Natural England has provided, there is little to justify the blanket application of the full list of ORNECs as proposed. Natural England policy should be to

justify why each one of the operations requires consent, with evidence for how this operation threatens the protected species or habitat.

31. The default should be for consents issued by Natural England to have no time limits, and the consent only able to be revoked if there is actual evidence of harm, or material change in the risk of harm.
32. The uncertainty over what activities will be permitted presents particular difficulties for land managers having entered or wishing to enter government funded land management and other schemes, as they cannot be sure that they will be granted permission to carry out the activities they have been granted funding for.
33. Natural England should make public the decision making process used to determine whether or not it will grant consent for an activity taking place on designated SSSI land. This would give land managers more confidence over what activities are likely to be allowed and prohibited, and allow them to plan.

SSSI byelaws

34. Land managers face further uncertainty over what activities will be restricted as a result of the potential for Natural England to enact byelaws. The model byelaws are extensive in the range of activities they cover, and therefore have the potential to have a significant impact on how landowners manage the land.
35. Land managers should have total certainty on whether byelaws will be enacted. If byelaws are enacted, land managers should be clear on the purpose of them and the basis of evidence of harm.

Social and economic impacts of designation

36. There is a rich 4000 year history of farmers and rural communities working alongside nature in the area. Without a mechanism to consider the socio-economic impacts of land designation, the designation of Penwith Moors as a SSSI will result in dramatic impacts on land managers ability to run viable businesses. In addition, there may be no additional environmental benefits compared to, for example, the land being entered into environmental schemes.
37. Designation, and the process of obtaining Natural England's consent for every action taken, makes the ability of land managers to run viable business very challenging, particularly for the managers of the 388 ha of 'clean land' (enclosed farmland) included in the SSSI boundary. For each activity that Natural England do not consent to, the farm businesses need to find an alternate income stream to replace the income foregone. For some farms, such as the ten farm holdings identified by Natural England as using more intensive farming systems, this income lost will be significant. Without the ability to farm as they have previously, they will be unable to run viable businesses.

Diversification

38. Across England, the change to agricultural subsidy post-Brexit means that farming businesses will lose a total of £1.87bn income a year from 2028. It is predicted that around 50% of this loss will be recouped from environmental schemes. However, £935m needs to be made up through diversification opportunities.
39. For land managers in the SSSI area, who are contending with changes to payment rates post-Brexit as well as restriction on their activity through designation, diversification is unlikely to be sufficient to replace income foregone. There are particular challenges with diversifying into tourism. Successful tourism businesses require significant investment capital, which the impacted businesses may struggle to raise. In addition, the risk of market saturation is highly concerning, with West Cornwall already inundated with tourism businesses.
40. In addition, some of the diversification activities that could be undertaken subject to consent are unlikely to deliver ecological benefits in the way that environmentally friendly land management practices can.
41. If SSSI byelaws are enacted, Natural England will have the authority to prevent activities which land managers would rely on to diversify their businesses, such as selling or offering any service ⁴, or placing advertisements ⁵.

Private finance

42. Designation is likely to result in a lack of private investment for stewarding the land. This is because the need for consent (and the risk of it being withheld) represents a risk factor for investors, which they can avoid elsewhere. As well as resulting in a lack of funding opportunities for land owners, this presents issues for the government's desire to use more private finance to fund environmental improvements.

Impacts on tenanted farmland

43. If the designation of the land significantly impairs the ability of a tenant farmer to run a viable business, tenants will end their agreements, risking land abandonment. The tenants will face a total loss of their business and livelihoods, while the landowner will lose their business and find it challenging to find new tenants.

Implications for planning permission

44. The boundary of the SSSI has implications for land managers beyond the SSSI boundary. Natural England is a statutory consultee for planning applications within the Impact Risk Zone, the area surrounding SSSIs and other protected sites. In Penwith Moors, this includes the settlements of Pendeen and Zennor.

⁴ Model SSSI Byelaws 3.42

⁵ Model SSSI Byelaws 3.41

45. Natural England can recommend mitigations be put in place if it deems the application to impact the SSSI, increasing the cost to the applicant. Despite this impact, land managers in the impact risk zone have not been contacted and informed of how it will impact their planning applications. CLA members have reported issues with obtaining planning permission as a result of their location in an Impact Risk Zone.

Delivering environmental improvements

46. The CLA supports the government's commitment to protecting and enhancing biodiversity, but is concerned that the commitment to '30 by 30' will result in a push to designate large areas of land without delivering actual biodiversity improvements. The biggest problem with SSSIs and other sites, and the reason they are not contributing to nature's recovery, is that many of them are un-managed or under-managed. This is largely because the cost of management, which could be remedied with the correct balance of funding and advice.
47. While Natural England has a statutory obligation to designate land it deems to be ecologically valuable, designating the land does not in itself result in improvements to the ecological value of the site. In 2011, Natural England committed to achieving favourable condition in 50% of SSSIs by 2020⁶. Three years after the deadline, only 37.99% of SSSIs are in favourable condition⁷.
48. Commitments to the improvement of SSSIs in the Environmental Improvement Plan 2023 are welcome, but without change in the management being taken, the improvements cannot be achieved. The bureaucracy and delays in decision-making are creating the opposite effect to what is intended. Due to the long time taken for Natural England to consent to agri-environment agreements on protected sites, we have heard that many land managers are withdrawing applications or not submitting them, preferring to effectively leave the land un-managed. Given that agri-environment schemes are a primary tool for funding the management of protected sites this represents a huge (and self-inflicted) problem for Government and nature.

Funding

49. The CLA wants to see a clear commitment to providing funding to land managers to enhance the condition of protected sites, as well as compensating land managers for income foregone as a result of Natural England denying consent for certain activities.

Delivering environmental benefits

50. In light of the issues with delivering environmental improvements on protected sites outlined above, the importance of targeted funding through agri-environment schemes is clear. The best way to deliver this funding would be through a combination of Higher Tier Countryside Stewardship and Landscape Recovery, to ensure funding is long term and tailored to the area.

⁶ Biodiversity 2020: A strategy for England's wildlife and ecosystem services

⁷ <https://designatedsites.naturalengland.org.uk/ReportConditionSummary.aspx?SiteType=ALL>

Higher Tier Countryside Stewardship

51. Higher Tier Countryside Stewardship, which aims to increase biodiversity and improve habitats, is the most appropriate scheme to deliver the environmental outcomes that Natural England are seeking.
52. It is essential that Natural England engage with land managers in the Penwith Moors area as soon as possible, to determine what land management options can be incentivised through Countryside Stewardship.
53. The timing of the notification and confirmation of the designation by Natural England will create a funding vacuum. The 2023 application window for Higher Tier Countryside Stewardship, the scheme for environmentally significant sites, will run from 7th February to 28th April. With the confirmation of the SSSI area planned for early May 2023, land managers will be unable to apply for Higher Tier Countryside Stewardship in 2023.
54. Improvements to the delivery of Countryside Stewardship may be introduced in 2024, including a rolling application window. However, this is unconfirmed, and if the historic application process is repeated in 2024, Higher Tier applications submitted after May 2023 will be for agreements that would not begin until January 2025. Payments would not be received until late 2025.
55. The timing of the designation and the application windows will therefore have an impact on land manager's ability to be paid for managing the SSSI in a way that Natural England would encourage, meaning that any ecological improvement is likely to be delayed.
56. As a solution, we ask that Natural England extend the Higher Tier application window for land managers in the Penwith area, or notify land managers in the area that they will be permitted to submit Higher Tier applications by the 28th April deadline, ahead of the confirmation of the SSSI designation.

Landscape Recovery

57. Landscape recovery provides large scale and long term habitat restoration through land use change. It would be well suited to delivering environmental improvement in the Penwith Moors SSSI area.
58. The announcement of the second round of Landscape Recovery Pilots having a theme of 'Protected Sites' is encouraging, but a total of 25 projects being funded is insufficient in context of the large (and increasing) area of protected land.
59. There must be a more cohesive approach to government funding and land management. An application for a Landscape Recovery project under the theme of habitat restoration was submitted for part of the Penwith Moors area in the first round of pilot projects in 2022, but was unsuccessful. The project could have delivered positive outcomes for the restoration of the area while working with land managers.

60. Natural England should provide an advisory service to assist with the application process and ensure that projects are designed in a way that delivers ecological benefits, encompasses all willing land managers, and request funding that is commensurate with the value of the species and habitats protected.

Compensation

61. It is imperative that designation does not go ahead until funding plans are in place. Without funding agreements, land managers who are denied consent for activities will be unable to continue running their businesses, which could result in land abandonment and bankruptcy.
62. This is because agri-environment schemes will need to replace income both from the loss of BPS and from activities which Natural England do not consent to. Funding through agri-environment schemes is unlikely to be sufficient to replace lost income.
63. When Natural England denies land managers consent to carry out specific activities, it may be breaching the land managers' right to the peaceful enjoyment of their property under the Article 1 Protocol 1 of the Human Rights Act 1998. Therefore, funding should be available to compensate land managers for the income foregone as a result of Natural England denying consent for certain activities.
64. Under Section 39(2)(c) of the Wildlife and Countryside Act 1981, a management agreement can be put in place, with provision to make payments. This provision should be used to provide compensatory payments if income foregone cannot be offset through Countryside Stewardship or Landscape Recovery.

Communication

65. Communication and engagement from Natural England has been lacking in clarity and often inconsistent and sporadic. CLA members have repeatedly raised concerns over the issues they have faced in contacting the Natural England area team and in getting satisfactory replies in a timely fashion.

Volume of information

66. The volume of information supplied by Natural England is too extensive and technical for every person who will be affected by the SSSI designation to be able to read and understand fully. There are more than 4000 pages of evidence, in addition to the 26 page notification document and the 58 page supporting information document.
67. In light of the evidence flaws highlighted above, it is imperative that land managers review the evidence, to ensure that the designation of their land is sufficiently supported by correct data and therefore whether Natural England has the right in law to designate the land. At the moment, landowners cannot be confident that this is the case. To independently review the evidence requires the land manager to employ professional ecologists and hydrologists

at great cost to themselves. Natural England must be aware of this and the impacts it has on land managers.

Accessing information

68. In its endeavours to communicate clearly with landowners, Natural England should ensure that all information is readily available and clearly signposted. Although Natural England have published the evidence used to justify designation, the documents are hosted on a different webpage to the consultation space, with no signposting to indicate this. The evidence is the only basis land managers can use to object to the notification, and should therefore be easy to locate.
69. It is not reasonable to expect all affected land managers to access the relevant information online, particularly as broadband connectivity rates in the St Ives constituency area are below the UK average⁸. Although consultation responses are accepted by post, the questions are only available as an online survey. The CLA had to contact Natural England to obtain a PDF copy to send to members who do not have email access, which represents around a fifth of the CLA membership in Cornwall.
70. Natural England should have ensured that all of their communications and evidence were easily accessible to people without internet or email access.

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⁸ <https://commonslibrary.parliament.uk/constituency-data-broadband-coverage-and-speeds/>