

Natural England Executive Board minutes

Date: 1st October 2012 (with subsequent sessions on 2nd & 10th October)

Paper ref: EB/76/01

Title: Proposal for SSSI – Chattenden Woods and Lodge Hill, Kent

Sponsor: Jim Smyllie, Executive Director – People, Landscape & Biodiversity



The Executive Board (EB) considered the notification of Chattenden Woods and Lodge Hill SSSI on 1st October (with subsequent sessions on 2nd and 10th October). EB members present were:

Dave Webster, Chief Executive

Jim Smyllie, Executive Director, People Landscape and Biodiversity

Andrew Wood, Executive Director, Science, Evidence and Advice

Guy Thompson, Executive Director, Customers and Land Management

Paul Lambert, Executive Director, Corporate Services

The following officers were present to advise the EB:

Tim Hill, Chief Scientist (via teleconference)

Julie Lunt, Head of Legal Services

Maddy Jago, Director, Landscape and Biodiversity

Alan Drewitt, Senior Ornithologist (via teleconference)

Ben Fraser, Senior Adviser, SSSI designations

First session of three (1.00pm 1st October)

- 1.1 JS provided a summary of the notification papers and the decision that Executive Board were being asked to consider. This was an enlargement of the current Chattenden Woods SSSI. The proposal was to increase this in size by 222 hectares, to approximately three times the area of the current SSSI. This would form a new notification, with a revised set of notified features, and the previous notification would cease to have effect.
- 1.2 The EB sought legal clarification on the level of discretion Natural England had on the decision under s28C of the Wildlife and Countryside Act 1981 (as amended) (WCA) to enlarge an SSSI if the evidence supported it. JL advised that this had not been tested in the case of enlargement, however reasonable parallels could be drawn from case law which discussed the level of discretion in s28(5) WCA. In those cases it was made clear that if the science supports the designation of a SSSI then the Board should designate it. Treating this case law as analogous to the situation under S28C JL advised that when the EB was considering enlarging a site relying on its powers under s28C it, in fact, had very little discretion if the science supported the notification. She also advised that in the absence of case law it is difficult to hypothesise about the circumstances when the discretion may be exercised; however, the EB should not close their minds to the fact that they have a discretion in these circumstances and must treat each notification on a case by case basis.
- 1.3 MJ took attendees through the evidence in the paper and emphasised that the major difference is that the entire site would have nightingale as an interest feature in its own right. This is the first site in England that would have nightingale as a separate interest feature. She reminded Executive Board members that the decision must be made on the evidence alone, and all argument should be made on the science.

1.4 Executive Board Members asked a series of questions on the evidence presented in the papers and in the following discussion the following points were clarified, supported by AD and BF:

- Nightingales utilise both the coppiced woodland and the scrub on the site; you cannot remove one of these components without affecting the numbers of birds using the whole site
- The 2012 site survey data has been validated by the BTO and there is a high level of confidence that it is accurate.
- The 2012 figure, when compared to the national population estimate based on 1999 figures, indicates that the site holds 1.3% of the national population and is therefore eligible for selection under the SSSI guidelines.
- It is also widely accepted that the national population has fallen steadily (3% per annum) since the last survey so the actual percentage of the national population present on the site is likely to be higher. There has been a survey in 2012 which is likely to corroborate this. Data from this survey will be available in early 2013 at the earliest.
- Historically Kent has held the highest concentrations of nightingales and this site is likely to be the most important in the county.
- Considered separately, neither the extension areas or the existing site would meet the 1% threshold.
- Nightingales are not the only proposed notified feature on the new areas. Some of the proposed extensions contain areas of ancient and long-established semi-natural woodland. The scrub breeding bird assemblage was also proposed as a notified feature.

1.5 EB Members asked for more information on some context, not directly related to the evidence. They were advised:

- Nightingales have no legal protection over and above that afforded to all birds under the Wildlife and Countryside Act. They are amber listed as a 'Bird of Conservation Concern'.
- One out of the eight proposed management units would be in 'unfavourable' condition.
- If notified, the scrub areas would need a rotational management system. This would not be technically difficult but it would require resources and would be for nature conservation purposes only;
- Much of the decision making is based on guidelines, which have no legal status. We do not have to follow the guidelines. However, these guidelines have been used for many years and tested regularly and Natural England will have to have a very good reason not to follow them.
- The guidance on the 1% threshold is widely recognised and used, and is well understood.
- The guidelines used are JNCC guidelines and are agreed across the three countries of GB.
- The bird sections of the guidelines have not been revised since 1989.

1.6 The Executive Board considered the proposal to notify the site for an assemblage of breeding birds associated with scrub habitats, despite the fact that the site only scores 13 points against a threshold site index value of 15 points when assessed using the published guidelines. The proposal was to update the species list, individual species scores and threshold site index value for scrub, based on latest population estimates and current understanding of habitat associations for breeding birds.

- 1.7 Whilst the Executive Board was satisfied that it was appropriate to update scores using published population estimates, it noted that revisions to the species list are a matter of expert judgement that should be subject to appropriate quality assurance through the JNCC guidelines review process. Accordingly, the Executive Board was not able to reach an opinion that the assemblage of breeding birds associated with scrub is of special interest, in advance of a formal review of the selection guidelines for birds by the JNCC. Should the outcome of such a review support the selection of this site for a breeding birds assemblage associated with scrub it would be appropriate to consider a further notification proposal.

This particular feature is therefore not approved for notification and should be removed from the papers.

(There was not enough time to complete the discussion and Executive Board agreed to re-convene the following day)

2. Second session: (10.30am 2nd October)

- 2.1 EB members and TH continued to ask questions about the remaining notified features proposed and received the following responses:
- There are patches of ancient woodland within the new areas of the site
 - The neutral grassland is still unfavourable on the existing SSSI due to lack of appropriate management, and this has resulted in the sward becoming excessively dominated by coarse grasses, low frequency of positive indicator species and sward height being too tall.
- 2.2 The main focus of the ensuing extensive discussion focussed entirely on the robustness of the 2012 nightingale survey data and levels of confidence in how this could be used to determine the proportion of the national population based on the 1999 national population estimate. Summarised as follows:
- TH tested the validity of relying on one year's data for nightingales, how reliable is the data as an indication of the longer term capacity of the site to support nightingales? AD commented that this is the most recent and reliable data we have, and while ideally we would use five years' data this is not always available, especially for scarce breeding birds subject to only periodic survey.
 - The survey used a methodology specifically designed to locate breeding nightingales.
 - The survey covered the whole site and was carried out at appropriate times of day and this has led to the raised numbers located compared to previous years.
 - BTO confirms that this is the best available estimate of recent data.
 - A suggestion that a warm March may have increased numbers in 2012 was dismissed as the birds only arrive in late April and May.
 - The map of territories was circulated to attendees, which clearly demonstrated the presence of breeding nightingales across the entire proposed site.
 - In its current state, the site would be probably a good site for nightingales for years to come. Scrub is not a sub-optimal choice for nightingales compared to coppiced woodland..
 - The emergence of good scrub habitat on the site, coupled with the population decline elsewhere strengthens the case to notify the new areas of the site on the basis of nightingales alone, although this is unprecedented for nightingales. It is a legitimate to recognise the site as a stronghold for the species in England.

2.3 Whilst not relevant to the overall decision the EB questioned the timing of the notification proposal.

- The process to formally consider notification was triggered in June 2012, when RSPB informed Natural England that new data indicated that the site met the 1% threshold.
- This was compatible with proposals in the draft SSSI notification strategy for birds which looked to identify a pipeline of sites in face of the contraction of populations to South East England.

2.4 In summing up, DW felt that while they were largely satisfied that the site survey data for 2012 represented the best evidence available for nightingales on the site, there were still one or two issues that needed clarification, and therefore it was agreed to reconvene the meeting at the next available opportunity. The Executive Board requested that the information in the notification papers be re-presented in order to help attendees determine if the evidence was sufficient to enlarge the site on the basis of nightingales alone.

2.5 Clarification was sought on the following areas:

- Status of the JNCC guidelines - make clearer that the guidance is tried and tested, and particularly the 1% threshold is well understood and accepted by others
- The extent of nightingales across the site, including a map of their distribution in the notification papers.
- Quantify the relative numbers across the existing SSSI and in the new area, in numbers and as a percentage of the national population.
- Explain why it is acceptable to notify on the basis of one year's data and make clear that this is the most recent estimate and only data for a specific survey of nightingales that covers the whole site. In addition to note that nightingales arrive in late April and May so numbers are unlikely to be inflated by a warm March.
- Needs to be clearer that the increased numbers in 2012 on site are down to the greater coverage of the survey and methodology rather than through any habitat changes.
- Explain clearly that the scrub habitat is a robust and optimal habitat for nightingales and not just a refuge because other prime habitat is not available
- Quantify more clearly the amount of ancient woodland in the three new management units
- Explain confidence levels that the 2012 nightingale survey compared to latest national population estimate (1999) is enough for the site to qualify in its own right.
- The supposition that the latest unpublished survey will reveal a national population decrease. It should be made clear that this is only to provide reassurance that the site will not fall below the 1% threshold in future years and is not material to the decision to notify on currently available evidence.
- Levels of confidence regarding the stability of the population at this site (habitat suitability, faithfulness of birds in using the site etc.)

3. Third session (10th October 2.30pm).

3.1 The additional information requested at the previous session had been incorporated into a revised set of notification papers. Also circulated were copies of some recent correspondence between TH and RSPB officials regarding the national population estimates for nightingales.

3.2 Attendees agreed not to revisit previous discussions and focus on the key issue of the national population estimate for nightingales.

- 3.3 TH stated that while he remained confident that the 2012 nightingale survey which identified 84 territorial males during the breeding season is an accurate figure for this site for the reasons set out in the papers, he is now less confident about the validity of comparing the figure of 84 with the GB population of 6,700 singing male nightingales that was estimated in 1999. Further information received from RSPB on 9th October indicates that the 6,700 population estimate in 1999 may be an underestimate which renders comparison of the 1999 estimate with population determined from the 2012 survey potentially unsafe.
- 3.4 RSPB officials have also commented that whilst they are confident in the decline of the BBS trend (c60%) since 1999, they believe that when published it is possible that the 2012 population could be similar to or greater than the 1999 estimate of 6,700.
- 3.5 AD questioned whether this new information should be material to consideration as the results of the previous survey in 1999 is peer reviewed and represents the latest available evidence and in no way detracts from the conclusion in the paper that the site meets the 1% threshold based on the best available evidence.
- 3.6 Executive Board members asked if, rather than having actually declined, nightingales might instead have relocated and concentrated in other parts of their range. They were assured that this was not likely to be the case as early indications from the 2012 survey show that even in Kent, a county where nightingales are most likely to persist, there is evidence of a significant decline since the 1999 survey.
- 3.7 TH concluded that while he was still uncertain as to whether the site population could be unequivocally stated as representing over 1% of the national population, it is probable that it does and he therefore leaned towards notification.
- 3.8 There was a general discussion of the evidence by the EB wherein they expressed their concern about whether the site met the 1% threshold due to advice received from RSPB on the previous day; the uncertainty around comparing the 1999 data to the 2012 data; whether to wait for the 2012 national data; and the fact there appeared to be no precedent for the notification of a site based on a single bird species (although it was recognised that the legislation did not preclude this).
- 3.9 DW stated, that taking into consideration the views of EB Members, on balance EB still lacked confidence that the evidence was sufficient to enlarge the site based on the nightingale data alone.
- 3.10 He therefore concluded that it would not be possible to notify the site today as it had not been possible to form a view that the site was of special scientific interest in respect of nightingales. This was because, whilst satisfied that the site supports a very large population of nightingales, apparently the largest in Kent and likely one of the largest in the country, the Executive Board had been unable to form an opinion that the number of nightingales on the site is of special scientific interest when assessed against the SSSI selection guidelines.
- 3.11 Specifically, this was because the Executive Board had been unable to satisfy itself beyond reasonable doubt that the numbers of nightingales using the site reach 1% of the national population, due to not feeling able to place sufficient confidence in the 1999 national

population estimate due to the information received from RSPB querying that the 1999 figure may be an underestimate.

- 3.12 To be satisfied that the site was of special scientific interest as required by the legislation the EB would wish to see in particular further evidence, such as clarification of the RSPB comments on the 1999 GB data or a reliable national estimate figure from the (as yet unpublished) 2012 survey. Either of these would help give them a sufficient level of confidence that the comparison between the national survey data and the site data was sufficiently robust to determine that the site carried over 1% of the national population.