

EAST AYRSHIRE COUNCIL

DEVELOPMENT SERVICES COMMITTEE : 28 AUGUST 2001

MUIRKIRK UPLANDS NOTIFICATION OF DESIGNATION OF THE AREA AS A SITE OF SPECIAL SCIENTIFIC INTEREST (SSSI)

Report by Director of Development Services

1. PURPOSE OF REPORT

1.1 To seek the Committee's views on the Notification by Scottish Natural Heritage of the designation of the Muirkirk Uplands as a Site of Special Scientific Interest.

2. BACKGROUND INFORMATION

2.1 On 9 March 2000, the Council was formally informed by Scottish Natural Heritage that the Muirkirk Uplands Area is being designated as a Site of Special Scientific Interest under Section 28 of the Wildlife and Countryside Act 1981 as amended (The extent of the area of land involved is indicated in Appendix I, attached to this report). Because of public concerns that the original consultation procedures on the designation of the SSSI had not been adequate, Scottish Natural Heritage withdrew their original proposal and have now instigated and recommenced a new consultation procedure on the proposal, and have re-notified the Council accordingly. Any representations or objections the Council might wish to make on this re-notification were requested, in writing, by 17 August 2001. The notification was accompanied by a list of some 28 operations which are considered likely to damage the flora or fauna or the features of the SSSI. Although the designation of the site as an SSSI has not yet been formally confirmed pending consideration of any objections or representations received, these operations now require to be the subject of prior consultation with Scottish Natural Heritage.

3. THE MUIRKIRK UPLANDS SSSI

3.1 The Muirkirk Uplands SSSI extends to some 19,270 hectares and consists of two adjacent upland areas, situated to the north and south of Muirkirk together with Airds Moss, a low lying blanket bog situated between the two and identified as a potential Special Area of Conservation (pSAC).

3.2 The Muirkirk Uplands encompass the best examples of upland habitat in the West of Scotland and also provide a mosaic of breeding and foraging habitats for the bird communities it contains, including blanket bog, wet/dry heath and acid grasslands. The site is considered to be of special nature conservation importance within Britain and the European Union for its outstanding breeding assemblage of upland birds comprising significant populations of hen harrier, short eared owl, with merlin, peregrine falcons and golden plovers also present.

3.3 In acknowledgement of the national/international importance of the above bird communities the above potential SSSI site has been identified as a possible Special

Protection Area (pSPA) under the EU Birds Directive (1979) and SSSI status is required to underpin that designation.

4. COUNCIL COMMENTS

4.1 There is no objection in principle to the designation of an SSSI within the broad area indicated, although it is considered that there may be conflict in some peripheral areas included for designation.

4.2 Opencast coal related planning applications impinge on the area at Powharnal and Grievehill. The Powharnal application, which is still to be determined together with its associated Environmental Impact Assessment, should be treated as a material consideration in the determination of the boundary of the SSSI, with due consideration also being given to the outcome of a study of the Powharnal area commissioned by Scottish Coal in association with Scottish Natural Heritage.

4.2 The second opencast site at Grievehill, planning application ref no: 98/0452/FL, also impinges on the SSSI, and whilst it has been determined, no consent has yet been issued pending a Section 75 Agreement for the development. It is considered by SNH unlikely that the implementation of the Grievehill application, extending into the SSSI by only some 3.9 hectares would have any significant effect on the ecological value of the site.

4.3 It should also be noted that part of the open cast coal site at Gasswater, which is already operational, impinges on the proposed boundary of the SSSI.

4.4 There is also an application for a proposed windfarm at Stonyhill, south of Muirkirk, part of which encroaches on to the SSSI. This application has yet to be determined.

4.5 The above comments have already been forwarded to Scottish Natural Heritage by the Head of Planning and Building Control as part of the Council's representations on the above SSSI re-notification.

5. FINANCIAL IMPLICATIONS

5.1 Under the provisions of the Town and Country Planning (Scotland) Act 1997 (Part IV) if it appears to that it is expedient to do so, the Council may by order revoke any planning consent. If the SSSI is designated this is likely to be a material consideration in the exercise of this power. If planning permission is revoked then a claim for compensation may be made against the planning authority in respect of expenditure, loss or damage in connection with such action. This should be distinguished from the position should the Secretary of State revoke any planning consent where there appears to be no such provision regarding compensation.

5.2 There are no provisions under the above Act for the Council to claim reimbursement of any such compensation monies from Scottish Natural Heritage.

6. LEGAL/AUTHORITY IMPLICATIONS

6.1 There are already legal provisions for protection of SSSI's under the Wildlife and Countryside Act 1981, as amended by the Wildlife and Countryside

(Amendment) Act 1985, and the Natural Heritage (Scotland) Act 1991. Under these Acts SNH can specify why the land is of such special nature conservation interest and what operations are likely to damage the flora and/or fauna and other physical features. Owners and occupiers of land notified of such an SSSI designation are not legally permitted to carry out any of the above "potentially damaging operations" unless SNH agree to such actions. The only exceptions to this rule are if,

- (a) the operation was authorised by a planning permission
- (b) the operation was an emergency one for which SNH had been notified

There are potential financial penalties under the above Acts for owners or occupiers contravening these legal provisions.

6.2 As regards existing and potential SACs and SPA's under the provisions of Circular 6/1995 – Habitats and Birds Directives, if the Council ascertains that any proposed development would adversely affect the integrity of such a site and this effect will not be removed by conditions attached to the planning permission, it must not grant planning permission except in the following closely defined circumstances. It must first be satisfied that there are no alternative solutions. It should consider whether there are or are likely to be suitable and available sites which are reasonable alternatives for the proposed development, or different, practicable approaches which would have a lesser impact. It should bear in mind the advice of SNH. In their own interests applicants should demonstrate that they have fully considered alternative solutions.

6.3 Under the above Circular 6/1995 where there are already existing planning permissions in areas being proposed for SAC and/or SPA status local authorities are required to review those permissions, which have not yet been implemented and analogous consents, and to modify or revoke them if their effect would be damaging to the conservation interests of European sites. Provision already exists under the Town & Country Planning (Scotland) Act 1997 (Part IV) for developers to be compensated by the planning authority when such an extant planning permission is modified or revoked. Such compensation could apply in respect of the proposed developments at Powharnal (should these gain planning consent in advance of SSSI approval) which might adversely affect the proposed Airds Moss SAC owing to their being contiguous with the site.

6.4 Under Section 28 of the Wildlife and Countryside Act 1981 SNH shall consider any representations or objections made to formal notification of an SSSI. However with regard to proposed SSSI's which are also potential SACs and SPAs, as in the case with the proposed Muirkirk Uplands SSSI, SNH can only consider such representations or objections on scientific grounds including those relating to land management. These representations/objections would initially be considered by SNH and if not able to be resolved through negotiation with the objectors the local SNH Area Board would review the position. The ultimate arbiter for decisions on such objections is the Advisory Committee on SSSI's. Social or economic matters can only be used to justify a development on SSSI's, which are also potential SAC's or SPA's if the site does not host a priority habitat type and/or a priority species as set out respectively in the EC Directives 92/43 and 79/409, as consolidated within Circular 6/1995. Where a priority species or habitat is involved, as in the case of the current SSSI notification, only matters of human health, public safety, benefits of primary importance for the environment or other overriding considerations

specifically approved by the European Commission can be used as justification for the designation not being approved.

7. PERSONNEL IMPLICATIONS

7.1 None

8. RECOMMENDATIONS

8.1 It is recommended that the Council agrees:-

- (i) to note the contents of this report.
- (ii) to conform the formal response to Scottish Natural Heritage made by the Head of Planning and Building Control in respect of the notification of designation of the Muirkirk Uplands as a Site of Special Scientific Interest (SSSI) which is based on the comments contained in Section 4 above, and that designation should not be confirmed until the Council and SNH are satisfied that the integrity of the SSSI will not be compromised by any of the planning applications or consents referred to; and
- (iii)** to authorise the Head of Planning and Building Control to forward a copy of this report to Scottish Natural Heritage in support of the above formal representation.

Stephen Chorley
Director of Development Services
21 August 2001 (JT/IMB/SA)
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LIST OF BACKGROUND PAPERS

1. Notification letters, dated 9 March 2000 and 8 May 2001 from Scottish Natural Heritage entitled 'Muirkirk' and North Lowther Uplands Site of Special Scientific Interest : Notification under Section 28 of the Wildlife and Countryside Act 1981 as amended' and enclosures.

Implementation Officer: Alan Neish

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AGENDA