

EAST AYRSHIRE COUNCIL

DEVELOPMENT SERVICES COMMITTEE: 18 DECEMBER 2001

MUIRKIRK AND NORTH LOWTHER UPLANDS POTENTIAL SPECIAL PROTECTION AREA

Report by Director of Development Services

1. PURPOSE OF REPORT

- 1.1 The purpose of this report is to seek the views of the Committee on a proposal by the Scottish Executive to classify the Muirkirk Uplands as part of a Special Protection Area (SPA), the land in question being important for its populations of protected wild bird species. The report also advises the Committee of the position relating to the likely adverse effects, if any, of extant or possible future planning permissions for opencast coal workings and other developments adjacent to, and/or impinging on, the above proposed SPA area. The report also outlines any other relevant planning issues relating to the SPA proposal.
- 1.2 The deadline for responses on the above SPA proposal to reach SNH is 31 December 2001.

2. BACKGROUND

- 2.1 On 8 May 2001 an area of land at Muirkirk was notified to the Council by Scottish Natural Heritage as the Muirkirk Uplands Site of Special Scientific Interest (SSSI) under the Wildlife and Countryside Act 1981. At its meeting on 28 August 2001 the Development Services Committee considered a report by the Director of Development Services regarding the proposed designation of the Muirkirk Uplands as a Site of Special Scientific Interest (SSSI). The Committee agreed to send comments on the proposal to SNH, stating 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 pertaining to the area.
- 2.2 The Muirkirk and North Lowther Uplands SPA extends to some 27,450 hectares and comprises those areas of land included within the Muirkirk Uplands SSSI notification, together with a third upland area based on the North Lowther Uplands, located within South Lanarkshire and Dumfries and Galloway. The Muirkirk and North Lowther Uplands qualify for SPA status under Article 4.1 of the EC Directive by regularly supporting breeding population of European importance of hen harrier (average of 28 breeding females between 1994 and 1998 representing 6% of GB total), short-eared owl (average of 23 breeding pairs

between 1997 and 1998 representing 2% of GB total), merlin (average of 12 breeding pairs between 1994 and 1998 representing 0.9% of GB total, peregrine (average of 9 pairs between 1992 and 1996 representing 0.8% of GB total) and golden plover (an estimated minimum of 157 pairs in 1999 representing 0.7% of GB total). This information is contained within the citation for the SPA which forms, together with a plan of the SPA area, the appendix to this report.

- 2.3 At its meeting on 9 May 2000, the Development Services Committee authorised the Head of Planning and Building Control to forward to SNH information relating to those development sites which might affect the SPA as referred to in Section 1 above. The same information has been requested as part of the current consultation exercise and is reproduced in Section 3 below. SNH has formally responded regarding the potential impact of those extant and potential development sites on the proposed SPA and their comments are contained in Section 3 below.

3. FORMAL RESPONSE OF SNH

- 3.1 SNH has pointed out that the duty of the Planning Authority under the Conservation (Natural Habitats Etc) Regulations 1994 is to review extant planning permissions which are likely to have a significant effect on a site, either individually or in combination with other development, and to take appropriate action, strictly applies to SPAs once they have been classified. SNH, however, advise that there is clearly an advantage in undertaking this process as early as possible.
- 3.2 The view of SNH on the likely impact of the extant planning permissions relating to developments at Gasswater and Grievehill Open Cast Coal Sites, respectively, and also to potential developments at Powharnal Open Cast Site and Stonyhill proposed windfarm site, are given below.

Gasswater O.C.C.S

This development is now nearing completion and much of the development site has been or is currently subject to restoration works. SNH was first consulted over this planning application and environmental impact statement (EIS) in October 1996. SNH objected to the development as proposed, citing a number of matters including likely impacts on hen harrier, short-eared owl and merlin through loss of hunting and foraging habitat. These bird species are amongst those for which the Special Protection Area has been selected. Scottish Coal subsequently amended their proposal to include withdrawal of development from areas of likely importance to the aforementioned bird species. In response to these amendments, SNH noted that the resulting proposal would lie adjacent to the area to be recommended as an SPA for its breeding population of hen harriers, but concluded that the amended development would not have a damaging impact on this feature of interest. While this response did not refer to

the full range of species for which the pSPA has since been identified, SNH considers that none of these species are likely to be significantly affected by the completion of the amended development.

Grievhill O.C.C.S

The development for which permission exists relates to the planning application and EIS over which SNH were consulted in 1998. SNH noted that a small area of the proposed development fell within the then draft boundary of an area likely to be recommended as a pSPA. SNH concluded that no qualifying features of the pSPA were likely to be affected significantly by the proposal. In a further amendment to the boundary of the pSPA No 2 (Amendment) Order received on the 28th November; there is a further reduction in the area of the proposed SPA which further reduces the impact of Grievhill.

At the time of SNHs above response, the impact of the development constituted an intrusion of the proposed excavation area into some 2 hectares of the proposed pSPA, comprising acid grassland and rush pasture. Since then the pSPA boundary has been reduced in this area to exclude some areas of limited value to the important bird species, with the consequence that there is now no issue regarding potential loss of pSPA habitat, and SNH remains of the view that the proposed development is not likely to have a significant effect on the interests of the pSPA.

Powharnal O.C.C.S.

This planning application is as yet undetermined, so the review of extant permissions does not apply. SNH have already responded to consultation over the proposed development with a holding objection. They cited a likely significant effect on the pSPA and requested further information which might permit SNH and the planning authority to judge whether the proposal would have an adverse impact on the pSPA's integrity. The applicant is currently assembling further information which may permit the planning authority to complete this appropriate assessment. This information will be subject to further statutory public consultation under the Environmental Impact Assessment Regulations.

Stonyhill Potential Windfarm

This planning application is as yet undetermined and the review of extant permissions does not apply in this case. SNH has objected to this development on the basis of likely adverse impacts on the integrity of the pSPA and on the basis of a lack of information regarding landscape and visual impacts.

4. FINANCIAL IMPLICATIONS

4.1 There are no financial implications for the Council.

5. LEGAL/AUTHORITY IMPLICATIONS

5.1 As regards existing and potential 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.

5.2 Under the above Circular 6/1995 where there are already existing planning permissions in areas being proposed for 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 and 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 SPA approval) which might adversely affect the proposed Muirkirk and North Lowther SPA owing to their being contiguous with the site.

6. PERSONNEL IMPLICATIONS

6.1 None.

7. CONCLUSIONS

7.1 In respect of the extant planning permissions at Gasswater and Grievehill O.C.C.S, SNH are satisfied that the proposed Muirkirk and North Lowther Uplands pSPA will not be adversely affected by any operations permitted under these permissions.

7.2 As regards Powharnal O.C.C.S. and Stonyhill potential windfarm, SNH has objected to these proposals and further information from the respective applicants is required before an assessment of whether the proposals, in their

present form, would adversely affect the proposed Muirkirk and North Lowther Uplands pSPA.

- 7.3 It is therefore not necessary for the Council to revoke any extant planning permissions under the Conservation (Natural Habitats, Etc) Regulations 1994 as referred to in Sections 3 and 6 above.
- 7.4 In view of the above, it is suggested that the Council make no objection to the proposed Muirkirk and North Lowther Uplands Potential Special Protection Area, but the SPA boundary should not be approved until the work on bird habitats around Powharnel has been completed.

8. RECOMMENDATION

- 8.1 **It is recommended that the Committee authorises the Head of Planning and Building Control to respond to the Area Officer, Strathclyde and Ayrshire, SNH, in the terms set out in Sections 3 and 7 of this report and specifically that the SPA should not be approved until the survey work on bird habitats around Powharnel has been completed.**

Stephen Chorley
Director of Development Services

7 December 2001
(JT/MLS)
FV/AN

LIST OF BACKGROUND PAPERS

- 1. Consultation letter dated 23rd November 2001 from Area Officer, Strathclyde and Ayrshire, SNH, re Muirkirk and North Lowther Uplands Potential Special Protection Area.**
- 2. Report by Director of Development Services to Development Services Committee 28 August 2001: Muirkirk Uplands Notification of Designation of Area as a Site of Special Scientific Interest (SSSI).**
- 3. Report by Director of Development Services to Development Services Committee 9 May 2000: Muirkirk Uplands Notification of Designation of the Area as a Site of Special Scientific Interest (SSSI) and Muirkirk and North Lowther Uplands Consultation on Proposal to Classify the Areas as a Special Protection Area (SPA).**

Anyone wishing to inspect the above papers should contact Julian Thorp on 01563 576789.

Implementation Officer: Alan Neish

EC Directive 79/409 on the Conservation of Wild Birds

CITATION FOR SPECIAL PROTECTION AREA (SPA)

MUIRKIRK AND NORTH LOWTHER UPLANDS STRATHCLYDE AND AYRSHIRE/DUMFRIES AND GALLOWAY (UK9003261)

Site Description:

Muirkirk and North Lowther Uplands potential Special Protection Area (pSPA) comprises three adjacent upland areas (situated to the north and south of the town of Muirkirk, and the northern Lowther Hills), together with Airds Moss, a low-lying blanket bog situated between the two upland areas of north and south Muirkirk. The predominant habitats include semi-natural areas of blanket bog, acid grassland and heath.

The boundaries of the potential SPA are coincident with those of North Lowther Uplands SSSI, and coincident with those of Muirkirk Uplands SSSI except for the exclusion of the Upper Heilar and Tarmac forestry plantations on Airds Moss. North Lowther Uplands SSSI comprises the existing Rough Flow Moss SSSI with an extension.

Qualifying Interest:

Muirkirk and North Lowther Uplands pSPA qualifies under **Article 4.1** by regularly supporting breeding populations of European importance of the **Annex 1** species; **hen harrier** *Circus cyaneus* (average of 29.2 breeding females between 1994 and 1998, 6% of GB), **short-eared owl** *Asio flammeus* (average of 26 breeding pairs between 1997 and 1998, 3% of GB), **merlin** *Falco columbarius* (average of 10 breeding pairs between 1989 and 1998, 0.7% of GB), **peregrine** *Falco peregrinus* (average of 6 pairs between 1992 and 1996, 0.5% of GB), and **golden plover** *Pluvialis apricaria* (an estimated minimum of 157 pairs in 1999, 0.7% of GB). The hen harrier population on this site is one of the largest in Britain. The short-eared owl is widely dispersed across its British distribution and the population of Muirkirk and North Lowther Uplands is one of the largest in Britain.

Muirkirk and North Lowther Uplands pSPA also qualifies under **Article 4.1** by regularly supporting a wintering population of European importance of the **Annex 1** species **hen harrier** *Circus cyaneus* (average of 12 individuals between 1991 and 1995, 2% of GB).

Area: 27,331.87 ha

National Grid References: NS640310, NS620255, NS685215 & NS800200

OS Sheet 1:50,000 – 71

Scottish Natural Heritage

27 September 2001

AGENDA