

CINDERFORD REGENERATION PROJECT AND HANDLING OF NON FORESTRY DEVELOPMENT PROJECTS**Purpose**

1. Update the Committee of the project's current position and seek endorsement of approvals for a further Forest Design Plan amendment and long-term closure (>180 days) of Countryside and Rights of Way Act (CRoW) access land.

Recommendations

2. The Committee endorses the proposed action to approve Forest Design Plan amendment and the long-term CRoW closure with conditions (paras 11 and 28), noting the risks and mitigations (paras 12-15 and 27).

Background - The Cinderford Regeneration Project

3. The Committee were appraised of this major development project near Cinderford in the Forest of Dean (FoD) in April 2014. Non forest land (brown field ex colliery workings) is being released to facilitate construction of a new FoD College. This is part of a wider regeneration programme for Cinderford, with a long history and strong support from the Homes and Communities Agency (HCA).
4. FoD District Council's (FoDDC) planning committee has now approved the planning application for the college but a section 106 Agreement is required before the planning decision is published. The 106 agreement is under negotiation - expected end of February 2015. Once the planning decision is published a challenge from local action groups is expected but the Department for Communities and Local Government have confirmed the Secretary of State (SoS) will not "call-in" the application for a public enquiry being content the proposal has been determined by the Local Planning Authority, but this does not prevent the action groups seeking a Judicial Review.
5. We have now established sufficient link between the tree felling and development that under usual circumstances a felling consent from the Forestry Commission would not be required. However, this exemption can only apply once any legal challenge has run its course. Both these points have been tested with DEFRA legal.
6. In the meanwhile, FC has two decisions to make in its role as a regulator, i.e. approvals of:
 - a) A further amendment to the Forest Design Plan (FDP).
 - b) A long-term closure of the mitigation area which is dedicated for public access under Countryside and Rights of Way Act 2000.

7. This is the first time in 10 years of operating this legislation that the FC has been required to consider a long term CRoW closure for anything other than large scale timber harvesting in Kielder Forest.

Forest Design Plan

8. In April 2014 an initial amendment to the Crabtree Hill and Serridge Forest Design Plan (FDP) was approved for tree felling with limited restocking. This was mitigation work to provide habitats for great crested newts (GCN) and dormice transferred from the development site. This work was required in advance of the planning permission to enable the development as it had to start before 30 March 2015 in order to secure the funding.
9. In addition, in August 2014 the developer revised the mitigation requirements and a further amendment to the FDP was applied to enable additional tree felling. A summary of all felling proposals:

| FDP Amendment | Felling Area (ha) (con. plantation) | BL Restock Area (ha) (dormice) | Open Habitat (ha) (GCN) | Open space in FMU after felling (ha) | Open Space in the FMU after felling (%) | Increase in FMU's open space (%) |
|-----------------|-------------------------------------|--------------------------------|-------------------------|--------------------------------------|---|----------------------------------|
| 1 st | 6.0 | 2.6 | 3.4 | | | |
| 2 nd | 3.4 | 1.0 | 2.4 | | | |
| Total | 9.4 | 3.6 | 5.8 | 179.7 | 16.6% | 0.54% |

FMU = Forest Management Unit - the total area covered by the FDP is approximately 1080ha.

10. No tree felling has yet taken place because the requirements of a licence issued by Natural England to collect GCN on the mitigation site have not yet been fulfilled by the developer. FE now expect to start tree felling in October 2015 once the GCN trapping is complete but this is likely to be before any legal challenge to the development has run its course. In addition HCA are seeking assurance now that FC approvals are in place for the development to proceed.

Proposed action

11. **Forest Services approve the further FDP amendment.** The proposal is considered UKFS compliant, resulting in only small increase in open space while creating open ground and a graded and feathered woodland edge (secured by the NERC/106 agreement as dormouse habitat).

Risks

12. **Procedure** - Approval would pre-empt the planning decision contrary to normal FC practice. This is mitigated by a NERC agreement which includes provision for the management of the land to secure habitat for GCN and dormice and will require restocking of the woodland areas if the development does not proceed. Also if the proposal had come forward in the absence of development it would be considered UKFS compliant.

13. **Bats** - The site is not within the mapped boundary of the Wye Valley & Forest of Dean Bat Sites Special Area of Conservation (SAC) survey data indicates the felling proposal will affect a feeding area and commuting route for the lesser horseshoe bat. Local bat and ecology groups have expressed concern about the tree felling but Natural England (NE) have accepted the Habitat Regulations Appropriate Assessment (AA) prepared by FoDDC on the impact of the mitigation felling on bats and the mitigation measures it sets out. On this basis FC would accept that the impact on bats can be mitigated and would rely on FoDDC's AA rather than undertaking its own.
14. **Butterfly Conservation** is concerned that the mitigation felling will remove trees that provide shelter to the only location of clouded buff moth and forester moth in the County (the latter is a BAP species and of principle importance in England). We have confirmation that the felling proposals would retain the broadleaved trees that border the butterfly area (this is not well represented on the plan). While this may not fully address Butterfly Conservation's concern, some shelter would be retained and this provides a rationale for allowing the work to proceed. Beyond this creation of a managed edge habitat within the wider area should improve the conditions for Lepidoptera in the long-term.
15. **Ancient Woodland** - The woodland is classified as ancient woodland. Designated as ancient woodland. However, Natural England has confirmed that the areas of mitigation felling were open until 1900AD and therefore unlikely to be ancient woodland.

CRoW Closure

16. There are two distinct areas associated with the development site, the actual development footprint, which is not dedicated as open access land, and the mitigation area which is dedicated. A mitigation area is required because the development site is a known great crested newt (GCN) and dormouse habitat, both of which are European protected species
17. The mitigation site is also a known GCN site and before any tree felling and habitat creation can take place (the intention is to create an area of broadleaved woodland for dormice and ponds for GCN), the existing population must be trapped and moved to an alternative site. The most appropriate times for trapping are in the autumn prior to the animals hibernation period and in the spring, when they become active again but before they start breeding (when they will have migrated to their breeding ponds).
18. An EPS licence was applied for by HCA to the NE wildlife licensing unit, and after much deliberation a licence to trap and relocate the GCN on all the sites was granted. The appropriate amphibian barrier was erected on site (to prevent re-colonisation). Due to likely vandalism, an 'Heras' security fence was erected to protect the barrier. This was not required by NE, but due to the history of vandalism on the site, NE would strongly encourage that this fencing be retained.
19. As the mitigation site is dedicated as open access a request was made for a 180 day closure on 4 August 2014 (this is the maximum period of closure that can be applied for without requiring a formal consultation). The closure was applied for

and granted on the grounds of Public Safety. This closure is due to expire on the 4 February 2015.

20. Trapping started as soon as conditions allowed, however with a change in the weather conditions (flooding of some areas) and the discovery that there were more GCN on the mitigation site than anticipated, the trapping programme was suspended until after the hibernation period. Because of the flooding and loss of the amphibian fencing an application to NE for a modification to the current EPS licence is required. This will be submitted shortly and will take approximately one month to approve following receipt. The current licence is still valid but of limited use as it only allows trapping of the areas not flooded.
21. An application was made to FC to extend the period of closure until 30 November 2015 to allow for the trapping programme to continue. Currently the felling of the trees on the mitigation area is scheduled to take place in October 2015. The closure period would allow for the felling as well as further trapping, if approved. Because the extension takes the closure period over 181 days, the FC as Relevant Authority for woodland open access land was required to undertake a formal consultation exercise, which includes members of the public.
22. As a consequence of this consultation process, we have received an unprecedented 144 comments many of which are standard 'cut and paste' opposition to the closure, but a number have required careful consideration to enable FS to take a final decision on whether to extend the period of closure. All oppose the closure extension, many on the grounds that GCN trapping should not be occurring when formal approval of the planning application has not taken place.
23. Requests were received seeking to extend the consultation period, but we have concluded that we have adequate information to inform our decision making process. Following a review of the proposals we have also made responders aware that we are now considering closure of the area for **Site Management** purposes rather than public safety. We believe this is more appropriate because the majority of the closure period is required for removal of newts, rather than the actual felling operation. As a result of this we have had requests to consider the closure as a new application and to open a new consultation process. We have refused to do this as per the Relevant Authority Guidance (RAG)¹. Public safety reasons were originally quoted due to the felling works proposed. This is purely an administrative correction and does not change:
 - The nature of the proposed work;
 - The consultation process in any way; and
 - We would expect the responses to be very similar as most already major on the trapping of the newts and other wildlife interest.

¹ Annex 1 of the RAG states –

Giving a direction that differs from the application

I.3.8 The relevant authority may decide to give a direction that differs from the one applied for.

Formal Options open to the FC:

24. (A) Refuse to extend the period of closure until the section 106 agreement and all legal challenge has been satisfactorily concluded, at which time formal approval of the development will be forthcoming.

25. (B)(i) Extend the period of closure until 30 November as applied for, on the grounds of site management requirements, but with no conditions.

(B)(ii) Seek to extend the current closure period until 30 November 2015, as per the current application, but with the condition that we revoke the closure in the event that either the section 106 agreement fails to be put in place for whatever reason, or NE refuse to issue a modified licence to collect and trap the GCN, or both.

Consequences and Risks associated with our formal decision

(A) Refusal to extend the period of closure

26. If we refuse to extend the period of closure this will likely result in:

- The Heras fencing having to be removed which would undermine all trapping work undertaken to date;
- NE would have to consider and agree a further modified licence for trapping GCN as the current licence would no longer be appropriate;
- Trapping would have to start all over again resulting in delays to the proposed development (assuming approval is given) increasing the costs of trapping and relocation to an unacceptable level. This would also result overall in a longer total closure period;
- May result in the project being shelved altogether;
- It is highly likely that FC would be formally challenged by HCA with likely Ministerial intervention (the proposed development has central Government support).

(B) Approval to extend the period of closure

27. If we approved the long term closure this will likely result in:

- Reputational risk as a result of the application being seen as the FC approving its own application (this is one reason why we have the EMGN4 process that brings this type of issue to the Committee for consideration). A number of the responses to the consultation have suggested a conflict of interest to date e.g.:

“Major development of this nature is not within the remit of the management of the Public Forest Estate by the Forestry Commission”

“...is an important matter as the Forestry Commission is both the applicant and the decision maker”

“The applicant is the Forestry Commission who are also to make the decision. There is no forestry reason at the present time to fell these areas”

“The development and works are on Public Forest Estate land which the Minister in a parliamentary statement made clear is not available for transfer”

“Given the recent concerns raised over the possibility of central government privatizing Britain's public forest assets and selling them into private ownership, which caused a storm of protest nationwide, I feel that the proposed lengthy closure of the site in question to the general public, with the accompanying loss of amenity value and the enshrined "right to roam" for nearly a year, runs entirely counter to the current requisite ethos of openness and transparency in all matters involving state departments and the public at large”

“There is a considerably-sized petition (of over 7,300 signatories) requesting the secretary of State to intervene and hold a public inquiry.” [this relates to the planning application process – not the CRoW closure request]

- Possible challenge from members of the public. This may be either through Judicial review or Parliamentary Ombudsman;
- Pressure on FC staff as a result of numerous Freedom of Information (Fol) requests, at a time when staff are already under immense pressure. The issuing of the current EPS licence resulted in NE staff being inundated with Fol requests.

Proposed action

28. That Forest Services approve as per (B)(ii) above, i.e. extend the current closure period until 30 November 2015, as per the current application, but with the condition that we revoke the closure in the event that either the section 106 agreement fails to be put in place for whatever reason, or NE refuse to issue a modified licence to collect and trap the GCN, or both.

The rationale for this approval being that:

- It avoids the risk of the value of the work done to date being lost (and the purpose of the elapsed closure period), and also avoids the risk of work having to start from the beginning resulting in a potentially longer total closure period.
- There is no evidence of significant public access use of the closure area and there is a substantial area of alternative access land in the local vicinity with equal or greater utility.

Annex A – Timeline

| Date >>>> | Dec-13 | Jan-14 | Feb-14 | Mar-14 | Apr-14 | May-14 | Jun-14 | Jul-14 | Aug-14 | Sep-14 | Oct-14 | Nov-14 | Dec-14 | Jan-15 | Feb-15 | Mar-15 | Apr-15 | May-15 | Jun-15 | Jul-15 | Aug-15 | Sep-15 | Oct-15 | Nov-15 | Dec-15 | | |
|---------------------------------------|--|--------|--------|--------|----------------------------------|--------|--------|--------|---|--------|--|---|--------|---|----------------------------|----------------------------|--|---------------------------|--------------------------------|--------|--------|--------|--------|---------|-----------------|--|--|
| GCNEPS Licence | | | | | | | | | 14th Licence issued | | | 18th Modification (60 days trapping required on mitigation area) | | App. for modified licence | Modified licence issued | Trapping Resumes | | Trapping Complete | Newt fencing remains in place. | | | | | | | | |
| Dormice/EPS Licence | | | | | | | | | | | | | | | | | | Nesting - no tree felling | | | | | | | | | |
| NE NERC Act Agreement | | | | | | | | | 11th Agreement signed to provide assurance if planning consent not granted | | | | | | | | | | | | | | | | | | |
| s106 Agreement | | | | | | | | | | | | | | Agt. in place by end of month | | | | | | | | | | | | | |
| Planning Decision | | | | | 17th Application made | | | | | | 14th Planning decision made to approve | 15th SoS confirms won't be called in | | Decision published | Challenge may be lodged | Challenge may be lodged | Six week period for possible challenge to be lodged. A challenge is anticipated | | | | | | | | | | |
| FDP Amendment Approval - Tree Felling | 19th Initial amendment application | | | | Initial amendment approved | | | | 28th Request for further amendment | | | | | 4th Decision confirmed on further amendment | | | | | | | | | | Felling | | | |
| Current short-term CROW closure | | | | | | | | | 4th Start | | | | | 4th Expires | | | | | | | | | | | | | |
| Proposed long-term CROW closure | | | | | | | | | | | | | | 5th Start | | | | | | | | | | | 30th Expires | | |
| Skills and Funding Agency Funding | | | | | | | | | | | | | | | | 30th Offer ends | | | | | | | | | | | |

Italic entries represent best estimates under an ideal scenario.