

Archived: 27 January 2021 17:50:08

From: [REDACTED]

Sent: Mon, 25 Jan 2021 12:38:02

To:

Subject: Balgonie Estates Limited: Objection to Newton Don LBS Scottish Borders PLDP

Sensitivity: Normal

Attachments:

[REDACTED] pdf

CAUTION: External Email

Dear Sir/Madam,

Please find attached an objection to the proposed Newton Don Local Biodiversity Site in the Scottish Borders Proposed Local Development Plan(PLDP) on behalf of Balgonie Estates Limited.

I would be grateful to receive an acknowledgement of this submission.

Kind Regards

[REDACTED]

Director
Planning

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25 January 2021

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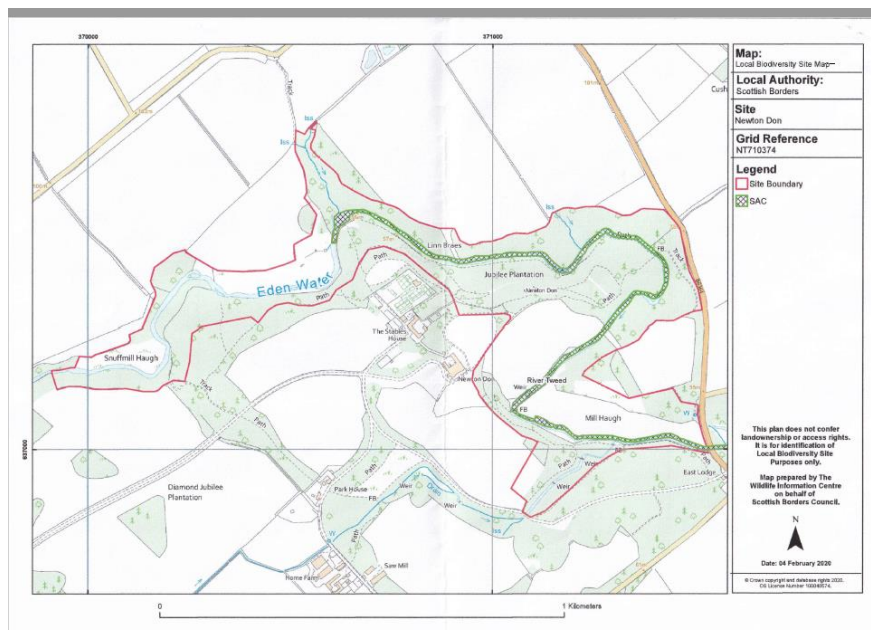
Dear Sir/Madam

Objection to Scottish Borders Council Proposed Local Development Plan: Inclusion of land at Newton Don within a Local Biodiversity Site

On behalf of our clients, Balgonie Estates Limited we are writing to object to the Proposed Local Development Plan (PLDP) Policy EP3 Local Biodiversity and Geodiversity and to formally request the exclusion of the land within their ownership at Newton Don as Local Biodiversity Site in the final Scottish Borders, Local Development Plan 2 (LDP2).

Balgonie Estates is supportive of good environmental management and seeks to adhere to the highest standards on its own landownership. For example the Estate is working on a project with the Game and Wildlife Conservancy Trust on other land in its ownership encouraging partridge and ground nesting songbirds. The Estate adheres to good environmental practice across its ownership and have put in place for many years protected margin strips along watercourses including at Newton Don.

Therefore this objection highlights the weaknesses in the process used to designate the site, the implications for the landowner, and the potential for undue weight to be given to such sites in the development management, and other process such as assessments for suitability for Woodland Grant Schemes. The map below shows the area referred to. My client wishes to clarify that not all of the land in the red line is within Balgonie Estate Ownership. Much of the northern bank is not within Balgonie Estates from Snuffmill Haugh to the footbridge marked "FB" to the east. Clarification of this boundary can be provided.



Newton Don, Proposed Local Biodiversity Site Map

Our client’s concerns are set out below and summarised at the end of this letter of objection. Our client also supports the separate comments by Scottish Land and Estates on the use of this designation.

Detail

It is our understanding that the designation of these Local Biodiversity Sites site has come about following the publication of national guidance [Establishing and managing local nature conservation site systems in Scotland](#) by NatureScot. Scottish Wildlife Trust’s list of Local Wildlife Sites were used as the basis for this new designation and were replaced by it. The national Guidance states in paragraph 1.4 that;

“The Guidance looks to encourage a spirit of co-operation and consensus, involving land managers, planners, and other stakeholders in selection and action for sites”

It is our view that the approach taken in this instance to the selection of the sites concerned has not involved land managers sufficiently. It has taken the form of notification rather than consultation.

We understand that the process of selecting these sites involved Scottish Borders Council along with the Scottish Borders Local Biodiversity Action Plan Partnership and local volunteers, introducing a new system of non-statutory Local Biodiversity Sites.

The guidance set out the responsibility for introducing, reviewing and managing Local Biodiversity Sites, which Local Authorities should take into consideration. It notes that the work should be carried out with the help of a panel of advisors comprising relevant interests and expertise, stating the following groups should be considered:

- Local expert naturalists
- Local representatives of voluntary and statutory nature conservation organisations
- Land owners and managers

- Farmers and crofters
- Forestry managers
- Water resource managers
- Development planners
- Businesses
- Local communities.

My client was not included in any discussions about the site selection process and we understand that the representative body for Landowners in Scotland, Scottish Land and Estates (SLE), was not involved either. It is our understanding that landowners in the Scottish Borders generally first became aware of the proposed designations through correspondence from The Wildlife Information Centre (TWIC) highlighting the proposals in the LDP.

Paragraph 4.6 of the Guidance states that because such sites are not “statutory” and “have no legal status behind them” and “there are no powers or duties associated with them”, the guidance “looks to encourage a spirit of cooperation and consensus towards the creation and use of a LNCS system. This should be founded on a partnership approach to selecting and managing sites”. Paragraph 4.7 goes on to set out the key stages for selecting new sites and the very first stage states;

“A provisional site is identified, and the landowner or manager is contacted with information about why it has been identified, the LNCS selection process, and the potential for the site to benefit from positive management for its geodiversity or biodiversity interest”.

The second stage refers to seeking “Permission from the landowner or manager to allow the site to be surveyed to sufficient level of detail to assess its importance”. My client has not been approached to allow the site to be accessed to assess its importance. We can only assume that the site has not been surveyed unless access has been gained without my client being made aware of this.

Further, we note that the technical report on the methodology used to identify sites states that, “no specific site surveys were commissioned.” No reference is made to landowners having been contacted.

If, therefore as we suspect, the site has not been surveyed, we are very concerned that this designation is being taken forward as part of a Local Development Plan process, which gives it the impression of weight in the planning process given that planning decisions must be taken in accordance with the Development Plan unless material circumstances indicate otherwise. We are apprehensive that without due process and “ground-truthing” of what must have been a desktop deliberation when the site was selected, this whole area will be subject to the restrictions set out in the draft policy on Local Biodiversity sites whether it justifies it or not.

We are afraid that the work on these Local Biodiversity and Local Geodiversity Sites has been rushed through in order to encapsulate them within the LDP as part of its process, without due attention to the letter and the spirit of the Guidance which clearly requires collaboration and partnership with the landowner concerned.

My client therefore objects to the process by which the selection of this site for designation was undertaken and considers that it is contrary to NatureScot Guidance as well as Scottish Government requirements for consultation as part of the Local Development Plan process.

I have already expressed the concern that the restrictions of the policy could be given unwarranted weight in the Development Management process if they are formally adopted as part of the LDP process. The designation of the site may also have implications regarding woodland creation through the Forestry Grant Scheme.

My client is also concerned that the Local Planning Authority has not adhered to either;

- National Planning guidance in [Planning Advice Note 3/2010: Community Engagement](#) which place significant duties on Local Planning Authorities to properly consult and engage widely over its LDP process, or;
- Its own Participation Statement which states at the outset that:
 - “Community Engagement must happen at an early stage to influence the shape of plans and proposals
 - It is essential for people or interest groups to get involved in the preparation of Development Plans as this is where decisions on the Strategy, for Growth or Protection, are made”.

Summary

As set out above, my client objects to the designation of land in their ownership within the Newton Don area as a Local Biodiversity Site in the Local Development Plan given:

- The lack of consultation and engagement with the landowner against National Guidance and the Council’s own LDP Participation Statement and;
- The lack of any objective ecological survey of the land being undertaken before it is given potentially undue weight in the Development Management process.

My client respectfully asks that before such sites are included within the Local Development Plan and given potentially unwarranted weight in the Development Management process and in any assessment of the suitability of such sites for the Woodland Grant Scheme:

- 1) This site at Newton Don is removed from the LDP
- 2) Due process is then followed to review how the designation of such sites is undertaken
- 3) The individual suitability of each site is properly assessed in full engagement with the landowner and based on a field ecological assessment not purely a desktop review.

Thank you for your consideration of this matter.

Kind regards,

Yours sincerely

██████████ • BSc (Hons) MRTPI

Director

e: ██████████