Wildlife: Scheduled Species



Chapter No:

19

65 - Scottish Natural Heritage [Written Submissions]

BACKGROUND

1. Structure plan Policy G2: Design for Sustainability is referred to in connection with this objection. The relevant section of the policy is,

"Proposed developments will be assessed on the extent to which they:

...

impact on the following resources, including pollution and discharges, particularly within designated areas:

habitats freshwater systems species marine systems landscape cultural heritage scenery air quality;

Developments which are judged to be significantly detrimental in terms of the above criteria shall not accord with the structure plan."

- 2. The **objector** referred to the box in the deposit draft plan entitled "Consultations" (see paragraph 6 of Appendix 1 to this report). In the second paragraph, there was reference to "Annex Species", when the correct term was "Scheduled Species". The objector also recommended that reference to these species should be included within Policy 4: Other Development Considerations (this policy subsequently being amended in earlier chapters of this report to Policy 1B).
- 3. However, while accepting the proposed change to the terminology, the **council** considered that Scheduled Species, as identified under the Wildlife and Countryside Act 1981 and the Nature Conservation (Scotland) Act 2004 were adequately protected under structure plan Policy G2 (see paragraph 1 above). The local plan (in its sections 2, 3 and 9 see paragraphs 9 and 10, and the policies as set out in Appendix 1 to this report) also made clear and unambiguous reference to the need to take structure plan policies into account ("you **must** read this plan with The Highland Structure Plan", etc), and the importance of Policy G2 was highlighted by its being included within the local plan. The possible presence of other features which were not mapped but which were protected by United Kingdom and European legislation, was also covered in the Consultations box referred to by the objector.

4. to Policy 4, a	The objector was and confirmed that	prepared to withdray it did not wish to tak	w on the basis of the case the matter of include	council's proposed change ling Scheduled Species in

Policy 4 any further. However, as this left the submissions incomplete (ie how it was proposed to include such a reference to Scheduled Species within the policy framework), I sought further observations from both parties on the matter.

- 5. Further consultation with the **objector** revealed that it continued to regard it as appropriate to include a reference in Policy 4 (Policy 1B) to species scheduled under the Wildlife and Countryside Act 1981, as such a reference would both recognise and reflect the policy of the Scottish Executive as set out in paragraph 17 of National Planning Policy Guideline 14: Natural Heritage (see Appendix 3 to this report) and ensure that developers were aware that the presence of protected species was a material consideration in the council's assessment of development proposals.
- 6. The objector also referred to the amendment of the Wildlife and Countryside Act 1981 by the Nature Conservation (Scotland) Act 2004, while confirming that the schedules to the former remained unaltered. As a consultee, it would assess development proposals in relation to any impact on species protected under the Act.
- 7. The **council** pointed out that the matter stemmed from a recommendation by the objector and not from a formal objection. In any case, it considered that there was no need to add the suggested reference within Policy 4 on the basis that Scheduled Species were adequately protected under Policy G2 of the structure plan, as well as by the Consultations box of the local plan. This was already set out to include the amendment sought by the objector, although a further reference was accepted so that the contents of the Consultations box would now read as follows (amendments shown underlined):

"Where development is located within a defined consultation area (as set out in Box 4 and, where possible, shown in the background maps), the developer and/or the planning authority must, where appropriate, consult the relevant infrastructure provider or regulatory agency when an application is being put forward.

There are a number of other features which cannot currently be mapped, many of which are protected under European Directives or national environmental legislation such as European Protected Species, priority habitats outwith candidate Special Areas of Conservation under the Habitats Directive, Scheduled Species under the Wildlife and Countryside Act 1981, as amended by the Nature Conservation (Scotland) Act 1981, and water areas under the Water Framework Directive. As a result, it is important that developers refer to the background maps and contact the Scottish Environment Protection Agency and Scottish Natural Heritage to discuss proposals at an early date."

CONCLUSIONS

- 8. I agree that the correct terminology should be used wherever possible throughout the plan, and accordingly, I support the council's modification to the incorrect description of Scheduled Species in the Consultations box, as well as the addition of the reference to priority habitats, and the amendment to bring the reference to the legislation up to date.
- 9. I have noted the council's statement that the situation arose from a recommendation rather than an objection from Scottish Natural Heritage. However, it is before me as part of a representation against the deposit draft of the local plan, and this is a matter I have dealt with in the Introduction to this report see Chapter 1, paragraph 9.
- 10. In relation to the suggested additional protection which could be afforded to Scheduled Species by including an additional reference in Policy 4, the council continues to rely upon structure plan Policy G2 and refers to a number of references to that policy within the local plan. I consider that the structure plan is noticeably vague in this regard. As can be seen by

reference to it in paragraph 1 above, it merely confirms that proposed developments will be assessed on the extent to which they have an impact on "... species ..." In these terms, I find that it could be referring to any species, from fox to amœba; its references to fresh water and marine systems are equally imprecise. Accordingly, I consider that the local plan can correct the position by accommodating the objection and similarly amending Policy 4 (now Policy 1B) to reflect government policy, as sought by the objector.

RECOMMENDATION

- 11. I therefore recommend that,
 - (i) the Consultations box be amended to include the text as shown in paragraph 7 above; and
 - (ii) Policy 4 (now Policy 1B) be similarly amended to include the following (additional text shown underlined):

"Scheduled Species - The presence of species protected under the Wildlife and Countryside Act 1981, as amended by the Nature Conservation (Scotland) Act 2004, will be considered as a material consideration in any proposals for development."