

Natural England Board



Meeting: 34
Date: 6 March 2013

Paper number: **NEB PU34 02**

Title: **Benty Grange Site of Special Scientific Interest (SSSI) – confirmation of notification**

Sponsor: **Jim Smyllie, Executive Director People, Landscape & Biodiversity**

1 Purpose

1.1 The purpose of this paper is to seek approval to confirm the notification of Benty Grange SSSI. The Natural England Board confirmation report is attached at Annex 1.

2 Recommendation

2.1 The Board is recommended to approve confirmation of the notification of Benty Grange SSSI without modification.

3 Background

3.1 Benty Grange SSSI was notified on 19 June 2012 under section 28 of the Wildlife and Countryside Act 1981, as substituted by Schedule 9 to the Countryside and Rights of Way Act 2000. A decision upon whether or not to confirm the notification of the SSSI is required on or before 18 March 2013.

3.2 Benty Grange SSSI is considered to be of special interest for its nationally important unimproved neutral grassland characterised by the nationally scarce National Vegetation Classification (NVC) type MG5 crested dog's-tail *Cynosurus cristatus* – common knapweed *Centaurea nigra* grassland.

3.4 Benty Grange SSSI consists of an extensive series of species-rich grasslands managed as meadow and pasture. The boundary of the SSSI is marked by stone walls.

3.5 The notification document (attached at section 2 of Annex 1, of the Report to the Board) was issued on 19 June 2012 and explains why Benty Grange was notified as a SSSI. The selection of this site against the relevant guidelines is dealt with fully in the supporting information document to the SSSI notification (also attached at section 2 of Annex 1, of the Report to the Board).

3.6 Natural England has a duty to notify land as SSSI where it is of the opinion that land is of special interest.

4 Issues

4.1 Benty Grange SSSI has two owners and is the subject of six outstanding objections. The period for making objections and representations ran from 19 June 2012 to 19 October 2012.

- 4.2 Annex 1 describes the site and its special interest, and considers the objections and representations made in respect of the 19 June 2012 notification. The grounds for the objections have been carefully considered by officers of Natural England.
- 4.3 Leading Counsel's advice on the scope of the Board's duties in respect of the SSSI confirmation process is attached as section 6 of Annex 1.

Annex 1

Natural England Board Confirmation Report: Benty Grange SSSI, Derbyshire

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1 Report to the Board of Natural England meeting on 6 March 2013 Benty Grange Site of Special Scientific Interest, Derbyshire

1.1 Executive summary

Benty Grange is notified as a Site of Special Scientific Interest (SSSI) for its unimproved neutral grassland characterised by the nationally scarce National Vegetation Classification (NVC) type MG5 crested dog's-tail *Cynosurus cristatus* – common knapweed *Centaurea nigra* grassland.

The notification document issued on 19 June 2012 explains why Benty Grange is notified by Natural England as an SSSI. Benty Grange SSSI has two owners and is the subject of six outstanding objections. The grounds for the objections have been carefully considered by officers of Natural England. Officers recommend to the Board of Natural England that the notification of the SSSI under section 28 of the Wildlife and Countryside Act 1981, as substituted by Schedule 9 to the Countryside and Rights of Way Act 2000, should be confirmed without modification.

1.2 Introduction

Benty Grange was notified on 19 June 2012 under section 28 of the Wildlife and Countryside Act 1981, as substituted by Schedule 9 to the Countryside and Rights of Way Act 2000. Natural England has a duty to notify land as SSSI where it is of the opinion that land is of special interest. This report describes the site and its special interest, and considers the objections and representations made in respect of the 19 June 2012 notification.

1.3 Site description and special interest

Benty Grange SSSI lies on a gentle south-facing slope. Neutral grassland extends over all the fields, though the influence of the limestone bedrock is strong in one of the western fields where soils are thin on steep slopes formed from old workings, and on limestone outcrops. On the thinnest soils, there are transitions to more calcareous neutral grassland, with sheep's-fescue *Festuca ovina*, lady's bedstraw *Galium verum*, hoary plantain *Plantago media* and glaucous sedge *Carex flacca*.

Benty Grange early medieval barrow (a Scheduled Monument designated under the 1979 Ancient Monuments and Archaeological Areas Act) is situated within the boundary of the SSSI and, whilst it is not relevant to the special scientific interest, the management of the SSSI is consistent with the protection of this historic environment feature.

The special interest of the site is unimproved neutral grassland of the nationally scarce NVC type MG5 crested dog's-tail *Cynosurus cristatus* – common knapweed *Centaurea nigra* grassland.

1.4 SSSI boundary as notified

The boundary has been drawn to include land supporting the features of special interest and those areas required to ensure the long-term sustainability of these features. The boundary of the SSSI is marked by stone walls.

1.5 Assessment of Benty Grange against the SSSI selection guidelines

The selection of this site was assessed against the *Guidelines for selection of biological SSSIs* (Nature Conservancy Council, 1989), hereafter referred to as 'the Guidelines'.

The Guidelines state that any example of MG5 grassland of 5 ha or more should be selected. Benty Grange SSSI supports over 19 ha of the nationally scarce unimproved grassland type MG5, with species richness typical of the community by comparison with the published descriptions in the NVC. The assessment is dealt with fully in the supporting information to the SSSI notification document (please refer to pages 23-43 of section 2).

1.6 Procedures

1.6.1 Pre-notification

The site has two owners, both having purchased the land at auction on 7 October 2010. Mr David Woolley owns units 2 and 3 (total 18.4 ha) of the SSSI and Mr Mark Allen owns unit 1 (2.69 ha). Prior to the auction, all prospective purchasers were informed (by letter from the Peak District National Park Authority (PDNPA)) that these fields support wildlife-rich neutral grassland (as well as a Scheduled Ancient Monument) and that consent would be required under the EIA Agriculture Regulations 2006 before undertaking any project designed to lead to agricultural intensification. The agent responsible for the sale of the property was also informed and details were included in the sales particulars. A copy of the letter and advice given to Mr Woolley by PDNPA prior to the auction is included in the annexes to Mr Woolley's objection (see pages 107-8 in section 3).

Mr David Woolley

Natural England officers had considerable contact with Mr Woolley prior to notification. Key events and discussions that took place after Mr Woolley purchased the land and up to the time of the May-June 2012 vegetation survey are summarised below:

- October 2010: Mr Woolley was visited by staff from Natural England and the PDNPA and offered a Higher Level Stewardship (HLS) agreement, which he declined.
- 23 October 2010: Mr Woolley submitted an EIA Regulations application for a screening decision to agriculturally improve 17.07 ha at Benty Grange. The application was to plough, reseed and fertilise. Officers carried out a vegetation survey which confirmed that the site supported lowland meadow priority habitat. The survey was carried out outside of the normal survey period for this habitat and was likely to have underestimated the quality.
- 23 November 2010: Officers informed Mr Woolley by letter that Natural England's screening decision was that, because the site supports lowland meadow priority habitat, there was likely to be a significant effect on the environment from Mr Woolley's proposals and, therefore, Natural England's consent would be needed. Mr Woolley was required to submit an Environmental Statement to inform the decision. Officers specified that a full NVC survey should be carried out and this was described more fully in the scoping opinion which Mr Woolley requested. Officers stated in the same letter that the survey should be carried out at an appropriate time of year (May or June). Mr Woolley has not carried out an NVC survey (officers have since confirmed in their letter dated 21 May 2012 that Natural England's own May/June 2012 NVC survey would be suitable for use by Mr Woolley to inform an Environmental Statement) and officers have not received an application for consent.
- 17 December 2010: The Grasslands Trust submitted a request under the Freedom of Information Act for all correspondence in this case, which

officers responded to in January 2011. As a matter of courtesy, officers shared their response with Mr Woolley.

- 4 January 2011: PDNPA reported to Natural England by email that Mr Woolley had applied slurry and farm yard manure to the land at Benty Grange, instigating an investigation into a possible breach of the EIA Regulations, resulting in officers' letter of 26 January 2011 to Mr Woolley.
- 17 January 2011: Officers visited the land with Mr Woolley's permission and again discussed HLS with him.
- 26 January 2011: Officers wrote to Mr Woolley requesting that he carry out no further agricultural improvements to the land before a consent was given under the EIA Regulations.
- 26 April 2011: PDNPA reported by email that several walls were being removed by Mr Woolley, in the process converting 11 fields into three larger ones.
- 25 May 2011: Officers met Mr Woolley and his agent at Moscar Farm (with PDNPA in attendance) to discuss ecological survey requirements, EIA Regulations Environmental Statement (ES) content, matters connected with Single Payment Scheme (SPS) and cross compliance, HLS and sanctions through EIA Regulations.
- 13 September 2011: Officers met Mr Woolley (Paul Tame, NFU, in attendance) and again discussed the potential for HLS. Mr Woolley was reluctant to put a significant number of the fields into HLS because in his view it did not make economic sense. He said he would prefer to continue with the EIA route. Mr Woolley offered to enter one or two of the original 11 fields within the EIA Regulations application into HLS. Officers have made it clear that any such application would be considered in the normal way but this could not alter the application of the EIA Regulations to any fields not entered into HLS.
- 16 September 2011: PDNPA reported by email that a digger was on site being used to remove limestone outcrops. Officers concluded that the operation did not constitute a plan or project covered by the EIA Regulations.
- 12 March 2012 – PDNPA reported by email that they had observed a tractor and slurry tanker spraying a liquid substance at Benty Grange on 11 March.
- 28 March 2012 – a Natural England officer counted at least 40 sheep grazing Benty Grange, viewed from the A515.
- 26 April 2012 – PDNPA reported by email that they had counted approximately 30 ewes and 50 lambs grazing Benty Grange on 23 April. This, combined with the spraying reported on 12 March and sheep grazing observed on 28 March, led to officers being concerned that a similar management regime was being followed to that which took place in 2011.
- 21 May 2012 – Mr Woolley was informed by telephone of Natural England's intention to survey the land to determine whether it is of special scientific interest, confirmed by letter requesting access permission which arrived on 22 May 2012. Officers took the decision not to carry out the normal (but optional) pre-notification consultation with Mr Woolley. This judgement was precautionary and was based on the history of involvement with Mr Woolley since October 2010, his management of the land since that time and his

proposals for management in the future. During the conversation on 21 May, Mr Woolley declined permission for the survey.

- 22 May 2012 – Officers sent a second letter to Mr Woolley (which arrived on 23 May), again requesting permission to survey but also informing Mr Woolley we would seek to use an Authorisation to Enter Land under Section 51 of the Wildlife and Countryside Act 1981 (as amended). Officers requested a response within two days, by Friday 25 May 2012.
- On 25 May 2012 – Mr Woolley stated that he would attempt to respond to the request within 28 days. Also on 25 May 2012, PDNPA reported an increase in stock numbers on the land, giving rise to officers' concerns that the survey could be more difficult to carry out effectively if the sward was heavily grazed. Accordingly officers took the decision to issue a notice under Section 51 on 26 May, to arrive on Monday 28 May, with a stated survey start date of 30 May 2012. This fully complied with the legal requirement to give at least 24 hours notice of Natural England's intention to access the land.
- 29 May 2012 – Officers received a hand delivered letter (dated 28 May) from Mr Woolley's agent, Mr Howard Elliott, raising various issues including several directly relating to the survey. The letter requested that the location of all quadrats should be physically marked on the ground and asked for the name of the surveyor, confirmation of the extent of his insurance cover, and confirmation that he had no prior knowledge of the site.
- 30 May 2012 – Mr Elliott confirmed by email that the matters relating to the survey (which officers had responded to immediately) were addressed to his satisfaction. A fuller response to other matters raised in the letter was provided on 2 July 2012
- 11 June 2012 – Officers sent Mr Woolley the results of the NVC survey.

Although not following the preferred or normal procedure, the decision to survey the site using statutory powers of entry, appeared to be justified in the opinion of officers, in light of a further increase in stock numbers and the mowing of most of unit 3 for silage, between the 26 May and the date the survey commenced (30 May 2012). The timing of the increase in intensity of grazing and the mowing for silage in late May prevented desirable species from flowering and setting seed, and also made survey conditions more difficult.

Mr Woolley was initially present on the first day of the survey and Mr Elliott was also present for part of the first day. An ecologist employed by Mr Woolley was also present while the majority of the survey took place.

Mr Mark Allen

Although officers did not judge the land owned by Mr Allen to be at any risk of inappropriate management, no pre-notification discussions were held with him as it was unclear whether he would discuss the matter with Mr Woolley. Mr Allen was therefore first informed of the intention to carry out the survey on 22 May 2012, when an officer visited Mr Allen to discuss the implications of the survey and hand delivered a formal letter requesting permission to access the land. A member of staff from the PDNPA, who Mr Allen has a good working relationship with, also attended this meeting. It was made clear to Mr Allen at this meeting that Natural England did not regard the site as being at any risk from his actions.

Mr Allen verbally refused permission to survey at the meeting of 22 May. A second letter was sent to Mr Allen on 29 May, again requesting permission to survey but also informing Mr Allen we would seek to use powers of entry if we had no formal

written response to our request by 7 June 2012. Telephone conversations took place following the meeting but Mr Allen refused permission to survey formally by letter on 7 June 2012.

A notice under section 51 was issued on 7 June, to arrive with Mr Allen on 8 June 2012. The survey took place on 11 June 2012 and Mr Allen was initially present (at the farm) but did not wish to speak to the officers or the surveyor.

1.6.2 Notification

The SSSI was notified on 19 June 2012 following approval by the Executive Board on 18 June. In addition to despatching notification documents by post, one notice was erected on the land on 20 June 2012 and a notice was placed in the local press (Buxton Advertiser and Matlock Mercury) on 28 June 2012.

The period for making objections and representations ran from 19 June 2012 to 19 October 2012.

No representation has been received from Mr Allen.

Objections were received from Mr David Woolley and five other interested parties in support of Mr Woolley: the National Farmers Union, Derbyshire Grassland Society, the Farm Crisis Network, the Royal Association of British Dairy Farmers and the Country Land and Business Association.

Three representations (from RSPB, PDNPA and English Heritage) expressed support for the notification. A further representation from East Midlands Airport did not object.

1.6.3 Decision

The Board is required to take a decision upon whether or not to confirm the notification of Benty Grange SSSI under section 28 on or before **18 March 2013**.

1.7 Objections

Objections to the notification of Benty Grange SSSI have been received from the following individuals and organisations. The land subject to Mr Woolley's objection is shown on the map that follows section 1.17 of this report. The other five objections are all submitted in support of Mr Woolley's objection and therefore refer to the same area of land. The key correspondence relating to each objection is presented at section 3 of this report.

1.8 Objection from Mr David Woolley

Having already expressed concerns in letters from his agent (Mr Howard Elliott) dated 28 May (prior to notification), 2 and 30 July, in a meeting with officers on 16 August, and during a telephone conversation on 28 August 2012, Mr Woolley set out his grounds for objecting to the SSSI notification on 18 October 2012. Mr Woolley made a further substantive submission dated 11 January 2013 in which he confirmed that his objections remained unresolved and emphasised his principal areas of concern. Mr Woolley also raised his concerns in an undated letter to his local MP, the Rt. Hon. Patrick McLoughlin MP. Mr McLoughlin wrote to both Natural England and the Secretary of State for Environment, Food and Rural Affairs on 16 November 2012 requesting assurance that the Natural England Board would take Mr Woolley's concerns into account, and also requesting that officers meet with Mr Woolley to attempt to address his concerns. Mr Woolley wrote to his MP again on 29 January 2013 following a meeting with officers and Mr McLoughlin again raised his constituent's concerns with the Secretary of State on 30 January 2013.

1.8.1 Objection

Mr Woolley objects to the notification of the entirety of his land that lies within the SSSI on the following grounds:

- the notified site is of variable composition and not universally of a quality worthy of SSSI status; and
- the scale and nature of the notification has a disproportionate effect on his interests and those of the farm business and is prejudicial to the future prospects of his family and those in the local community employed by him.

In addition to his grounds for objection listed above, Mr Woolley also made representations concerning:

- the manner in which the survey and notification of Benty Grange were carried out;
- the way in which Natural England dealt with the EIA Agriculture Regulations 2006 application made by him in October 2010; and
- the role of the PDNPA, as well as Natural England's working relationship with it, with respect to his case.

These concerns are detailed in section 2 of Mr Woolley's objection submission under the heading 'Relevant Factual Background' and officers have responded to them as appropriate in the letter dated 10 December 2012. Officers' understanding of the sequence of events following Mr Woolley's purchase of the land leading up to notification, as well as those following notification, is detailed in sections 1.6.1 (above) and 1.8.2 (below).

Mr Woolley's objection submission also proposes a compromise involving modification of the boundary of the SSSI to exclude approximately 12.75 ha of grassland in his ownership.

The detailed points raised by Mr Woolley in support of his two grounds for objection are presented in table 1 (below).

1.8.2 Consideration of objection

Officers responded in detail to the points raised in Mr Woolley's objection in a letter dated 10 December 2012. Consideration of detailed points raised in the objection is presented in table 1 (below). Prior to this, officers engaged with Mr Woolley to consider and address his concerns as follows:

- On 2 July 2012, officers responded in full to Mr Elliott's letter of 28 May (having initially replied on 29 May to issues relating directly to the survey) to explain the assessment against the Guidelines, and the approach taken to the survey and notification. Officers offered to meet Mr Woolley to discuss the notification process, management of the land, the notice and consent process, and options open to Mr Woolley under HLS.
- Officers left several telephone messages following notification, offering a meeting to discuss the notification and to ensure Mr Woolley was aware of his obligations as an owner of land within a SSSI. Mr Elliott acknowledged these messages by email on 3 July and also attached a letter (dated 2 July) requesting clarification of the SSSI selection process, and the definition of unimproved grassland. This letter also questioned what management Natural England was likely to consider appropriate on the SSSI and indicated a preference for grazing, rather than hay meadow management.
- Officers responded to this second letter on 23 July 2012, explaining the 'minimum standards' approach (as described in 1.8.3 below, under the

heading 'assessment against the SSSI selection guidelines') to selection of MG5 grassland SSSIs and providing a definition of unimproved grassland. The letter also emphasised the need for landowners to seek consent for any operations listed in the notification documents, and requested that Mr Woolley remove grazing from the site for a period to allow the site to recover from the recent heavy summer grazing, and early mowing. A further request for a meeting was also made.

- In a letter dated 30 July 2012, Mr Elliott confirmed that Mr Woolley intended to agree to a meeting and outlined Mr Woolley's expectations for the meeting.
- On 1 August 2012, officers received a report that approximately 100 dairy cattle had been turned out onto unit 3 of Benty Grange. No notice had been given. Officers agreed (through telephone and email communication with Mr Elliott) to the removal of grazing within a time period manageable for Mr Woolley. All livestock were removed from the site in the agreed time period. A date was also agreed for a meeting between Natural England and David Woolley.
- On 14 August 2012, officers offered to provide a management agreement of one year duration, with the same options, prescriptions and payment rates as HLS, recognising that Mr Woolley may wish to wait until after the Board meeting to make any longer term decisions regarding management of the site.
- On 16 August 2012 a meeting took place between Ian Fugler (Director, Land Management North and Uplands), Tom Moat (Area Manager, Peak District, Derbyshire, Nottinghamshire and Lincolnshire), Mr Woolley and Mr Elliott. During this meeting, Mr Woolley provided a description of his farm and circumstances, raised concerns subsequently submitted as part of his formal objection and proposed an amendment to the boundary of the SSSI.
- On 16 October 2012 two Natural England Board members, David Hill (Deputy Chair) and Will Cockbain, visited Mr Woolley with Ian Fugler, Karl Hobson (Team Leader, Lowland Derbyshire and White Peak) and Richard Jefferson (Senior Grassland Specialist). Mr Woolley outlined his objections and proposals for boundary amendments to the SSSI. The two Board members will be invited to provide feedback on this visit at the Board meeting.
- During the site visit on 16 October 2012, Mr Woolley expressed his wish to graze the site. Officers drafted a notice and consent on 17 October 2012 and issued, on the same day, a consent to graze the site until 30 November 2012.

Following officers' detailed response on 10 December 2012 to Mr Woolley's objections, officers provided additional information and responses to Mr Woolley's further submissions and enquiries, as follows:

- On 24 December 2012, Mr Woolley requested copies of survey material relating to HLS agreements on two sites in the Peak District, including Hurdlow Meadows SSSI. Officers provided Farm Environment Plan (FEP) survey data and additional information for Hurdlow Meadows SSSI (2011 Integrated Site Assessment (ISA) data and 2002 NVC survey data) on 4 January 2013.

Following Mr Woolley's additional submission dated 11 January 2013, officers telephoned Mr Woolley to discuss deferral of the Board meeting to 6 March and to

arrange a meeting at his farm. These arrangements were confirmed in emails dated 21 and 24 January 2013.

- On 29 January 2013, Maddy Jago (Director of Landscape & Biodiversity), Karl Hobson and Ben Rodgers (Lead Adviser, Lowland Derbyshire and White Peak) met with Mr Woolley and Mr Elliott at Moscar Farm. They discussed his dairy business, EIA Regulations, management of the site (including funding through HLS), and the NVC survey. Officers offered to commission a third party specialist to review the NVC survey evidence base in response to Mr Woolley's unresolved objection and in an attempt to narrow the scientific disagreement between us.
- Following the meeting, Mr Elliott emailed officers on 31 January 2013, to summarise the main conclusions of the meeting from Mr Woolley's perspective, including his expectations for the review of the NVC survey.
- On 4, 7 and 11 February 2013, officers liaised with Mr Woolley and Dr Martin Page of Wardell Armstrong by email and telephone over the specification and preferred contractor for the review of the NVC survey. It was mutually agreed that Dr David Shimwell be appointed to carry out this review.
- On 22 February 2013, officers responded formally by letter to the points raised in Mr Woolley's letter of 11 January, at the meeting on 29 January, and in Howard Elliott's email of 31 January. Officers also enclosed the results of Dr Shimwell's review of the NVC survey with this letter.

In addition to the correspondence with Mr Woolley and Mr Elliott, Natural England's Chief Executive, Dave Webster, replied to the Rt. Hon. Patrick McLoughlin MP in a letter dated 10 December 2012.

1.8.3 Scientific justification

The NVC survey

Based on the May-June 2012 NVC survey (see section 4), Benty Grange SSSI supports an unusually extensive example of the nationally scarce NVC type MG5 crested dog's-tail *Cynosurus cristatus* – common knapweed *Centaurea nigra* grassland, which conforms mainly to the MG5a meadow vetchling *Lathyrus pratensis* sub-community. The MG5b lady's bedstraw *Galium verum* sub-community is found on thinner soils over limestone outcrops and former quarry worked areas.

The total area of MG5 grassland recorded by the survey was approximately 19.3 ha extending across all fields, with the remaining 1.8 ha largely comprising areas of rank grassland forming narrow strips along field margins or where walls had been removed, and in the shade of large trees.

Dr Martin Page of Wardell Armstrong assessed the NVC survey report for Mr Woolley and Dr Page's conclusions are included as an annex with Mr Woolley's objection. Natural England's Senior Grassland Specialist, Dr Richard Jefferson, has carefully considered Dr Page's report and officers included their analysis of Dr Page's conclusions with the response to Mr Woolley's objection. It is reproduced below as tables 2 and 2a in this paper.

Dr Page produced a further response to the analysis by Dr Richard Jefferson and this was included with Mr Woolley's letter dated 11 January 2013. In acknowledgement of Mr Woolley's outstanding scientific objection and in an attempt to narrow the disagreement, officers agreed with Mr Woolley and Dr Page

to commission a review of the NVC survey by Dr David Shimwell. Dr Shimwell's report is included at section 5.

In summary, Dr Shimwell's review confirmed that the survey enabled an accurate appraisal of the nature of the grassland vegetation of Benty Grange. The report classified all stands as MG5 grassland with differing degrees of representativeness, and concluded that the grassland at Benty Grange showed close overall similarity to the MG5 grasslands described by Rodwell¹ in terms of species diversity, the constancy values of ten of the eleven constant species, and the general absence or low vitality of negative indicator species. The report concluded that the predominant plant community may be viewed as a regional variation of MG5 grassland.

Officers continue to have confidence in the results of the NVC survey and maintain the view that the 2012 survey provides robust scientific evidence that the grassland satisfies the Guidelines.

Status of MG5 grassland

The MG5 grassland vegetation community forms part of the 'lowland meadows' priority habitat, which is included on the list of habitats and species which are of principal importance for the conservation of biodiversity in England, as required under Section 41 of the Natural Environment and Rural Communities (NERC) Act 2006. In England the extent of lowland meadow is estimated to be around 7,300 ha of which <6,000 ha is MG5; this is equivalent to approximately 0.06% of the non-urbanised land area of England. Lowland meadow habitat is highly fragmented mainly across the lowlands of England and individual patches are now invariably small; only 20% of the resource comprises areas in excess of 5 ha in size and a mere 5% are in the same size class as Benty Grange (10-19.99 ha).

Unimproved neutral grassland habitat suffered a remarkable decline in the 20th Century, almost entirely due to changing agricultural practice. MG5 grasslands are particularly vulnerable to agricultural improvement as they often occur on relatively level, free-draining, potentially improvable brown-earth soils. It is estimated that by 1984 in lowland England and Wales, semi-natural grassland had declined by 97% over the previous 50 years. Losses continued during the 1980s and 1990s, and have been recorded at 2-10% per annum in some parts of England. The national decline has continued into the 21st Century, in parallel with a deterioration in the condition of many remaining sites; an assessment of the condition of semi-natural grassland types in non-statutory sites in England in 2005 found only 16% of lowland hay meadows outside of the SSSI series were considered to be in a favourable condition, largely due to neglect or agricultural improvement. Unless addressed, the decline in condition will lead to further losses of lowland meadows.

Lowland grasslands in the Peak District have mirrored these national trends and have continued to both decline in quality and contract in extent. In the Peak District National Park (PDNP), there has been a recorded 76% loss and decline in the extent of hay meadows during the period 1985-1995.

Assessment against the SSSI selection guidelines

The Guidelines (Part B, section 2.10.5, p.26) attach particular importance to rare habitats in general and state that:

'Any habitat with a total area in Britain of less than 10,000 ha (the area of one 10 km grid square) can be regarded as rare, and for these there should be a general presumption in favour of selecting all remaining areas.'

¹ Rodwell, J. S. ed. 1992 *British Plant Communities Volume 3: Grasslands and Montane Communities*. Cambridge University Press, Cambridge.

The Guidelines recognise the scarcity of neutral grasslands, their significant and ongoing decline, the fragmented nature of the surviving remnants, and their continuing vulnerability to agricultural improvement. Specifically, the Guidelines (Chapter 3, section 3.6, p.95) state that:

‘The nature of lowland grasslands, and especially meadow grasslands, is such that adequate representation in the SSSI series tends to involve a large number of small sites. Many of the remaining good meadow grasslands are individual fields which have chanced to escape improvement. Some communities are now so rare that the inclusion of **all** remaining examples is still an unsatisfactory and inadequate representation.’

The Guidelines (Chapter 3, section 3.7, p.95) further state that:

‘Within the meadow grasslands, where extensive areas of any one type are rare, large single-type stands will tend to be more highly valued than equivalent areas of mixed types.’

Accordingly, the Guidelines set out an assessment framework that seeks to select all examples exceeding critical minimum standards, rather than a sample of representative exemplars, as is the case for more widespread and extensive habitats such as ancient semi-natural woodlands.

The specific selection requirements in the Guidelines (Chapter 3, section 3.5, p.94) state that:

‘Examples of grassland with any of the communities listed in Table 9, either singly or in mixtures, should be at least 0.5 ha in area to qualify for selection. The selection should include the best examples of each grassland sub-community within an Area of Search and all combinations of different sub-communities in addition to pure stands. The best examples will usually be the largest stands, but floristic quality by comparison with the type will also contribute to the assessment. Any single community of MG grassland in Table 9 of 5 ha or more or any mixture of types of 10 ha or more should be selected.’

MG5 grassland is included in table 9 in the Guidelines and, with over 19 ha, Benty Grange greatly exceeds the threshold of 5 ha above which the Guidelines state that all examples should be selected. The Guidelines do not specify a minimum quality threshold for MG5 grasslands that exceed 5 ha, merely that they should conform to MG5. The NVC survey shows that Benty Grange supports typical MG5 that falls well within the expected range of variation, based on species richness, diversity and presence/frequency of less widespread unimproved grassland ‘character’ species. It is the large extent of MG5 that makes Benty Grange an unusual and important site. Benty Grange supports the largest extent of mowable MG5 grassland within an SSSI in the Peak District and is also a large site in a national context.

Mr Woolley’s proposed boundary modification

Mr Woolley has submitted a proposal (see section 6 of his objection submission) to modify the boundary of the SSSI to exclude approximately 12.75 ha of grassland. This would equate to a reduction in size of the SSSI by approximately 60%. Of the remaining 8.35 ha, 2.69 ha is owned by Mr Woolley’s neighbour, Mr Allen.

Mr Woolley states that land in his ownership that, under this proposal, would remain within the SSSI, would be managed positively for wildlife. Stone wall boundaries (removed by Mr Woolley since 2010) would be reinstated and these fields ‘*managed as grazing or hay meadow with no regard to agricultural productivity*’. Mr Woolley also proposes managing land that he owns at Arbor Low

(to the east of the SSSI) to restore species-rich grassland. The land at Arbor Low currently has very limited botanical interest but Mr Woolley has advised it has low levels of soil nutrients making it, in his view, potentially suitable for restoration.

In section 6.03 of his objection, Mr Woolley proposes that the 12.75 ha, once removed from the SSSI, would be brought within the 'rotational grazing regime' of the dairy herd. It is assumed that Mr Woolley would seek to manage a modified SSSI, and Arbor Low, within HLS and section 6.06 of his objection suggests that if Natural England were to carry out the notification with the proposed modifications, the site would be managed to deliver '*real conservation benefits enthusiastically, rather than a begrudging adherence to minimum standards*'.

The boundary of the SSSI as notified is drawn to include all grassland of special interest, as identified in the survey of May-June 2012. Mr Woolley owns an estimated 18.4 ha within the 21.1 ha SSSI, supporting approximately 17 ha of MG5 grassland, and this includes the majority of the approximately 12.75 ha which Mr Woolley proposes removing from the SSSI.

The approximately 12.75 ha area which Mr Woolley proposes removing from the SSSI is alone larger in extent than any other current single interest MG5 SSSI within the Peak District. MG5 sites recently notified, during 2011, in the National Park do not exceed 6 ha and of those MG5 sites surveyed in 2012 for the purposes of assessment against the Guidelines, Benty Grange is the largest. To reduce the size of the SSSI through modification of the boundary would reduce its importance and value in the SSSI series.

In conclusion, officers do not recommend the removal of 12.75 ha of grassland from the boundary of the SSSI, because this grassland clearly satisfies the Guidelines and the size of the land parcel contributes to the special interest and resilience of the site.

1.8.4 Site management

This information about the management of the land should be read in the context of Leading Counsel's advice (see section 6).

The ideal approach to achieve and maintain favourable condition of the MG5 grassland would be hay meadow management or low intensity grazing, as set out in the statement of Natural England's views about the management of the SSSI (see page 13 of section 2). Intensive dairy management that involved ploughing, re-seeding or fertilising (as proposed by Mr Woolley in his application for a screening decision under the EIA Regulations on 23 October 2010) would not be compatible with the conservation of the special interest in any part of the SSSI, and our expert judgement is that this management would result in its degradation and ultimate loss of the special interest.

In the short term, officers offered (on 14 August 2012) to provide a management agreement of one year duration, with the same options, prescriptions and payment rates as HLS, recognising that Mr Woolley may wish to wait until after the Board meeting before making any longer term decisions regarding management of the site. Mr Woolley has not taken up this offer. Officers also provided consent on 17 October 2012 to enable Mr Woolley to use the land for some grazing up to 30 November 2012.

Officers have sought to identify longer term management (not necessarily the ideal) that would enable the grassland to achieve and maintain favourable condition, as well as allowing the land to make a contribution to Mr Woolley's farming business, and which would be eligible for funding under HLS. During the meeting with Mr Woolley on 29 January 2013, officers discussed with Mr Woolley whether offering him some relaxation on the optimum hay meadow system would

be more compatible with his farming system, particularly in view of the proximity of the land to the dairy.

The particular proposal put to Mr Woolley was to manage the land as four separate and equal sized blocks. In any one year one block would be grazed by the dairy herd, with the other three blocks managed for hay or by low intensity grazing of young stock. Each year the management would be rotated so each block would be grazed by the dairy herd one year in four. No inputs or supplementary feeding would take place on any of the blocks and monitoring would need to take place to ensure the management was achieving favourable condition of the SSSI interest. Although this approach was discussed in some detail, and Mr Woolley gave the proposal consideration, he did not regard it as something that he wished to pursue. Nevertheless, this offer remains open should Mr Woolley wish to investigate it further at any point.

Officers have also repeated (most recently in their letter dated 22 February 2013) that they are prepared to discuss the possibility of an access route for cattle across the SSSI, following the wall line, as referred to in Mr Woolley's objection letter of 18 October, but not raised subsequently. It is officers' understanding that provision of such an access route could allow land to the east of the SSSI in Mr Woolley's ownership to be brought within the grazing regime of the dairy herd.

It is the view of officers that the management options described above represent a compromise on the ideal management for the MG5 grassland, but which would still enable it to achieve and maintain favourable condition. The management described would be eligible for funding under HLS and would enable the land to make a contribution to the agricultural productivity of the farm, both through grazing by the dairy herd (and young stock) and by facilitating access to grazing land to the east of the SSSI.

1.8.5 Officers' recommendation

With respect to the objection from Mr Woolley the Board is recommended to approve confirmation of the notification of Benty Grange SSSI without modification.

Table 1 Unresolved objections from David Woolley

Relevant sections in objection	Grounds for objection	Consideration of objection
1.06, 3.03	The notified site is of variable composition and not universally of a quality worthy of SSSI status.	The scientific justification for the inclusion of Mr Woolley's land within the SSSI is set out in section 1.8.3 (above). The special scientific interest of the MG5 grassland has been explained to Mr Woolley and supporting evidence has been shared with him. Officers also commissioned an independent review of the NVC survey by Dr David Shimwell with Mr Woolley's agreement.
3.06	The notification of land as an SSSI should reflect a robust scientific evidence base which identifies it as a site of most valuable quality.	
1.06, 5.21, 5.22	The scale and nature of the notification has a disproportionate effect on Mr Woolley's interests and farm business and is prejudicial to the future prospects of his family and those in the local community employed by him.	Officers have offered a short term management agreement and provided consent for some grazing. In meetings with Mr Woolley, officers have discussed options for longer term management of the land to achieve and maintain favourable condition of the MG5 grassland (with funding under HLS), whilst enabling some use of the land by the dairy herd and young stock. This is described in section 1.8.4 (see above). Officers are prepared to discuss the possibility of an access route for cattle across the SSSI, following the wall line, as referred to in Mr Woolley's objection letter of 18 October, but not raised subsequently. Natural England cannot take account of wider socio-economic factors when deciding whether to confirm a SSSI. Its decision is limited to whether the area is of special interest by reference to the scientific evidence.
3.06	The exercise of Natural England's duties should be compatible with wider social and economic objectives, and be sensitive and proportionate to the impact of designation on affected interests.	
5.16, 5.17, 5.18	<p>The intended management regime has been deemed unacceptable by Natural England.</p> <p>If the potential to access the Arbor Low Farm through the SSSI were retained, it might be possible to bring a small area of land into the rotational grazing regime of the dairy herd.</p> <p>Under Natural England's proposed management regime the farm will be unable to sustain the dairy herd at its current size.</p>	<p>In considering the impact of the notification it is also of relevance that, prior to purchase of this land at auction, Mr Woolley was warned that the land was of nature conservation importance, and that it would be subject to the EIA (Agriculture) Regulations 2006. The PDNPA sent a letter and advisory note to Mr Woolley and other prospective purchasers highlighting the ecological importance of the grassland at Benty Grange, both in the context of the Peak District and nationally. This correspondence also outlined that agricultural intensification would be detrimental to this grassland interest.</p>

Relevant sections in objection	Grounds for objection	Consideration of objection
Section 4	The Scientific Case for notification	Please also see tables 2 and 2a which provide a full response to the Wardell-Armstrong report by Dr Martin Page (Appendix 10 of the Mr Woolley's objection). Specific points are summarised here.
4.03, 4.04	The land subject to the objection largely comprises MG5 grassland but lacked a number of characteristic species for this community with species diversity lower than should be expected from an old meadow.	<p>There are flaws in the methods used by Dr Page to analyse the data. The NVC guidelines state that individual quadrats should not be matched to the NVC, and computer programmes should not be used alone, or as the main method, to ascribe data to NVC communities. Interpretation in this way can lead to such obvious mistakes as classifying quadrats to a community type (MG3) which does not occur in Derbyshire.</p> <p>Dr Page's report measures species richness, not species diversity. Benty Grange has a similar but slightly lower mean species richness compared to the published NVC but with species number being within the range in Rodwell (1992).</p> <p>The list of character species selected by Dr Page is not defined and includes not only rare species in the Peak District, but a species which is not recorded in the Peak District. There is no explanation of how these characteristic species are selected, but only six of the 11 are Common Standards Monitoring² indicator species or NVC constant or preferential species for MG5, and five of these six species have been recorded at Benty Grange (although two of them were not recorded in May-June 2012). In any case, not all 'character species' can be expected to be recorded at every site.</p> <p>Dr Shimwell's review of the NVC survey classified all stands as MG5 grassland with differing degrees of representativeness, and concluded that the grassland at Benty Grange showed close overall similarity to the MG5 grasslands described by Rodwell (1992) in terms of species diversity, the constancy values of ten of the eleven constant species, and the general absence or low vitality of negative indicator species. The report concluded that the predominant plant community may be viewed as a regional variation of MG5 grassland.</p>

² In 1998, the Joint Nature Conservation Committee published *A Statement on Common Standards Monitoring*, which sets out the standards by which the condition of features of protected sites (including SSSIs) will be monitored and reported on throughout Great Britain.

Relevant sections in objection	Grounds for objection	Consideration of objection
4.03	Some records accorded with the characteristics of improved grassland.	MG5 grassland can have high frequencies of species also indicative of agricultural improvement such as <i>Trifolium repens</i> and <i>Cynosurus cristatus</i> . <i>Cynosurus cristatus</i> is a constant species for MG5 and can be very abundant in MG5 swards including up to Domin value of 8 (51-75% cover) in quadrats.
4.04, 4.05	Natural England accepts that the northern part of the notified land has a low frequency of positive indicator species.	The northern block (unit 3) clearly supports MG5 grassland (as confirmed by Dr Shimwell's review of the NVC survey) which meets the Guidelines.
3.05, 3.06, 4.06, 4.08	Benty Grange does not meet the SSSI selection criteria as it is not one of the very best or most valuable sites. The land is not a good example of the habitat type.	<p>The Guidelines attach considerable importance to site extent and state that all examples of single communities of neutral grassland (including MG5) that exceed 5 ha should be selected. At 21.1 ha, of which 19.3 ha is estimated to support MG5 grassland, Benty Grange is a large site in both a local and national context.</p> <p>Based on species richness, diversity and presence/frequency of less widespread unimproved grassland 'character' species, Benty Grange falls well within the expected range of variation of MG5. Dr Shimwell's review concurs with this analysis. However, the outstanding feature of Benty Grange is its large size (over 19 ha) when compared against the national dataset.</p>
4.05	Past management has been variable and includes historic ploughing.	<p>Natural England does not argue that management prior to Mr Woolley's ownership was beneficial in maintaining or enhancing the semi-natural grassland interest, but simply that continuation of the management introduced following his purchase of the land would result in a long term decline in semi-natural grassland at this site.</p> <p>Species rich MG5 grassland can tolerate periods of neglect and overgrazing as long as this management does not persist in the long term. It is also possible for such grassland to recover from a single ploughing event.</p>

Relevant sections in objection	Grounds for objection	Consideration of objection
4.06	The management objectives stated by Natural England are less driven by the need to conserve what is currently present than by the pursuit of an aspirational agenda which seeks to develop the species composition, through the introduction of a regime of consistent management which has not hitherto existed.	<p>Benty Grange supports MG5 grassland of special interest and the notification of this land aims to protect this feature. The notification considers the special interest of the grassland which differs from consideration of its condition.</p> <p>When the features are being managed in a way which maintains their nature conservation value, then they are said to be in 'favourable condition'. Recent management, including prior to 2010, has not been consistent. Natural England therefore seeks to maintain, or achieve, favourable condition of the MG5 grassland at Benty Grange through reinstatement of positive and consistent management. This management has been described in discussions with Mr Woolley, in a draft HLS and through the statement of views about the management of the land.</p>
4.07, 4.08	A large proportion of MG5 has already been notified. Notification of all remaining examples of MG5, particularly larger areas over 5 ha, is not a sustainable objective.	<p>Due to the scarcity, vulnerability to improvement and large historic losses of MG5³, the Guidelines adopt a 'minimum standards' approach: all examples of unimproved neutral grasslands exceeding 0.5 ha are eligible for selection and all examples exceeding 5 ha should be selected. The Guidelines recognise that this approach may tend towards very high proportions (in some cases all) of a feature being selected.</p> <p>Significant work has been carried out in the Peak District in identifying MG5 grassland sites and this work continues. Our approach to prioritisation of any site for survey for notification purposes is based on factors including the contribution that the site would make to the SSSI series and the degree of threat, but we consider all MG5 sites which potentially qualify according to the minimum standards approach. This approach remains entirely consistent with the Guidelines.</p>

³ Fuller, R.M. 1987 The changing extent and conservation interest of lowland grasslands in England and Wales: a review of grassland surveys 1930-1984. *Biological Conservation* **40**: 281-300.

Relevant sections in objection	Grounds for objection	Consideration of objection
4.08	Benty Grange represents 1% of the existing hay meadow and unimproved pasture resource in the PDNP.	The Peak District Biodiversity Action Plan ⁴ definition of lowland meadows includes the large areas of neutral grassland found on the thinner soils of the limestone dales, which give rise to a different sub-community of MG5 to that dominating Benty Grange. Benty Grange supports the largest extent of MG5 grassland within an SSSI and manageable as hay meadow, within the PDNP.
4.09	MG5 is not a fundamentally endangered resource. Environmental Stewardship and the EIA (Agriculture) Regulations offer protection to MG5 outside of SSSIs.	<p>Natural England considers that MG5 is an endangered resource for the reasons set out in section 1.8.3 (above). Benty Grange supports an extensive area of MG5 that is very vulnerable to agricultural improvement, occurring as it does on mostly level, free-draining, potentially improvable brown-earth soils.</p> <p>It is correct that a proportion of MG5 outside of SSSIs is managed under agri-environment schemes such as HLS, but this mechanism does not ensure appropriate management in perpetuity (agreements being of a 10 year duration) or indeed provide a proper framework for the consideration of wider pressures that MG5 grasslands may face. The EIA Regulations are not the most appropriate mechanism for the long-term conservation of unimproved grasslands.</p>
4.10	The quality of the grassland resource does not justify such an extensive designation, when viewed in the context of all other relevant factors.	Natural England has a statutory duty to notify land that, in its opinion, is of special scientific interest. The justification for that opinion is as set out in section 1.8.3 (above).
6.04	Acceptance of Mr Woolley's compromise proposal would result in his enthusiastic and sympathetic management of the land within the modified SSSI.	The intention of notification is to consistently safeguard and manage land against all current and future pressures. The scientific judgement of whether land is of special interest and merits notification as a SSSI has to be a separate consideration from the current or likely future management status of the land. Officers consider the SSSI as notified to be of special interest and can see no scientific justification for recommending exclusion of the land proposed by Mr Woolley.

⁴ Peak District National Park Authority – Peak District BAP website: <http://www.peakdistrict.gov.uk/looking-after/biodiversity/peak-district-biodiversity/peak-district-habitats/lowland-meadows>

Table 2 Assessment of the report *Assessment of meadows at Benty Grange* by Dr Martin Page, Wardell Armstrong

Section(s)	Subject	Consideration of issue
1.4.1	Recording of mosses	MG5 grasslands are not known for their richness of mosses, liverworts or lichens. Those species that do occur are widespread ubiquitous species such as <i>Brachythecium rutabulum</i> , <i>Kindbergia praelonga</i> , <i>Scleropodium purum</i> and <i>Rhytiadelphus squarrosus</i> and do not play a role in typifying this NVC community.
1.6.2	Timing of survey/ possibility of further survey	Mr Woolley took the decision not to carry out his own NVC survey of the land. However, an ecologist, employed by Mr Woolley, was present during the survey carried out by James Frith on behalf of Natural England and was in full agreement with the methods and collection of survey data. Although the management of the fields prior to the 2012 survey was not ideal for undertaking botanical survey, we are confident that the survey is robust (as also concluded by Dr Shimwell) and sufficient as the evidence base to inform the notification decision.
2.1.3, 2.1.5., 2.2.1, 2.3.1, 2.3.2, 2.4.3, 3.4, 3.5.2	NVC analysis of quadrat data including role of computer	Based on the analysis by Dr Page, these sections contend that species diversity of the Benty Grange meadows is lower than would normally be expected of old meadows and that the grassland lacks a number of characteristic species for the MG5 community. In addition, Quadrat 1 in Block 1 had the best fit to semi-improved MG6 grassland using the computer matching programme, Tablefit.

Section(s)	Subject	Consideration of issue
	matching, assessment of site quality including species richness	<p>NVC matching – It is not good practice to match individual quadrats to the NVC either manually or by computer. The NVC methodology is to select a minimum of five quadrats from a homogeneous stand of vegetation. A table is then drawn up (see section 4 for NVC standard record cards from the 2012 survey) listing species in each quadrat with their constancy and frequency. These data are then matched to the NVC.</p> <p>Computer-based programmes such as Tablefit should not be the main method or used alone for ascribing quadrat data to NVC communities⁵. This should be based on judgements by experienced botanical surveyors with reference to the published descriptions, floristic tables and manual keys perhaps supplemented by computer matching software. The NVC provides broad generalisations from a national sample data set and it is not unusual for local surveys to throw up variations not well represented in the published volume. The NVC users handbook, states (on p.56), for example: <i>“What is important is to use the NVC as a descriptive frame within which such information can be structured and understood. It is quite unacceptable simply to identify vegetation types with lists of highest correlation [similarity] coefficients derived from statistical tests.”</i></p> <p>Over-reliance on computer matching in the absence of checking the published accounts can result in spurious determinations, such as appear to be the case, for example, in Dr Page’s matching of quadrats 2, 3 and 5 in Block 2a as MG3 <i>Anthoxanthum odoratum</i> – <i>Geranium sylvaticum</i> grassland (highest % fit using Tablefit). The likelihood of this upland hay meadow community occurring in Derbyshire is low as the environmental conditions are unsuitable and there are no current or historical records in the county (see Rodwell 1992).</p> <p>Species diversity – Regarding species diversity (or what we assume Dr Page means as species richness) the numbers of vascular plant species (excluding mosses and liverworts) per quadrat from the James Frith survey range from 15 to 29, with an overall mean, from 22 quadrats, of 21.45 species/4m². The mean per block ranges from 17.8 for Block 1 to 24.8 for block 2a. The published table for MG5 (Rodwell 1992) has an overall mean of 23 species/per 4m² (range 12-38), but the quadrats in the NVC include mosses, liverworts and lichens. MG5, however, rarely has an abundance or richness of lower plant species and they are not important in typifying the NVC community. This shows that Benty Grange has a similar but slightly lower mean species richness compared to the published NVC but with range in species number being within the range in Rodwell (1992).</p> <p>Character species – Although Dr Page does not define character species, one measure would be the constant species in NVC table. The tables in section 4 of James Frith’s report show that Benty Grange has all of the constants for the MG5 community, mostly at constancy values that closely match the published NVC values with the exception of <i>Lotus corniculatus</i>.</p>

⁵ Rodwell J.S. 2006 *National Vegetation Classification user’s handbook*. Joint Nature Conservation Committee, Peterborough.

Section(s)	Subject	Consideration of issue
		Botanical 'quality' – The Guidelines indicate that good examples of NVC lowland grassland communities (including MG5) exceeding 0.5 ha are eligible for SSSI selection. Quality of botanical composition is determined by reference to the NVC's floristic tables. Crucially in the case of Benty Grange, the Guidelines attach considerable importance to site extent and states that all examples of single communities of neutral grassland (including MG5) that exceed 5 ha should be selected.
2.2.1 (final sentence)	Plant indicators of agricultural improvement	Care is required in always assuming that high frequency/cover of white clover is indicative of agricultural improvement. This can often be the case but some high-value unimproved grasslands can have a high frequency of this species. This is why it is not used as a negative indicator in the grassland Common Standards Monitoring system in England ⁶ .
2.3.2 (2 nd sentence)	Plant indicators of agricultural improvement	Frequent <i>Cynosurus cristatus</i> is not necessarily always an indication of improvement although it can persist in swards that have been fertilised. It can be very abundant in MG5 swards including up to Domin value of 8 (51-75% cover) in quadrats.
2.4.4	Assessment of nature conservation value using available information	While the management of fields in block 3 leading up to the May-June 2012 survey was far from ideal, it would not be correct to state that the vegetation composition and NVC status of the meadows cannot be assessed. Even with sub-optimal survey conditions the data collected confirmed the block conformed to MG5 grassland.
3.2 & 3.3	Presence/absence of characteristic old meadow species	If a reasonable definition of 'characteristic' is that they are constant species in the MG5 community or preferential to a sub-community in the published NVC table, or are a positive indicator species in the Common Standards Monitoring assessment table for MG5, then of the selection of species listed in 3.3. by Dr Page (NB rationale for choosing these species is not specified), six out of the 11 listed species fall within this definition (see Table 2a, species in bold fall within this definition). Of these, three out of six occur at Benty Grange at constancy /frequency levels commensurate with those in the published NVC. Of the remaining three, both <i>Primula veris</i> and <i>Stachys officinalis</i> have been recorded previously at Benty Grange but not by in May-June 2012. There are no records for <i>Genista tinctoria</i> at Benty Grange but this species is not listed in the NVC floristic table for MG5. Not all species in these 'character species' categories will be recorded at every site.

⁶ Robertson H.J. & Jefferson R.G. 2000. Monitoring the condition of lowland grassland SSSIs. Volume I: English Nature's rapid assessment system. *English Nature Research Reports*, No 315, Volume I. English Nature, Peterborough.

Section(s)	Subject	Consideration of issue
3.5.1	Relative quality of Benty Grange in the context of the national series of MG5 grasslands	<p>The sites mentioned by Dr Page are some of the highest quality meadow grassland sites in the country, both included in the <i>Nature Conservation Review</i>⁷ (NCR) which lists 735 key nature conservation sites (all habitats) in Great Britain. However only one of these is MG5: Eades Meadow (Fosters Green Meadow). The other (Marston Meadows – now known as Mottey Meadows) is MG4 so the comparison is not valid. It would seem unreasonable to compare Benty with an NCR MG5 site because the NCR only lists nine sites (1.2%) equivalent to MG5 in the whole of Great Britain, so hence it is not surprising that Benty Grange is “probably inferior” to these few exemplars of the community.</p> <p>It is not correct though to state that sites such as Eades Meadow (Fosters Green Meadow) should be considered as the ‘type’ as they represent the best not the typical.</p> <p>Based on species richness, diversity and presence/frequency of less widespread unimproved grassland ‘character’ species, Benty Grange is not an exceptional example of MG5 but falls well within the expected range of variation. However, the outstanding feature of Benty Grange is its large size (over 19 ha) when compared against the national dataset. It has not had a history of good management and its condition could be recovered by establishing an appropriate management regime.</p>

⁷ Ratcliffe, D.A. (ed). 1977. *A Nature Conservation Review*. Volume 1. Cambridge University Press, Cambridge.

Table 2a 'Characteristic' species of MG5 identified by Dr Page in section 3.3

Species	NVC constancy and frequency range (Domin) in MG5 table (p64/65)	Constant (C) or Preferential (P) in NVC table?	Common Standards Monitoring (CSM) positive indicator for MG5?	Comments
<i>Centaurea nigra</i>	IV (1-5)	Yes (C)	Yes	Constancy IV (1-4) in 22 quadrats at Benty Grange
<i>Colchicum autumnale</i>	I (1-4)	No	No	A scarce MG5 species. Native populations are largely confined to south-western England with very few sites in central and northern England. There are no known records in the Peak District .
<i>Conopodium majus</i>	I (1-5)	Yes (P)	No – but has been added to indicator lists during local CSM tailoring	This is a preferential for MG5c – the sub-communities at Benty are MG5a and MG5b although this species can occur in this sub-community but at lower frequency. Constancy III (1-3) in 22 quadrats at Benty
<i>Genista tinctoria</i>	-	No	Yes	Not recorded at Benty Grange.
<i>Leontodon hispidus</i>	II (1-6)	No	Yes	Constancy II (1-3) in 22 quadrats at Benty Grange
<i>Listera ovata</i>	-	-	No	Previously recorded at Benty Grange but not in 2012 survey
<i>Ononis repens</i>	-	-	-	This is a species of calcareous grassland
<i>Orchis (Anacamptis) morio</i>	-	-	No	Possibly under-represented in the published NVC as it is an early flowering species that may have been missed by later surveys. Not recorded at Benty Grange. Only two relatively recent records for this species in the Peak District ⁸
<i>Primula veris</i>	II (1-4)	No	Yes	Previously recorded at Benty Grange but not in 2012 survey
<i>Saxifraga granulata</i>	-	-	No	A rather local species of MG3 and MG5 grasslands. Recorded at Benty Grange in 2 quadrats in the 2012 survey
<i>Stachys officinalis</i>	I (1-5)	Yes (P)	Yes	This is a preferential for MG5c – the sub-communities at Benty are MG5a and MG5b although this species has been recorded during previous surveys.

⁸ Derby City Council – Flora of Derbyshire website: <http://www.derby.gov.uk/apps/flora/Flora.aspx?SpeciesID=1206>

1.9 Objection from National Farmers Union (NFU)

NFU has submitted objections to the notification in two letters, one dated 17 October 2012 from the East Midlands Region and the other dated 15 October 2012 from the Bakewell Branch. The objections are made on behalf of the regional and local NFU membership, in support of Mr Woolley's objection. The NFU confirmed in a letter dated 8 January 2013 that it wishes to maintain its objection and reiterated some of the main points of concern.

On 6 July 2012 NFU made a request under the Freedom of Information Act, on Mr Woolley's behalf, for details of correspondence concerning Benty Grange that Natural England has had with anybody, between 1 January 2011 and 6 July 2012.

1.9.1 Objection

The NFU objects to the notification on the grounds that:

- it has not taken into account the social and economic impact on the Woolley family and has an unnecessarily disproportionate adverse effect on the sustainability of Mr Woolley's farm business and on the social and economic well-being of the local farming community;
- it has breached the Woolley's human rights in preventing them making a living from their land;
- the quality of the grassland does not warrant notification;
- Natural England has failed to consider the impact that the notification will have on future cooperation of the wider local farming community in agri-environment schemes; and
- there is a suspicion that Natural England has allowed its authority in these matters to be unduly influenced by PDNPA staff.

In addition to the grounds for objection listed above, NFU also made representations concerning:

- the manner in which the survey and notification of Benty Grange were carried out; and
- the way in which Natural England dealt with the EIA Agriculture Regulations 2006 application made by Mr Woolley in October 2010.

Officers have responded to these concerns as appropriate in letters dated 13 December 2012 and 16 January 2013. Officers' understanding of the sequence of events following Mr Woolley's purchase of the land leading up to notification, as well as those following notification, is detailed in sections 1.6.1 and 1.8.2.

The detailed points raised by the NFU in support of its objection are presented in table 3 (below).

1.9.2 Consideration of objection

Officers responded to the Freedom of Information request on 23 August 2012. Officers wrote to NFU on 13 December 2012 to respond in detail to the points raised in the objection. The response included a full assessment (see table 2, above) of the ecological report prepared by Dr Martin Page of Wardell Armstrong (submitted by Mr Woolley in support of his own objection), which was referenced in the NFU's objections. On 16 January, officers responded in writing to the points raised in the NFU's letter dated 8 January 2013. Consideration of detailed points raised in the objection is presented in table 3 (below).

1.9.3 Scientific justification

The scientific justification for notification of the land is as set out in the response to Mr Woolley's objection (see section 1.8.3).

1.9.4 Officers' recommendation

With respect to the objection from the NFU, the Board is recommended to approve confirmation of the notification of Benty Grange SSSI without modification.

1.10 Objection from the Derbyshire Grassland Society

Derbyshire Grassland Society (DGS) stated its objection in a letter dated 8 October 2012. The objection is submitted in support of Mr Woolley's objection. The DGS confirmed in a letter dated 8 January 2013 that it wishes to maintain its objection and addressed some of the points in officers' response to its letter of 8 October 2012.

1.10.1 Objection

The DGS objects to the notification on the grounds that:

- the quality of the grassland does not warrant notification; and
- it has not taken into consideration the financial impact on Mr Woolley's business.

In addition to the grounds for objection listed above, DGS also made representations concerning:

- the way in which Natural England dealt with the EIA Agriculture Regulations 2006 application made by Mr Woolley in October 2010; and
- the role of the PDNPA, as well as Natural England's working relationship with it, with respect to this case.

Officers have responded to these concerns as appropriate in letters dated 13 December 2012 and 22 February 2013. Officers' understanding of the sequence of events following Mr Woolley's purchase of the land leading up to notification, as well as those following notification, is detailed in sections 1.6.1 and 1.8.2.

The detailed points raised by the DGS in support of its objection are presented in table 3 (below).

1.10.2 Consideration of objection

Natural England responded to the objection on 13 December 2012. On 22 February, officers responded in writing to the points raised in DGS's letter dated 8 January 2013. Consideration of detailed points raised in the objection is presented in table 3 (below).

1.10.3 Scientific justification

The scientific justification for notification of the land is as set out in the response to Mr Woolley's objection (see section 1.8.3).

1.10.4 Officers' recommendation

With respect to the objection from the DGS, the Board is recommended to approve confirmation of the notification of Benty Grange SSSI without modification.

1.11 Objection from the Farm Crisis Network

The Farm Crisis Network (FCN) stated its objection in a letter dated 12 October 2012. The objection is submitted in support of Mr Woolley's objection. The FCN reiterated some of its concerns in a letter dated 9 January 2013.

1.11.1 Objection

The FCN objects to the notification on the grounds of its impact on:

- David Woolley and his family's health and well being;
- the financial viability of the farm; and
- the future prospects of the Woolley family.

The detailed points raised by the FCN in support of its objection are presented in table 3 (below).

1.11.2 Consideration of objection

Natural England responded to the objection on 13 December 2012. On 22 February, officers responded in writing to the points raised in FCN's letter dated 9 January 2013. Consideration of detailed points raised in the objection is presented in table 3 (below).

1.11.3 Scientific justification

The FCN has not challenged the scientific justification for the notification. The scientific justification for notification of the land is as set out in the response to Mr Woolley's objection (see section 1.8.3).

1.11.4 Officers' recommendation

With respect to the objection from the FCN, the Board is recommended to approve confirmation of the notification of Benty Grange SSSI without modification.

1.12 Objection from the Royal Association of British Dairy Farmers

The Royal Association of British Dairy Farmers (RABDF) stated its objection in a letter dated 12 October 2012. The objection is submitted in support of Mr Woolley's objection.

1.12.1 Objection

The RABDF objects to the notification on the grounds that:

- Natural England should take into account the needs and challenges facing dairy farmers;
- placing onerous restrictions on the way Mr Woolley can farm his land is unfair;
- loss of this dairy farm would have a significant impact on the local economy; and
- it is important to retain as many remaining dairy farms as possible for sound economic and food security reasons.

The detailed points raised by the RABDF in support of its objection are presented in table 3 (below).

1.12.2 Consideration of objection

Natural England responded to the objection on 13 December 2012. Consideration of detailed points raised in the objection is presented in table 3 (below).

1.12.3 Scientific justification

The RABDF did not challenge the scientific justification for the notification. The scientific justification for notification of the land is as set out in the response to Mr Woolley's objection (see section 1.8.3).

1.12.4 Officers' recommendation

With respect to the objection from the RABDF, the Board is recommended to approve confirmation of the notification of Benty Grange SSSI without modification.

1.13 Objection from the Country Land & Business Association

The Country Land & Business Association (CLA) stated its objection in a letter dated 16 October 2012. The objection is submitted in support of Mr Woolley's objection. The CLA confirmed in an email dated 10 January 2013 that it wishes to maintain its objection and reiterated some of the main points of concern.

1.13.1 Objection

The CLA supports Mr Woolley's objection to the notification of the SSSI on the grounds that:

- the notification has not taken into consideration the financial impact on Mr Woolley's business;
- the quality of the grassland does not warrant notification;
- the approach taken to the notification may have wider impacts on land owners' willingness to enter agri-environment schemes and may even have the perverse effect of encouraging farmers to plough or fertilise sites of conservation interest; and
- the PDNPA has provided the real impetus for designation, rather than Natural England.

The detailed points raised by CLA in support of its objection are presented in table 3 (below).

1.13.2 Consideration of objection

Natural England wrote to CLA on 13 December 2012 to respond in detail to the points raised in the objection. The response included a full assessment (see table 2, above) of the ecological report prepared by Dr Martin Page of Wardell Armstrong (submitted by Mr Woolley in support of his own objection), which was referenced in the CLA's objection. On 22 February, officers responded in writing to the points raised in the CLA's email dated 10 January 2013. Consideration of detailed points raised in the objection is presented in table 3 (below).

1.13.3 Scientific justification

The scientific justification for notification of the land is as set out in the response to Mr Woolley's objection (see section 1.8.3).

1.13.4 Officers' recommendation

With respect to the objection from the CLA, the Board is recommended to approve confirmation of the notification of Benty Grange SSSI without modification.

Table 3 Unresolved objections from National Farmers Union, Derbyshire Grassland Society, Farm Crisis Network, Royal Association of British Dairy Farmers, Country Land and Business Association

Grounds for objection	Objectors					Consideration of objection
	NFU	DGS	FCN	RABDF	CLA	
The notification of the site has not taken into account the severe financial implications on Mr Woolley's business and thus has a disproportionate impact on the socio-economic well-being of Mr Woolley, his family and the local community.	✓	✓	✓	✓	✓	<p>Natural England cannot take account of wider socio-economic factors when deciding whether to confirm a SSSI. Its decision is limited to whether the area is of special interest by reference to the scientific evidence.</p> <p>The notification of the fact that Natural England are of the opinion that an area is of special interest does not of itself breach any owner or occupiers human rights. The courts have determined that in so far as any landowners rights are affected by the designation of a SSSI, these issues can, and should be, addressed or taken into account, through the operations requiring Natural England's consent process which itself provides a right of appeal to the Secretary of State, or possibly (if appropriate) through the Town and Country Planning regime.</p>
The notification breaches the Woolleys' human rights as it prevents the Woolley's from earning a living on the land.	✓					<p>Shortly after purchasing the land, and as required under the EIA Regulations, Mr Woolley submitted an application for a screening decision to plough, reseed and fertilise. The land is still subject to the EIA Regulations screening decision and it cannot be assumed that the SSSI notification will solely prevent Mr Woolley from agriculturally improving this land, and thus impact uniquely on his farm business. If the notification is not confirmed, this EIA screening decision will remain in place.</p> <p>Mr Woolley was made aware of the nature conservation importance of the site before he purchased the land. We fail to see why the information supplied by the PDNPA prior to auction was insufficient to warn Mr Woolly of the issues that might arise if he chose to purchase this land and progress with agricultural intensification.</p>
The quality of the grassland does not warrant SSSI notification.	✓	✓			✓	<p>Natural England's decision to notify Benty Grange was based on the scientific evidence collected during the survey of May-June 2012. Benty Grange supports 19.31 ha of MG5 grassland. The Guidelines attach considerable importance to site extent and state that all examples of single communities of neutral grassland (including MG5) that exceed 5 ha should be selected.</p>

Grounds for objection	Objectors					Consideration of objection
	NFU	DGS	FCN	RABDF	CLA	
Notification of block 4 is 'questionable'.					<	We assume this refers to Block 3 (unit 3). Block 4 (unit1) is owned by Mr Allen, and Block 3 is referred to in section 2.4 of the report by Dr Martin Page and in section 4.05 of Mr Woolley's objection. While the management of fields in block 3 leading up to the NVC survey was far from ideal, it would not be correct to state that the vegetation composition and NVC status of the meadows cannot be assessed. Even with sub-optimal survey conditions the data collected confirmed that the block supports MG5 grassland, as concluded by Dr Shimwell in his review of the NVC survey.
Wardell Armstrong have produced a report concluding that most of the land was not of sufficient quality to be designated.	✓				✓	We have considered the report by Dr Martin Page, submitted by Mr Woolley, which questions the quality of the grassland at Benty Grange and our full assessment is included in tables 2 and 2a. This report does not alter our conclusion that the MG5 grassland at Benty Grange is of special interest. Benty Grange is a large site in a national context and supports the largest extent of MG5 within a SSSI and manageable as hay meadow, within the PDNP.
At no time during the purchase phase did Natural England indicate that the fields were of SSSI quality, and the site should have been notified prior to sale if this was the case. An email of 26 January 2011 indicates Natural England did not regard the site as being of SSSI quality.	✓				✓	Natural England cannot assume that a site meets the Guidelines without detailed and high quality NVC survey, which we now have. These data were lacking in 2010 and 2011.

Grounds for objection	Objectors					Consideration of objection
	NFU	DGS	FCN	RABDF	CLA	
Regarding connectivity between sites, there are six other sites in the White Peak National Character Area (NCA) which support MG5, including a large site of 48.5 ha (Rose End Meadows). Lathkill Dale, close to Benty Grange supports calcareous rather than neutral grassland.					<	<p>Increasing the connectivity between sites of high nature conservation value is important, particularly where large historic losses have taken place, as is the case with MG5 grassland. Due to its fragmented nature, scarcity and vulnerability to improvement, Natural England takes the view that all MG5 grasslands that satisfy the Guidelines should be notified.</p> <p>Rose End Meadows SSSI lies outside the PDNP and, whilst it supports MG5 grassland, much of which is managed as hay meadow, it is very different in nature to Benty Grange, largely due to the presence of extensive lead rake⁹ interest across the site. This does not reduce the importance of Benty Grange which supports the largest extent of MG5 grassland within an SSSI and manageable as hay meadow, within the entire PDNP.</p>
The SSSI land had been derelict prior to Mr Woolley purchasing it.	✓	✓				<p>It can be misleading to attempt to judge the nature conservation value of a site based only on a visual assessment. Accordingly, the notification of a SSSI for grassland habitat relies on evidence obtained from a botanical survey carried out to the standards of the NVC. Regardless of previous management, the MG5 grassland at Benty Grange is considered to be of special scientific interest.</p> <p>The land was considered to be of nature conservation importance prior to its sale at auction. Mr Woolley was made aware of this, and that the land would be subject to the EIA Regulations, through a letter and advisory note sent out by the PDNPA. All prospective purchasers, including Mr Woolley, received this correspondence.</p>
The land was purchased at a price that reflected the fact there was no SSSI designation.					✓	<p>Prior to the sale the PDNPA alerted Mr Woolley to the nature conservation importance of the land and the likely application of the EIA Regulations. Natural England could not have stated that the land met the Guidelines at the time of the auction as no survey for the purposes of determining this had been carried out.</p>

⁹ Centuries of mining the mineral veins in the White Peak have resulted in a distinctive landscape of hillocks and hollows referred to as lead rakes, which support a complex mosaic of vegetation types reflecting their great range of topography and the varied nature of waste material. The toxic nature of some of the lead rake material results in unique 'metallophyte' (metal tolerant) vegetation communities.

Grounds for objection	Objectors					Consideration of objection
	NFU	DGS	FCN	RABDF	CLA	
The timing of the notification, and the fact that other grassland in the PDNPA may also qualify but has not been notified, suggests an agenda to single out Mr Woolley.	<				<	<p>Natural England has not surveyed all grassland within the National Park that may meet the Guidelines, nor is it able to do so with current resources, and so threat is an important factor in prioritising sites for survey for notification purposes. However, we consider for notification all MG5 sites which potentially qualify, and this approach remains entirely in line with our statutory duties.</p> <p>The timing of this notification reflected the degree of threat Natural England considered the site to be under. For example, despite our concerns, shared with Mr Woolley (letter of 26 January 2011), over the watery slurry applications and our investigation of these activities as a technical breach of the EIA Regulations, further applications were made in March 2012. Natural England was of the opinion that the botanical interest would decline under a management regime of high summer stocking rates and regular nutrient input.</p>
Natural England and the PDNPA were not interested in compromise and have not been open with Mr Woolley.	>				>	<p>Natural England has an effective working relationship with the PDNPA and this is no doubt reflected in correspondence and email exchanges obtained under the Freedom of Information request. Internal Natural England discussions regarding the survey of Benty Grange for SSSI notification purposes began only in late 2011. The PDNPA was not involved in these discussions.</p> <p>The PDNPA assisted Natural England in beginning dialogue with landowners and obtaining permissions for survey of several sites in 2012, but the PDNPA was not aware of the intention to survey Benty Grange prior to this.</p> <p>The PDNPA had raised concerns regarding the management of Mr Woolley's land prior to Natural England's decision to notify the site but these concerns were, wherever possible, openly shared with Mr Woolley. Anyone can inform Natural England of sites they feel are worthy of consideration as a SSSI and anyone may report to us any incidents that they feel may breach the EIA Regulations. Natural England must investigate such reports.</p>

Grounds for objection	Objectors					Consideration of objection
	NFU	DGS	FCN	RABDF	CLA	
The approach to notification has been forceful and rapid, without normal pre-notification consultation.	<				<	<p>It was because we regarded the ongoing management as a threat to the semi-natural grassland interest of the site that we took the approach we did. Although it is understandable that this approach resulted in a concern over a lack of openness and dialogue immediately prior to and in relation to notification, Natural England staff had to make a judgement regarding the level of increased threat to the site once it became known to Mr Woolley that the site was being considered for notification. Such a judgement is necessary prior to every notification that takes place, and we operate a precautionary approach when making this decision, purely in the interests of the sites we seek to protect.</p> <p>The manner in which we discuss and correspond with those affected by a notification of land prior to the statutory notification process is kept under constant review. We strive to ensure that the notification of sites is as straightforward as possible for landowners and seek to build good working relationships with them from the start.</p>
Natural England has failed to consider the wider farming community and the impact this notification will have on entry into agri-environment schemes, as well as the perverse effect it may have in encouraging farmers to plough sites.	✓	✓			✓	<p>Natural England recognises the need to work with land owners and rural businesses to safeguard important wildlife sites, and we do so wherever possible while delivering our statutory responsibilities. We regard our decisions and actions relating to both the EIA screening decision and the notification of Benty Grange SSSI as being consistent with this approach.</p> <p>Natural England is concerned that objectors feel this notification is likely to impact on the future willingness of other farmers to engage with agri-environment schemes, and we hope they will seek to reassure the wider farming community, in light of our shared aims regarding the success of HLS. Natural England works closely with many landowners and managers both within and outside SSSIs and will continue to do so. Many landowners are immensely proud, quite rightly, of the nature conservation interest found on their land and we are very concerned at the suggestion they would feel threatened by Natural England's interest in their sites. Natural England will continue to seek to foster good relationships with landowners and managers.</p>

Grounds for objection	Objectors					Consideration of objection
	NFU	DGS	FCN	RABDF	CLA	
Mr Woolley has offered to enter part of the SSSI and alternative land (Arbor Low) into HLS.	✓				✓	HLS continues to be on offer to Mr Woolley and we are available to discuss the options available under this scheme at any time. An application from Mr Woolley would be treated as a priority.
David Woolley wished to progress his business while having regard for the environment and should be encouraged.		✓	✓	✓		Unfortunately Natural England does not regard David Woolley's management of the land at Benty Grange to be consistent with this statement. In light of the way the land was being managed after it was purchased by Mr Woolley, Natural England may have been neglecting its statutory duty under the Wildlife and Countryside Act 1981 (as amended) had it not carried out a survey of the MG5 grassland with a view to determining whether it is of suitable quality for notification purposes, when we were aware the site may be of special interest and national importance and where we regarded such interest as being under threat.
Higher Level Stewardship will not compensate for the loss of profitability resulting from notification.					✓	The Wildlife and Countryside Act 1981 (as amended) precludes Natural England from offering compensation, and thus HLS payments are based on the income forgone of undertaking a management activity, or not undertaking a management activity, to achieve positive management.
The notification of Benty Grange SSSI does not reflect the balance which, in the public interest, the Government wishes to see struck between environmental and agricultural interests, and does not adhere to the approach promoted recently by Natural England.	✓				✓	Natural England is entirely committed to the sentiments expressed and this approach does not conflict with our duties under the Wildlife and Countryside Act 1981 (as amended). We also remain committed to the objectives of the National Park Management Plan, developed by the PDNPA in partnership with a number of partners including the NFU. Consideration of the scientific evidence indicates that the value of Benty Grange is such that its notification is entirely consistent with the principles of the National Park Management Plan.

1.14 Representations

1.14.1 Representation from The Peak District National Park Authority (PDNPA)

In a letter dated 22 June 2012, Jim Dixon (Chief Executive) welcomed the notification of Benty Grange SSSI as the first step in achieving favourable conservation management of the site.

In a further letter, dated and received on 19 October 2012, following consultation within the PDNPA, Mr Dixon confirmed widespread support for the notification across the PDNPA, and welcomed securing the future of a significant area of the threatened lowland meadow resource within the White Peak.

This letter made reference to the National Park Management Plan, developed in partnership with various landowner and farming organisations (The Land Managers Forum). It stated that this forum agreed, in May 2011, to a number of principles to guide the achievement of the aims of the Plan, at the forefront of which was 'a focus on food production through farming which is viable, competitive and evolving in a way which seeks to impact positively on the environment' and while understanding the business objectives of the landowners, recognised that without protection of this site it was difficult to envisage how the objectives of the Management Plan would be met.

The letter also expressed the hope that the ecological interest of the site could be conserved whilst contributing to a healthy and sustainable farming system, and stated that the PDNPA would be willing to work with the landowner and Natural England in order to achieve this aim.

1.14.2 Representation from English Heritage (EH)

In an email of 16 October 2012, Tim Allen (Inspector of Ancient Monuments & Historic Buildings) supported the notification of Benty Grange, stating it was entirely compatible with, and supportive of, the preservation of the Benty Grange early medieval barrow (a Scheduled Monument designated under the 1979 Ancient Monuments and Archaeological Areas Act, which is within the boundary of the SSSI) and any other important archaeological remains extending beyond the area currently designated as a scheduled monument

1.14.3 Representation from the Royal Society for the Protection of Birds (RSPB)

In an email of 27 June 2012, Tim Melling (Senior Conservation Officer, RSPB North England Region) expressed support for the notification of an important species-rich neutral grassland SSSI and stated that the RSPB had no comments to make regarding the reasons or the list of operations requiring consent.

In a letter dated and received on 19 October 2012, Kate Jennings (Acting Head of Site Conservation Policy) supported the notification of Benty Grange SSSI for its species-rich neutral grassland and outlined the importance of the habitat as a component of the 'Lowland Meadows' habitat included in the list of habitats considered to be of principal importance to the conservation of biodiversity in England (Section 41 of the Natural Environment and Rural Communities Act 2006), and as a priority habitat under the England Biodiversity Strategy 2020.

1.14.4 Representation from East Midlands Airport

In an email dated 28 June 2012, Will Fuller (Aerodrome Safeguarding Officer for East Midlands, Bournemouth and Humberside Airports) stated that there were no safety issues relating to the notification and East Midlands Airport had no objection.

1.15 Legal Considerations

Natural England's functions in respect of the designation of SSSIs are set out in section 28 of the Wildlife and Countryside Act 1981 (as amended). Section 28 states that:

- “(1) Where Natural England are of the opinion that any area of land is of special interest by reason of any of its flora, fauna, or geological or physiographical features, it shall be the duty of Natural England to notify that fact -*
- (a) to the local planning authority (if any) in whose area the land is situated;*
 - (b) to every owner and occupier of any of that land; and*
 - (c) to the Secretary of State.”*

Section 28(5) states:

- “(5) Where a notification under subsection (1) has been given, Natural England may within the period of nine months beginning with the date on which the notification was served on the Secretary of State either-*
- (a) give notice to the persons mentioned in subsection (1) withdrawing the notification; or*
 - (b) give notice to those persons confirming the notification (with or without modifications).”*

It is the decision whether to confirm this SSSI or not that the Board have to consider on 6 March 2013.

In reaching its decision the Board must also have regard to Natural England's other more general legislative duties, in particular:

Section 40 NERC Act which states that Natural England must in exercising its functions:

“...have regard, so far as is consistent with a proper exercise of those functions, to the purpose of conserving biodiversity.”

As regards section 37 Countryside Act 1968 which states that:

“...it shall be the duty of Natural England to have due regard to the needs of agriculture and forestry and to the economic and social interests of rural areas.”

Counsel has advised that section 37 considerations are irrelevant to the decision as to whether or not a site is of special interest.

As well as questioning the scientific basis for the confirmation of this SSSI, Mr Woolley has also raised objections (supported by NFU, DGS, FCN, RABDF and CLA) about the interference the designation will have with his right to manage his property in the way that he would like and the impact that the designation will have on his business and the local community.

Natural England has taken Leading Counsel's Advice on the scope it has to take account of the socio-economic issues that have been raised by Mr Woolley and the weight, if any, that should be attached to them as part of the designation process. A copy of Leading Counsel's Advice is attached at section 6. The advice may be summarised as follows:

- (1) There are four elements to the designation process which the Board must consider:
 - (i) whether the land is of special interest;
 - (ii) the specification of the features by which the site is of special interest;

- (iii) the specification of those operations likely to damage the features; and
 - (iv) the statement about Natural England's views about the management of the land.
- (2) The main question for the Board is a scientific one. The Board must be satisfied that the area of land notified is of special interest. If the Board are of that opinion, having heard the scientific case for notification, it has a duty to confirm the notification of that area as a SSSI. Counsel's advice is absolutely clear on this and points out that if Parliament had intended to confer a discretion on Natural England to withdraw a notification because it was undesirable given its consequences then Parliament could have chosen to do that but it did not. In the absence of any such discretion the scope to withdraw the notification is limited to where the Board is of the opinion that the area notified is not of special interest.
 - (3) The Board may not withdraw the notification if they remain of the opinion that the area, or any part of it, is of special interest.
 - (4) If it is not open to the Board to withdraw the notification because it is satisfied that the site is of special interest then the only other decision open to it is to confirm the notification with or without modification. In doing so the Board must consider each of the four elements of the notification in the light of any objections, representations or further information that has become available in addition to the information available at the time of the initial notification.
 - (5) In considering whether to confirm the specification of any operations likely to damage the special features Natural England has to decide whether or not such operations are likely to damage those features and to confirm the list with or without modification. The specification of these operations may engage a person's rights under the European Convention on Fundamental Rights and Freedoms but in Counsel's opinion the statutory regime which requires a person to apply for consent allows a fair balance to be struck at that point between likely harm to the nature conservation interests and any likely detriment to the owner/occupier. This coupled with the fact there is a right of appeal if consent is not granted means this regime is not disproportionate and does not infringe the owner / occupiers human right to quiet enjoyment of their possessions.
 - (6) When considering whether to confirm the views on management Natural England should seek to promote its general purpose whilst having regard to the purpose of conserving biodiversity (as required by section 40 of the NERC Act) and giving such regard as it considers appropriate in all the circumstances to the needs of agriculture and forestry to the social and economic interests of any rural area (in accordance with s37 of the Countryside Act 1968). In this respect it may also bear in mind that the statement has no legal effect itself. It should have regard however to the Code of Guidance¹⁰ issued by the Secretary of State which states:

“the Secretary of state expects the [statement of views on management] to be a simple statement of the way in which the land needs to be managed in order to maintain its special interest”
 - (7) The notification of the fact that Natural England is of the opinion that an area is of special interest does not of itself interfere with a landowner's peaceful enjoyment of their possessions and therefore is not contrary to their human rights.

¹⁰ *Sites of special Scientific Interest: Encouraging Positive Partnerships – Code of Guidance, Defra, 2003*

1.16 Additional Human Rights issues

In relation to human rights, from a procedural perspective the obligation is to undertake a fair and public hearing in determination of the civil rights and obligations of all of the owners and occupiers of this area of land. The courts have determined that the combination of the process followed by Natural England, to include this meeting today, in addition to the supervisory jurisdiction of the High Court by way of judicial review, is compatible with the requirements of the Human Rights Act.

1.17 SSSI which the Board is recommended to confirm

The SSSI notification that the Board is considering for confirmation is the subject of six objections, all of which remain wholly unresolved and four additional representations, three of which expressed support for the notification.

With respect to the unresolved objections from David Woolley, National Farmers Union, Derbyshire Grassland Society, Farm Crisis Network, Royal Association of British Dairy Farmers, and the Country Land and Business Association, officers recommend that the Board approves the confirmation without modification.

The Board is recommended to approve confirmation of the notification of Benty Grange SSSI without modification.