



EUROPEAN COMMISSION

DIRECTORATE-GENERAL
ENVIRONMENT

Directorate D - LIFE Programme, Legal Implementation & Civil Protection
ENV.D2 - Legal implementation and enforcement

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Mr Craig Bennett
Friends of the Earth
26 —28 Underwood Street
London Ni 7JQ
United Kingdom

Dear Mr Bennett

Subject: Complaint 2002/4781 concerning the White Horse Millennium Landmark

I refer to your complaint letter of 7 May 2002 and write to update you on progress.

As you know, your letter of 7 May alleges that the decision of the Secretary of State for Transport, Local Government and the Regions to grant planning permission for the erection of a White Horse Millennium Landmark within part of the Folkestone to Etchinghill Escarpment proposed Site of Community importance (“pSCI”), is in breach of Council Directive 92/43/EEC on the conservation of natural habitats and of wild flora and fauna (“the Directive”).

On receipt of that letter, we wrote to the United Kingdom Government seeking their comments on the issues raised by you. In particular, our letter of inquiry requested an explanation of what assessment had been carried out for the purpose of Article 6(3) of the Directive and the basis on which the Government appears to have concluded that the proposal was likely to have no overall adverse effect on the pSCI, notwithstanding evidence to the contrary from English Nature, the government-funded body generally responsible for providing advice on natural heritage to the authorities of the United Kingdom of Great Britain and Northern Ireland in England.

The response of the United Kingdom of Great Britain and Northern Ireland contained an account of their grant of planning permission for this development. This clarified that it was decided by the Secretary of State for Transport, Local Government and the Regions for the purposes of Article 6(3) of the Directive that the development would not adversely affect the integrity of the pSCI. The reasons for this decision, as adopted in paragraph 5 of the Secretary of State’s decision letter dated 27 March 2002, are set out at paragraphs 78 to 81 of the Planning Inspector’s Report of 28 June 2001. The Inspector concluded that although the proposal would have an immediate adverse effect on the site in terms of habitat loss, it would not have an adverse effect on its overall integrity, given the mitigating steps proposed.

In light of this response, the Commission has now sent a letter of formal notice to the United Kingdom Government in connection with its failure to ensure that the requirements of the Article 10 of the EC Treaty in conjunction with Article 6(3) of the Directive were met with regard to the proposed development. This letter summarises the main issues covered in our letter of formal notice.

The letter of formal notice refers to the fact that the proposed development site is situated within part of the Folkestone to Etchinghill Escarpment pSCI. As you know, that site has been

proposed for designation in accordance with Article 4(1) of the Directive because it contains European priority natural habitats types listed in Annex I of the Directive. The pSCI is also an important site for orchids. The Commission is of the view that the site deserves to be listed on the Community list of Sites of Community Importance ("SCI") under Article 4(2) of the Directive. The fact that that list has not yet been adopted is not relevant when assessing obligations incumbent on Member States because in terms of Annex III, Stage 2, point 1 of the Directive, all sites identified by Member States which host priority natural habitat types will be considered as sites of Community importance. The letter makes clear that although the text of the Directive seems to indicate that Member States do not need to apply the provisions of Article 6 of the Directive before the Community list has been adopted, other provisions of Community law as interpreted by the European Court of Justice need to be taken into consideration.

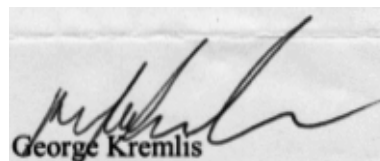
In particular, under Article 10 of the EC Treaty the United Kingdom of Great Britain and Ireland has a duty to take all appropriate measures to fulfil the obligations arising out of the Treaty or resulting from action taken by the institutions of the Community. The United Kingdom of Great Britain and Ireland must facilitate the achievement of the Community's tasks and abstain from measures which may jeopardise the attainment of the objectives of the Treaty.

The Commission is not satisfied that the decision of the Secretary of State that the proposal will not adversely affect the integrity of the site is well founded. The letter of formal notice refers in detail to the evidence provided by English Nature, in particular with regard to the conservation objectives of the site and their view that the anticipated habitat loss is irreplaceable. The United Kingdom of Great Britain and Northern Ireland has not presented evidence to contradict English Nature's advice. The Commission is therefore of the view that consideration under Article 6(4) of the Habitats Directive is required in order for the proposal to proceed. However, in light of the Planning Inspector's conclusion that there was likely to be no adverse effect on the integrity of the pSCI, the Secretary of State concluded that it was not necessary to justify the development under Article 6(4).

As already noted, the Commission considers that the United Kingdom of Great Britain and Northern Ireland has granted an approval likely to seriously compromise the maintenance in a state of favourable conservation of the site and which is likely to seriously adversely affect the integrity of a SCI containing priority habitat, in breach of Article 10 of the Treaty in conjunction with Article 6 of the Directive.

The United Kingdom of Great Britain and Northern Ireland has a period of two months in which to respond to the letter of formal notice. I will keep you advised of any further developments.

Yours sincerely



George Kremlis
Head of Unit

Head of Unit