

From: Routh, Charles [<mailto:charles.routh@naturalengland.org.uk>]

Sent: 06 September 2019 14:18

To: Richard Price <RICHARD.PRICE@planninginspectorate.gov.uk>

Cc: A303Stonehenge <A303Stonehenge@highwaysengland.co.uk>

Subject: RE: TR010025: Request for further information

Dear Richard, many thanks for the request for further information below.

You ask:

[Can] Natural England confirm that they view the stone curlew replacement plot within Parsonage Down as mitigation rather than compensatory measures, and explain why this is the case in the context of the above case law?

Yes, I can confirm that the replacement plot should be considered as mitigation and not compensation.

As per your letter, rulings by the European Court of Justice (cases C-521/12 and C-164/17) suggest that provision of replacement habitat within a European site should be viewed as a compensatory measure rather than mitigation. However, there are two terms in this statement liable to cause confusion.

The first term liable to cause confusion is the term "a European site". There are two different European sites concerned, Salisbury Plain SPA (designated for a number of bird species, including stone curlew), and Salisbury Plain SAC (designated for certain chalk grassland communities and associated species). These designations are not coextensive, and Parsonage Down is part of the SAC, but not part of the SPA. In this situation, the impact relates to a feature of Salisbury Plain SPA (stone curlew), occurs outside the designated site boundary on 'functionally-linked land', and the measure to address it is also located outside the designated site boundary. Thus it is correct to view the measure as "mitigation".

However, as the measure is located within a second European site, namely Salisbury Plain SAC, a second question arises; will the measure have an adverse impact on the SAC? In this case, the plot is located on land that does not contain any features for which the SAC is designated. In particular the habitat in this specific location is mesotrophic grassland, and not calcareous grassland, the type for which the SAC is designated. So the measure will not have an adverse effect on the SAC.

The second term liable to cause confusion is the term "replacement habitat". The impact is not an impact on a designated habitat, but on stone curlew. Thus the proposal is not to replace any designated habitat at all. As I understand it, the rulings referred to above pertain to replacement of designated habitat.

I hope this clarifies matters.

Regards

Charles Routh
Team leader – Wiltshire Conservation Team,
Somerset, Avon and Wiltshire Area Team, Natural England.

