

## To the Planning Inspectorate: Deadline 10 submission.

Personal Reference: EA1N. IP: 20024031. AFP: 132.  
EA2. IP: 20024032. AFP: 0134.

These remarks are in respect of both EA1N and EA2.

### **My comments on The Applicants' Response ( REP9-025) to Action Points from Compulsory Acquisition Hearing 3 ( CAH3) ( REP8-248. ).**

(Action point 10 in respect of whether or not the Public Sector Equality Duty has been met in respect of Wardens Trust.)

1. In my Deadline 9 submission I noted in a prefacing remark the statement found on page 13 of the EA1N and EA2 Public Sector Equality Statement (PSES)( REP3-013):

*"...the site selection has avoided direct effects upon community facilities, which has therefore avoided effects upon any organisation providing a service or product aimed specifically at one or more protected characteristic groups."*

2. It has become clear throughout this Examination that Wardens Trust is a community facility/ organisation which provides a service aimed specifically at one or more protected characteristic groups, i.e. the elderly, adults and children with mental and physical disabilities.
3. It has become apparent too how severely the effect on Wardens Trust of the proximity of the Landfall construction and the cable corridor work over an extended period ( with two projects potentially being given Consent and proceeding sequentially, and the strong possibility of National Grids ' Nautilus Project and others following at the same location to connect with the same Substation) will be.
4. It is therefore not the case that site selection has avoided effects upon any organisation providing a service or product aimed specifically at one or more protected characteristic groups.
5. The Applicants make no comment on this point.
6. At ID 2 , I identify the protected characteristics of users of Wardens Trust that I believe are relevant to this case as being those of age and disability. The Applicants make no comment on this point.
7. At ID 4, the key issue emerges here in respect of the definition and applicability of a disproportionate equality effect, and whether the Applicants have satisfied their PSED Requirements in respect of Wardens Trust. The Applicants concur that *a disproportionate equality effect arises when an impact has a proportionately greater effect on protected characteristic groups than on other members of the general public at a particular location.*
8. The Applicants pose the question as to *whether or not the protected characteristics give rise to any greater vulnerability to the effects*, and state that *the specific points of issue are detailed below.*
9. However, I do not consider that the points of issue which the Applicants go on to address in any way consider the question of *greater vulnerability* associated with some of the conditions experienced by the users of Wardens. Their responses confine themselves, on occasion, to suggested mitigation; that is noted, but the mitigation does not take into account that, for example, to an individual with extreme and uncontrollable sensitivity to noise who comes to a quiet location, making the noise slightly less will not make a difference. The potential diminution of effect cannot be appreciated by such a person as it may be by someone to whom the noise is simply unpleasant or inconvenient.
10. In the same way, I refer here to The Applicants remarks at ID19, Human Health.
11. In the PSES, The Applicants reference the effects of "*perceived risk*" which may have a greater impact on health than the hazard itself. This is an argument, as they point out, that was made at ISH10, along with a discussion of

the potential to mitigate “anxiety “. At ID 19, they state:” *The Applicants recognise that communication can play a big part in reducing anxiety, but does not fully alleviate this.*”

12. This argument, about anxiety and risk, was originally put forward in relation to conditions of stress and anxiety experienced by Interested Parties and others in the face of SPR’s and other energy projects’ intentions for our local area. The Applicants’ unconvincing contention appeared to be that the anxiety arose from not knowing what may come; once what may come had been fully described, however bad it may be, the anxiety would be alleviated. To adduce it here in relation to the experiences and perceptions of individuals who, in line with certain neurodevelopmental and other conditions, will respond very differently from the rest of the population to disturbing stimuli, is at least inadequate. The effect on such persons won’t be mitigated by describing it to them in advance, or explaining it to them as it occurs. To suggest that it might, certainly shows a profound failure to understand those conditions, and therefore to effectively address them in a way that satisfies the Applicants’ PSED duties in respect of the activities and users at Wardens Trust.
13. At ID 5 and 6 I suggest that according to their own methodology described in the Public Sector Equality Statement, information about Wardens Trust ( and the protected characteristics of its users) would or should have featured in the assessment of effects upon the Onshore Human Environment, and on the basis of various aspects of Table 1 effects ( Screening) and Table 2 (Assessment) that the PSED has not been met in respect of the users of Wardens Trust.
14. These factors include, at ID 7, Groundwater and Contamination.
15. This issue in itself, in respect of potential effects on the aquifer serving Wardens Trust, is one which I consider remains unresolved within the Examination, although clearly not within the perception of the Applicants, whose position is that as “ *mitigation and management measures for this topic were agreed with the Environment Agency (REP8-124) and the Councils (REP8-114)*”, the topic is not to be considered further. However, I do not believe that within those documents any information about the particular issues of the aquifer and the potential disruption to Wardens has been included, so cannot be agreed.
16. The issue here is Point 3 of the PSED, which references the requirement to “ *take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of those who do share it*”, and Point 4, , “ *meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons’ disabilities ” ( my underlining).*
17. In making reference here, as they go on to do throughout their comments in this document, to agreements that have been reached in respect of the general population affected by these proposals, The Applicants are failing to take steps to meet the needs of those disabled persons whose needs are different as they are required to do in respect of the PSED.
18. ( I note here that so great is the Applicants’ confidence in its assertions that no damage will be caused to the aquifer/ groundwater conditions, that borehole drilling to a depth of 35 metres has already been underway for some weeks. )
19. ID 8, I state “ *in respect of the Applicants’ duties under the PSED to the users of Wardens Trust, I find it extraordinary that no particular area of human sensitivity has been identified here in respect of NRMMS, haul road traffic or cable corridor construction metres from their sleeping accommodation and outdoor recreational field.* ”
20. At ID 15 The Applicants respond that *air quality impacts were considered in the assessment in relation to the UK government’s health- based air quality Standards and Objectives; these standards take into account vulnerable groups*. Changes in pollutant concentrations will be *negligible* and it is considered that *significant health effects would not occur*.
21. While I note that vulnerable groups are taken into account, is this in relation to vulnerable groups , some of whom will have breathing difficulties, who are resident at a location where pollutants are emitted, sleeping and exercising within metres of those pollutants, or simply to individuals who may temporarily be in the presence of such pollutants? The difference is significant.
22. In the light of Professor Sir Stephen Holgate’s remarks on the effects of air pollution in the case of the death of Ella Kissi- Debrah, The Applicants ‘ assertion that significant health effects would not occur might merit further consideration.

23. Again, The Applicants reference in their response at ID 15 that a full response to air quality related health issues has been provided in their **Applicants Comments on SEAS D5 submissions ( ( REP6-032)**, and that the Councils have agreed with the air quality assessment.
24. However, these are again in relation to the general population, and do not address the differential needs of persons with protected characteristics which( make them more vulnerable to these effects.
25. ID 9 refers to Land Use. In response to the comment that the use to which the land ( within the Order Limits) is put here currently, in respect of the Trusts users having free access to the surrounding countryside, has not been considered at all, the Applicants state that they “ *have assessed the owners and occupiers of all land that could be acquired compulsorily and have identified no groups of protected characteristics for the purposes of the Equality Act 2020.* “
26. This does not answer the concern. We know that Wardens does not own Land within the Order Limits. However, it comes back to the question of Wardens Trust having a highly significant interest in that land in order to offer a service aimed specifically at one or more protected characteristic groups. This will be addressed at ID 20.
27. ID10 addresses the effects of Noise and vibration. *Although the cable corridor construction will be around 75 metres from Wardens Trust, The Applicants state here that “ The projects have been located in areas where there was a reduced potential to cause disturbance. On this basis, noise effects have been assessed as not significant and conclude that “ *there is no predicted differential or disproportionate impact to protected groups.*”*
28. This clearly is not the case. The Cable Corridor alignment has not been located In this area with any reduced potential to cause disturbance. I note the reference to the information contained in the updated CoCP.
29. Again, The Applicants state that agreement in respect of noise and vibration has been reached with the Councils, but in respect only of the general local population, I believe, and not in reference to the particular needs of persons who have protected characteristics, which is after all the purpose of the PSED as addressed in the PSES.
30. ID 11. Traffic and Transport. It was made clear in the Applicants’ responses to my Written Statement of Oral Case at CAH 3 ( which I address in a separate Deadline 10 submission) that, not having rights in Plot 12 on the track or Plot 14 on the byway, Wardens traffic can turn northward to Sizewell Gap to arrive at or leave the site. Even if it wishes to travel south, it must travel via Leiston and Aldringham to make the very short journey to Thorpeness, adding half an hour into its journey each way. Equally, Emergency services will have to follow the same route.
31. This fails to take into account the needs of those vulnerable and disabled persons who may experience discomfort or agitation on extended journeys, and who may have significantly more need of emergency services.
32. However, the Applicants conclude at ID18 that with its management measures in place... “ *there is no predicted differential or disproportionate impact to protected groups.*
33. In making this assertion , The Applicants are relying on their own Traffic and Transport assessment, which “ *determines that the operation and functionality of the highway network is not significantly impacted by the project traffic and therefore it is implicit that there is not an impact on emergency service response times or public transport.*”
34. I think the ExA is aware that there is significant disagreement from local users with this basic assessment in respect of Traffic and Transport within the Examination.
35. ID 12 Human Health. I have referred above at point 12 to The Applicants’ Comments here.
36. Again, I note that *all matters pertaining to mitigation in relation to human health have been agreed with the council*, although not perhaps within the context of the requirements of the PSED.
37. ID 13. Landscape and Visual Aspect. In reference to the proposed fences, approximately 2metres high, their effect in impinging upon open views to the west is not comparable to those views being “ *blocked by trees and hedgerows*” as the Applicants suggest. The trees and hedgerows are a naturally occurring and organic part of the landscape, and are beautiful in their own right. The Applicants own proposed mitigation at the Substation site of tree cover must recognise that.
38. ID 14 , Tourism, Recreation and Socio Economics will be addressed at ID 20.
39. IDS 15, 16, 17, 18 and 19 have been addressed above.

40. ID 20. Tourism, Recreation and Socio- Economics.  
In the PSES, citing their “*extensive site selection process*” The Applicants state at page 13 that  
**“ as above, the site selection has avoided direct effects upon community facilities, which has therefore avoided effects upon any organisation providing a service or product aimed specifically at one or more protected characteristic groups.**
- Table 27.23 of Chapter 27 Human Health( APP-075) lists Health and Community Assets within 1 km of the onshore development area. There are no direct effects upon these properties both of which are outwith the project onshore development area. “**
- The Applicants conclude “ **there is no predicted differential or disproportionate impact to protected groups.**“
41. Wardens Trust does not appear on the map **Location of Health and Community Assets.** (APP- 314.) The site selection comes within 85 yards of it. The Examination has heard in detail the disastrous effects these Projects will have upon this community asset, providing a service or product aimed aimed specifically at one or more protected characteristic groups.
42. And yet, while they acknowledge that “ *The Wardens Trust is not specifically illustrated on the figures accompanying the site selection process as set out within Chapter 4 of the ES, ( APP-052) ... Wardens, which is significantly closer to the Order Limits than either of the projects illustrated there....The Applicants now claim that:*  
*‘ they have been aware of the Wardens Trust since before the submission of The Applications.*
43. This does not make sense.
44. If the Applicants were aware of Wardens Trust when they compiled **Chapter 4 of the ES** in October 2019, why did they omit it from the ES and the figures accompanying the site selection process within that document?
45. If the Applicants were aware of Wardens Trust when they compiled **Chapter 27, Human Health, ,** why did they not include it in the list at Table 27.23, listing Health and Community Assets within 1km of the Onshore Development Area?
46. If the Applicants were aware of Wardens Trust when they compiled the **Public Sector Equality Statement** in January 2021 , why does it state under Tourism, Recreation and Socio Economics in Table 2 that “ *the site selection has avoided direct effects upon community facilities*“?
47. Why, if the Applicants have been aware of the Wardens Trust since before the beginning of the submissions, has it been omitted from all three significant documents?
48. With these omissions, The Applicants fail entirely in respect of their PSED obligations to the users of Wardens Trust. Their subsequent comments do not alter this position.
49. I do not see that in claiming now that they did know of Wardens Trust and the services it offers to persons with protected characteristics alters that. In fact, to claim to have been in possession of that knowledge and yet to have excluded it from **every** document in which it should have appeared is incomprehensible and raises alarming questions.
50. I have pointed out that failure to Include the presence and significance of Wardens Trust from the very earliest processes of site selection means that at no point have the Applicants fulfilled the requirements under PSED to its users.
51. I have a strong impression that The Applicants’ position in relation to its knowledge or otherwise of Wardens Trust and its services has altered somewhat throughout the Examination. It has been implied that Wardens had come late to the table ( although representations on its behalf have been submitted throughout the Examination.) At the time these comments did not suggest that the Applicants ‘ representatives were at all aware of the Trust.
52. The possibilities are:
- a) The Applicants were, as they state here, always aware of Wardens Trust and its status in respect of the PSED but made a decision not to acknowledge the Trust in any of the material submitted to the Planning Inspectorate along with other health and community assets.

- b) The Applicants were always aware of Wardens Trust but failed, due to error, lack of due diligence or oversight to include it in Chapter 4 of the ES, Site Selection Chapter 27 Human Health, Map showing location of Health and Community Assets, or the Public Sector Equality Statement.
- c) The Applicants were perhaps not aware of the Wardens Trust from an early stage, but recognise that in order to substantiate their claims of robustness in methodology, they should have been.
53. At ID 20, The Applicants state , “ furthermore, the Applicants are aware of Wardens Trust and have been in discussions with Agents instructed by one of the Trustees at The Wardens Trust since 2018”.
54. As I have discussed in a separate Deadline 10 submission, **Response to the Applicants’ Comments on my Written Statement of Oral Case CAH 3**, I find this assertion problematic.
55. It is understood that the Applicants were in contact with a land agent from 2018 in respect of Ness House interests, but this of course is an entirely separate matter. The Applicants have made clear in recent submissions that there should be no confusion between the separate interests of the landowner at Ness House, represented by their Power of Attorney, and the interests of Wardens Trust, which have been separately represented by their Chair, although a single individual occupies both roles. Please see **Applicants’ Comments on SEAS’ Complaint** ( REP9-010) **Point 4:**
56. *It is important at the outset to recognise that Dr.Gimson has appeared before the Examination representing different interests. On one hand, he has a Power of Attorney for a relative who owns land within the Order Limits and over which the Applicants would seek rights. In addition, Dr Gimson is also a Trustee of the Wardens Trust. It is important in considering his position to understand which interest he is representing at any particular time. The two are separate and distinct.* ( my underlining).
57. **Point 14:** The Applicants state:  
*It is important to draw the distinction of Dr. Gimson acting under Power of Attorney and Dr. Gimson acting as a Trustee of the Wardens Trust.*
58. In the light of these clear distinctions and others in the same document submitted by The Applicants, it is difficult to see why the Applicants would make the mistake here at ID 20 of conflating the two roles of Dr. Gimson as Chair of Wardens Trustees and POA for the landowner, in which capacity agents were being instructed. It has no bearing on any knowledge or otherwise that they may have had of Wardens Trust.
59. Finally, at ID 21 I comment that *as the impacts on the users of Wardens have not been adequately considered, or considered at all, in all the categories referenced above, I don’t think that the statement at paragraph 16 is justifiable*
60. ( Paragraph 16 states *no differentiated or disproportionate impact on groups with protected characteristics under the Equalities Act 2020 are predicted at any phase of the projects.* ).
61. The Applicants conclude that they “ *consider that there are no disproportionate equality effects.*
62. My submission is that, although they claim to have been aware of Wardens Trust from an early stage, The Applicants, by excluding it from the relevant Chapters of the ES and on all the counts listed above, have entirely failed to fulfil their Public Sector Equality Duty to Wardens Trust and its users.

End.