

From: [REDACTED]
To: [Cleve Hill Solar Park](#)
Subject: Natural England's Deadline 3 submission
Date: 01 August 2019 19:03:38
Attachments: [REDACTED]

Dear Cleve Hill Solar Park case team,

Please find attached a summary of the oral evidence given by Natural England at the Biodiversity ISH on 25 July.

Regards,

Alison Giacomelli
Sussex and Kent Area Team
Natural England
Guildbourne House
Chatsworth Road
Worthing BN11 1LB

Tel: 0208 225 7693

www.gov.uk/natural-england

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Date: 31 July 2019
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David Rose
Lead Member of the Panel of Examining Inspectors
Cleve Hill Solar Park Case Team
The Planning Inspectorate

Hornbeam House
Crewe Business Park
Electra Way
Crewe
Cheshire
CW1 6GJ

BY EMAIL ONLY

T 0300 060 3900

Dear Mr Rose

**EN010085 Cleve Hill Solar Park
Natural England's submission for Deadline 3: Summary of oral evidence given at the Issue Specific Hearing on Biodiversity (25 July 2019)**

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

Summary of oral evidence

Update on provision of a Letter of No Impediment

Natural England can confirm that Letters of No Impediment (LoNIs) were issued to the applicant for water voles and great crested newts on 25 July 2019. In summary, Natural England sees no impediment to a licence for great crested newts being issued, subject to comments made on the Method Statement being incorporated into the formal licence application. Similarly, we see no impediment to issuing a licence for water voles, subject to the provision of updated survey information (it is understood that 2019 surveys have already started) and our comments on the Method Statement being incorporated into the formal licence application.

Update on Natural England's position regarding adverse effects on the integrity of The Swale Special Protection Area (SPA) and Ramsar site

As set out in our Written Representation [WR-xx], Natural England's view is that potential adverse effects could arise during construction (in terms of noise and visual disturbance, dust, and water quality impacts) and during operation (in terms of loss of habitat for brent geese, lapwings, golden plovers and marsh harriers). We understand that our comments on construction impacts will be addressed through updated documents including the SPA Construction Noise Management Plan and Construction Environment Management Plan. Our view is that to avoid an adverse effect on the integrity of the SPA during operation, there should be no net loss of foraging resource. We are still in discussion with the Applicant, through the Habitat Management Steering Group (HMSG), regarding the provision of mitigation land for SPA birds. Overall, discussions are heading in the right direction, but we are still working on resolving the uncertainties mentioned later in this submission.

Arable Reversion Habitat Management Area (AR HMA) for brent geese

Natural England's view is that the Applicant has used their best efforts to find a solution that ensures no net loss for SPA birds. The best available evidence suggests that the AR HMA should provide

sufficient resource for brent geese, subject to appropriate management being identified and secured through the Landscape and Biodiversity Management Plan (LBMP). This management is the subject of ongoing discussions and we understand the LBMP will be updated to address our comments.

In our Written Representation [WR-xx] Natural England raised a question regarding whether the avoidance of application of fertiliser within 10m of the ditch system has any effect on the carrying capacity of the AR HMA for geese. Natural England notes the submission by the Applicant at the ISH that taking into account the non-application of fertiliser close to the ditches only makes a difference of 300 goose-days. Natural England welcomes the fact that this calculation has been carried out and will provide further comment once the Applicant has submitted the calculations in writing.

AR HMA for lapwings and golden plovers

In our Written Representation [WR-xx], Natural England set out four areas of uncertainty around the sufficiency of the AR HMA for lapwings and golden plovers:

1. That the lapwing and golden plover days can be combined so that the over provision for golden plovers can make up for the shortfall for lapwings.
2. The fact that a lapwing/golden plover-days figure is not available for pasture, so the calculation of mitigation land requirements is based on arable land in Norfolk.
3. Whether intensive management for geese will hinder lapwings and golden plovers from getting at soil invertebrates.
4. The BTO work in Norfolk¹ found birds concentrated in just a few fields, therefore if they averaged over the whole area, the bird days would be much lower. It is not clear from that study why the plovers were aggregating in the fields they did, and whether those conditions will be replicated in the AR HMA.

Natural England notes that the Applicant has discussed the use of the bird-days figures from the Norfolk study with Dr Gillings, and that he had confirmed that it is appropriate to combine the lapwing and golden plover bird-days figures. It would be helpful if the Applicant could submit this personal communication into the Examination, but subject to this, the first uncertainty, above, may be resolved.

A bird-days figure is not available for pasture, though grassland can contain more earthworm biomass than arable land. However, Natural England's concern is that this advantage of pasture may be negated by the intensive grassland management for geese. Lapwing, golden plovers and brent geese all prefer a short sward, demonstrating that the grassland management for geese and waders is not necessarily in conflict. Nevertheless, the waders do favour arable land at certain times indicating a preference for bare ground.

In summary, Natural England is working with the Applicant, through the HMSG, to resolve the uncertainties, but management of the AR HMA will be key.

Natural England agrees with the Applicant's approach to the management of the AR HMA in terms of concentrating on a full grassland sward, at least in the first few years, as this is necessary to provide sufficient resource for brent geese. Natural England has advised the Applicant to focus on brent geese as this species is more site faithful and has a shorter foraging range than lapwings or golden plovers. However, we note that the application of fertiliser will be helpful in providing some bare patches and invertebrate prey (provided ivermectin-free manure can be sourced, as pointed out by Kent Wildlife Trust). Natural England would support an adaptive management approach that could provide muddy patches later if this would not compromise habitat for geese, and if agreed by the HMSG.

Timing of the sowing of the grassland

Natural England's advice is that the grassland needs to be sown early in the construction timetable, so that it is providing a foraging resource as soon as possible. This will be necessary to avoid an

¹ Gillings, Fuller & Sutherland (2007) Winter field use and habitat selection by Eurasian Golden Plovers *Pluvialis apricaria* and Northern Lapwings *Vanellus vanellus* on arable farmland. *Ibis*. 149, 509-520.

adverse effect on integrity. Monitoring of the sward development will be required and remedial action taken if necessary.

Monitoring

Monitoring of the AR HMA and the meeting of the HMSG to discuss results may need to carry on beyond the first five years of the solar park operation. However, it is likely that more intensive effort will be necessary in the initial years. Natural England will work with the HMSG to agree an appropriate monitoring protocol.

Is the approach to the AR HMA sufficiently precautionary?

The Applicant has used their best efforts to achieve no net loss in foraging habitat so as to achieve no adverse effect on integrity using the best available data. Nevertheless, some further detail is required in the LBMP on the points set out above regarding management of the AR HMA. There are also some uncertainties, particularly for lapwing and golden plover, as to whether no net loss will be achieved. Given the uncertainties, there is a need to apply the precautionary principle.

A monitoring protocol and adaptive management measures for remedial action must be secured in the LBMP. These management measures could include changes within the boundary of the site, for example providing supplementary feed for geese if the grass does not grow well, or adjusting the grazing regime. Natural England has discussed the option of providing additional land outside the DCO boundary. Our view is that it is not necessary to provide this upfront, as the best available evidence suggests the AR HMA is sufficient. However, a best practice approach would be to retain an option on additional land that could be brought in as part of an adaptive management approach, if measures within the site prove inadequate. This would add security to the conclusion of no adverse effect on integrity. However, we are not at point of requiring additional land yet, but need the additional information with the aim of resolving the uncertainties.

Is there sufficient detail in the LBMP?

Natural England's view is that there is insufficient detail in the version currently submitted, but we understand that this will be addressed in an updated version to be submitted for Deadline 3.

Marsh Harriers

Natural England's approach has been to advise the Applicant to maximise the habitat between the ditches and solar panels, to provide as many small mammals as possible as food for marsh harriers. We have been concerned to provide corridors of as great a width as possible, and avoid 'pinch points' that would be likely to deter birds from flying along the ditches. The Applicant has increased the distance between the ditches and panels to a minimum of 15m from the ditches to help in this regard. Our advice has therefore been that provision of an abundant food resource will encourage individuals to overcome any reticence they might have about entering the solar park site.

However, we note the helpful evidence provided by Mr Gomes at the ISH and in his written representation [WR-xx]. In particular we note the evidence on the wide-ranging habit of the species, the importance of arable land in providing food, flight heights and the concern that the change in landscape may cause birds to abandon the site.

Natural England's view is that to be confident in a conclusion of no adverse effect on the integrity of The Swale SPA for marsh harriers, the Applicant should ensure that there is no net loss of foraging resource. Our view is that, subject to the detail on habitat management being set out in the LBMP, the proposed habitat enhancements will result in more food for marsh harriers in both the ditch corridors and the AR HMA. However, if marsh harriers are deterred from using the site by the presence of the panels, this food will not be available to them. Absolute certainty over the response of marsh harriers will not be possible as there are no equivalent sites and the project has not yet been built. Therefore, Natural England will work with the Applicant and the HMSG on the steps to take to resolve the uncertainty. We suggest that the Applicant could calculate the carrying capacity of the DCO area for marsh harriers before and after the proposal, and/or calculate the amount of prey likely to be provided by the different parts of the DCO area, with a view to demonstrating the change in habitat quality and how much food will be provided in different parts of the site. It would also be helpful to provide information on the width of the ditch corridors at the northern part of the

site – are they wide enough so that birds are not deterred from entering the site from the habitat along the borrow dyke?

Ramsar invertebrate feature

The Applicant's answer to question 1.1.7 states that there will be no likely significant effect of the solar panels on Ramsar invertebrates due to the distance and height that separates the panels from the ditch invertebrate habitat. Paragraph 102 of the RIAA also states that all but two of the invertebrate species listed on the Ramsar citation are either saltmarsh specialists or associated with flowering plants (galls) or emergent vegetation (leaf minors). Natural England agrees that for these species there is unlikely to be any interaction, and therefore no likely significant effect. The remaining two species are *Micronecta minutissima* (a water boatman) and *Campsicnemus magius* (fancy-legged fly). One of these, *C. magius*, is a dolichopodid fly that lays its eggs in water and is attracted to horizontally polarised light, and therefore is potentially attracted to solar panels. However, given its habit of skimming low over mud, Natural England agrees with the Applicant that there is not likely to be a significant effect on Ramsar invertebrate species.

Is the maintenance of the existing coastal defences 'necessary for the management of the designated sites'?

In their answer to question 1.1.18, the Applicant states that the maintenance of the existing coastal defences is, in part, an action necessary for the management of The Swale SPA/Ramsar because it protects the freshwater components of the designated site from inundation by seawater. Natural England's view is that the sea wall does protect the freshwater habitat, but also contributes to the loss of intertidal habitats through coastal squeeze. Therefore, our advice to the Environment Agency for their assessment of the Medway Estuary and Swale Strategy (MEASS) under the Habitats Regulations, is that the maintenance of the sea wall should not be considered as 'necessary for the management of the site'.

Natural England is content that the Applicant has confirmed that there will be no flood defence works over and above those likely to be undertaken on an ongoing basis by the Environment Agency to maintain the current standard of protection. As this current standard of protection has been assessed through the HRA of the MEASS, and a strategic approach taken to addressing losses of intertidal habitat to coastal squeeze, Natural England concurs with the Applicant's assessment in the RIAA that there will be no loss or change of SPA/Ramsar habitats as a result of the DCO. Therefore, our view is that the maintenance of the sea wall does not need to be considered as 'necessary for the management of the site', but it can be concluded that it will not have a likely significant effect, as it will not result in any change in habitat over and above that already assessed through MEASS.

Outline decommissioning and restoration plan

Natural England does not have any comment to make on this document.

Enhancements on the SSSI

Natural England welcomes the inclusion of part of The Swale SSSI/SPA/Ramsar within the DCO area as it offers opportunities to enhance this part of the designated site. This unit is in favourable condition as it provides grassland for wintering waterbirds. However, there are opportunities for improved water level management and grazing management. Natural England will work with the Applicant on this through the HMSG and would wish to see the detail set out in the LBMP.

Biodiversity metric calculation

Natural England does not have any specific comments on the metric calculation, but it is helpful in quantifying the habitat gains and losses due to the proposal. However, it should be noted that the metric is just focused on habitats, and does not consider gains and losses in species.

CPRE comment on Natural England's funding

Natural England's resources are stretched due to funding cuts. However, the area that we have informed Defra that we will step back from is SSSI condition monitoring, not 'policing' of SSSIs. In relation to the SSSI unit within the DCO area, monitoring carried out by the Applicant will be helpful in informing future Natural England condition assessments, and partnership working in this way will

help fill the resource gap.

Dormice

Natural England notes the dormouse record supplied by CPRE Kent. A dormouse mitigation licence will be required if there will be an impact on dormice that would otherwise be illegal, such as killing, disturbing or injuring individuals, or damaging, destroying or obstruction access to, their breeding or resting places. Therefore, Natural England recommends the Applicant consider the location of the breeding record and whether there will be any impact from the proposal on habitat potentially used as breeding or resting places, even if that habitat would normally be considered sub-optimal.

Great crested newts

As noted above, Natural England has issued a LoNI for great crested newts. Some amendments are required to the Method Statement to support a formal licence application, but overall our view is that the proposal is relatively low impact in terms of habitat loss.

Saltmarsh as carbon sequestration

The Environment Agency has calculated the gains and losses of saltmarsh and intertidal habitat through the MEASS, and Natural England defers to them for their view on whether and when realignment is required over the Cleve Hill site to ensure that the amount of intertidal habitat in the Swale is maintained. Natural England's role in the NSIP Examination is to provide advice on the impacts on designated sites. Therefore, provided that the site can be realigned in the future, and the MEASS can be implemented, Natural England is content that the Examination can conclude the maintenance of the sea wall for the lifetime of the proposal will not have a likely significant effect.

I hope this summary is helpful to the Examination.

Yours sincerely

Alison Giacomelli
Sussex and Kent Area Team