

From: [REDACTED]
To: [Cleve Hill Solar Park](#)
Subject: Natural England's Deadline 5 response
Date: 20 September 2019 21:42:06
Attachments: [REDACTED]

Dear Cleve Hill Case Team,

Please find attached a summary of the oral evidence given by Natural England at ISH 6.

Many thanks,
Alison

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

We are here to secure a healthy natural environment for people to enjoy, where wildlife is protected and England's traditional landscapes are safeguarded for future generations.

In an effort to reduce Natural England's carbon footprint, I will, wherever possible, avoid travelling to meetings and attend via audio, video or web conferencing.

This message has been sent using TLS 1.2 This email and any attachments is intended for the named recipient only. If you have received it in error you have no authority to use, disclose, store or copy any of its contents and you should destroy it and inform the sender. Whilst this email and associated attachments will have been checked for known viruses whilst within the Natural England systems, we can accept no responsibility once it has left our systems. Communications on Natural England systems may be monitored and/or recorded to secure the effective operation of the system and for other lawful purposes.

Date: 20 September 2019
Our ref: n/a
Your ref: EN010085



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 6 on Environmental Matters (11 September 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 and comments on issues raised at the hearing

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. These letters were submitted by the Applicant at Deadline 3.

Construction Noise Management Plan (CNMP) and Breeding Bird Construction Plan (BBPP)

Natural England is satisfied that the revised versions of the CNMP [REP3-008] and BBPP [REP3-006] submitted by the Applicant at Deadline 3 take account of the concerns raised in our Relevant- [RR-827] and Written Representations [REP2-096]. In particular, our view is that these documents now address our concerns regarding noise contours and measures to avoid construction noise disturbance to particularly sensitive parts of the designated sites, including Castle Coote. Therefore, Natural England is satisfied that the CNMP and BBPP contain clear and sufficient measures to avoid an adverse effect on the features of The Swale Special Protection Area (SPA) and Ramsar site from construction disturbance.

Fertiliser-free buffer along ditches within the Arable Reversion Habitat Management Area (ARHMA)

The Applicant has confirmed that if the 10m fertiliser-free buffer along the ditches is taken into account in the calculations of capacity for brent geese, this makes a difference of 360 bird-days. Natural England's view is that this difference is not significant in the context of the total number of bird days being supported by the ARHMA. Though we note that management of the ARHMA will be crucial in achieving the bird-days required.

Fertiliser application rates [REP4-050]

Natural England is satisfied that the fertiliser application rates over the whole solar farm site will be lower than in the current situation, as evidenced by [REP4-050]. There will therefore be lower

nutrient inputs to the ditches if the solar farm is built, which will be a benefit to the Ramsar ditch features over the current situation. This resolves the issue Natural England raised in paragraph 3.3.2 of our Written Representation [REP2-096].

Ivermectin-free manure

Natural England's view is that the ARHMA should be fertilised with farmyard manure to increase the nitrogen content of the grass to benefit feeding brent geese. The Applicant has suggested that the use of manure will benefit feeding lapwings and golden plovers by increasing the invertebrate biomass of the ARHMA. However, Kent Wildlife Trust pointed out it will only achieve this dual benefit if it is pesticide-free. Natural England recognises that the Applicant wishes to retain flexibility by saying that it will source ivermectin-free manure where possible. We suggest that this issue is addressed in the next version of the Landscape and Biodiversity Management Plan (LBMP), perhaps through monitoring of the amounts of ivermectin-free manure and the impact this has on the invertebrates available, and wader numbers/foraging locations, with the results of this monitoring reported back to the Habitat Management Steering Group (HMSG).

Natural England also supports the suggestion made by Mr Gomes at the hearing, that it would be beneficial if the grazing licence for the ARHMA could stipulate that the animals used should be ivermectin-free.

Seed mix

Natural England confirms that it is happy with the seed mix set out in the LBMP [REP4-007] and that this takes account of the discussions at the HMSG meeting on 23 August.

Lapwings and Golden Plovers – bird days

Natural England is satisfied that the additional submission [AS-040] by the Applicant of the correspondence with Dr Gillings confirms that the lapwing- and golden plover-days can be combined. This resolves one of the uncertainties we have identified in regard to the ARHMA for waders.

Timing of sowing of habitat management areas

Natural England would wish to see the habitat management areas, and in particular the ARHMA, seeded and growing before the birds arrive in the first winter after construction has started.

Grazing compartments

Natural England confirms that it is content that the proposals for stock-proof fencing are sufficient to ensure that grazing can be managed to achieve the optimum habitats for wildlife.

Grazing management

Natural England is satisfied with what is set out at paragraphs 42 and 347 of the LBMP [REP4-007] in terms of grazing. However, as discussed at the HMSG on 23 August, the success of the grazing will depend on finding a grazier that can respond quickly to adjust the grazing pressure if necessary to achieve the right sward height at the beginning of winter.

Mowing vs. grazing

Natural England supports flexibility in management to achieve the right sward height. As CPRE pointed out at the hearing, mowing can be a risk to ground nesting birds. Therefore, Natural England recommends that grazing is used initially, and a cut is taken in late summer if the grazing has not been able to achieve the desired sward length, for whatever reason. We understand this to be the preferred approach in the LBMP [REP4-007].

Monitoring, triggers and remedial actions

Natural England's view is that as the HMSG will have a crucial role in advising on the implementation of the habitat management areas, interpreting monitoring results and recommending any remedial actions necessary, it will need to be formally constituted. Terms of reference will be necessary that stipulate, for example, the role of the group, how often it meets, process for reaching decisions and arbitration. Kent Wildlife Trust informally suggested, during a break in the hearing, that an independent chair of the HMSG, for example Swale Borough Council, could be helpful.

Natural England would be supportive of this arrangement, though it would clearly need agreement of the Applicant and Swale Borough Council.

At the HSMG meeting on 23 August, monitoring and remedial measures were discussed. Natural England agrees that it is difficult to set brent goose or wader numbers as trigger for remedial action on the ARHMA as there are many permutations. For example, if lower than expected numbers of birds use the ARHMA, this may be because there is suitable habitat within the SPA or elsewhere and the birds don't need to use the ARHMA, or it could be because there have been declines in the SPA population as a whole. Natural England's advice is that to ensure no adverse effect on the integrity of the SPA, there should be no net loss of foraging habitat. Therefore, the ARHMA needs to be in the optimal habitat condition for geese and waders to achieve this objective. Hence it follows that it is appropriate to focus on the management of the ARHMA in terms of triggers and remedial action for wintering waterbirds.

Triggers and remedial actions for marsh harriers

The triggers and remedial actions set out at Appendix A, paragraph 55, of the LBMP [REP4-007] relate to actions the Applicant can take within the application site boundary. However, there is a gap in that there is no remedial action in the event that marsh harriers are deterred from using the application site due to the presence of the solar panels.

The approach taken by the Applicant has been to maximise the habitat within the solar park site for small mammals as a foraging resource for marsh harriers. This is in line with Natural England advice that the presence of optimal foraging habitat is likely to encourage at least some individual marsh harriers to overcome any reticence about the presence of the panels, such that the overall population will be maintained. This advice has been given by Dr Richard Saunders, Senior Ornithologist for Natural England.

However, as discussed at the last Biodiversity Hearing and at the HMSG meeting on 23 August, there is uncertainty over whether the landscape changes will prevent marsh harriers from accessing the habitat provided. No remedial action is currently set out in the LBMP [REP4-007] to address this eventuality. Natural England's view is that the situation for marsh harriers is different to that for wintering waterbirds, in that even if the habitat is in optimal condition, it might be the presence of the panels that prevent marsh harriers from using that habitat. In order to be certain an adverse effect on the integrity of the SPA will be avoided, there should be both no net loss of foraging habitat and no net loss of foraging opportunities.

Judgements in both the European Court of Justice and the UK courts have made it clear that a high level of certainty is required when assessing whether a plan or project is likely to adversely affect the integrity of a European site. The landmark Waddenzee judgement in 2002 ruled that a high level of certainty is required 'where no reasonable scientific doubt remained as to the absence of such effects'.

Natural England guidance is that the best that can be achieved is for the competent authority to identify the reasonably foreseeable risks, in light of information that can be realistically obtained and put in place a legally enforceable framework aimed at preventing the risks. There is always going to be a certain level of uncertainty as we are making a prediction of the reactions of individual birds – there cannot be absolute certainty as the project has not been built yet. Therefore, the assessment of impacts has to be based on expert opinion, which is divided. Where scientific uncertainty is present then a precautionary approach should be adopted. Natural England's engagement in the Examination and through the HMSG has been to try and resolve the uncertainty as far as possible.

Water level control

Natural England is content that the LBMP [REP4-007] contains sufficient information on water control and structures within the solar park site. However, we would wish to see SSSI enhancement measures in the next version, including water level management and creation of scrapes or other surface water features.

Current position on adverse effects on integrity

Natural England is content that the updated CNMP and BBPP contain sufficient mitigation measures to avoid an adverse effect on the integrity of The Swale SPA/Ramsar from construction disturbance. We are also content that the CEMP [REP3-006] contains sufficient mitigation to avoid an adverse effect on integrity from other construction impacts, including dust and water quality.

In terms of operational impacts, subject to the updates to the LBMP discussed at the hearing, Natural England is satisfied that the AR HMA is sufficient to avoid an adverse effect on the integrity of the SPA/Ramsar for brent geese. The further work on the LBMP is required to secure the constitution and status of the HMSG.

Natural England has previously raised a number of uncertainties surrounding the sufficiency of the ARHMA for lapwings and golden plovers. Our view is that as there has been confirmation that the lapwing and golden plover-days can be combined, giving a requirement of around 33ha for both species, the provision of 51ha is sufficiently precautionary to overcome the uncertainties (as described in our answer to ExQ.2.1.12). In addition, the recommendation of the HMSG on 23 August was to provide open water in a scrape on the adjacent SSSI land, to attract the waders to the site, and make it more likely that they use the ARHMA for foraging. Subject to this being added to the LBMP along with further detail on the constitution of the HMSG, Natural England is satisfied that an adverse effect on the integrity of the SPA/Ramsar for lapwings and golden plovers will be avoided.

Natural England's view is that there is still some remaining uncertainty surrounding the use of the application site by marsh harriers, such that it has not yet been established, beyond reasonable scientific doubt, that there will not be an adverse effect on the integrity of the site for marsh harriers. We will continue to work with the Applicant and the HMSG to resolve this issue.

Impact on The Swale Estuary Marine Conservation Zone (MCZ)

Natural England is satisfied that the CEMP [REP3-006] and deemed Marine Licence avoid water quality impacts on the Swale Estuary MCZ.

Provision of offsite mitigation

In previous submissions, Natural England had suggested that provision of offsite mitigation might be appropriate in the face of uncertainties around lapwings and golden plovers. This was to overcome the fact that the bird-days calculations indicated an under-provision for lapwings but over-provision for golden plover. As there is now confirmation that the bird-days can be combined, Natural England's view is that off-site provision is not necessary for lapwings and golden plovers. However, off-site habitat creation could be a way of resolving the uncertainty surrounding marsh harriers.

In the case of the Kemsley Sustainable Energy Plant, precautionary mitigation was provided for marsh harriers in the form of reedbed creation on Sheppey at Harty Marshes. This was due to concerns that the breeding pair that used the adjacent reedbed would be displaced by construction activity. However, in this case, Natural England cannot give a figure for the amount of habitat that might be necessary.

I hope this summary is helpful to the Examination.

Yours sincerely

Alison Giacomelli
Sussex and Kent Area Team