

Date: 31 July 2018
Our ref: 250044
Your ref: EN010090



The Planning Inspectorate
National Infrastructure Directorate
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BY EMAIL ONLY

Dear Sir

NSIP Reference Name / Code: Kemsley Paper Mill (K4) CHP Plant (EN010090)
Our reference: KEM4-0001

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.

**WRITTEN REPRESENTATION
SUMMARY OF NATURAL ENGLAND'S ADVICE**

- The updated Habitats Regulations Assessment Report (Appendix 10.2 June 2018 – Section 51 version) is procedurally correct in the light of the ruling regarding People Over Wind and Sweetman vs Coillte Teoranta (ref: C 323/17).
- Further information is required on the bird use of the mouth of Milton Creek, in order to support the conclusion that noise-related construction disturbance will not compromise the objectives of The Swale Special Protection Area (SPA)/Ramsar site.
- Operational noise is unlikely to cause significant disturbance to SPA/Ramsar bird features.
- Visual disturbance will not have an adverse effect on the integrity of The Swale SPA/Ramsar.
- Potential impacts from dust, water quality impacts and lighting can be addressed by the Construction Environment Management Plan, such that an adverse effect on integrity of sites can be avoided.
- Confirmation is required that Ramsar habitats will not be adversely impacted by air quality issues.
- Process water will be discharged via the applicant's effluent treatment plant which operates under an existing permit. As a Water Framework Directive (WFD) scoping exercise concluded that the proposal will not affect the Swale's compliance with the WFD, it will consequently not result in an adverse effect on The Swale SPA/Ramsar. However, a Marine Conservation Zone (MCZ) assessment should also be carried out.

1. INTRODUCTION

1.1. Purpose and structure of these representations

1.1.1. These Written Representations are submitted in pursuance of rule 10(1) of the Infrastructure Planning (Examination Procedure) Rules 2010 ('ExPR') in relation to an application under the Planning Act 2008 for a Development Consent Order ('DCO') for the decommissioning of the existing gas-fired Combined Heat and Power (CHP) plant and to build a new CHP plant (K4) ('the Project') submitted by DS Smith Paper Limited ('the Applicant') to the Secretary of State.

1.1.2. Natural England has already provided a summary of its principal concerns in its Relevant Representations, submitted to the Planning Inspectorate on 8 June 2018. This document comprises an updated detailed statement of Natural England's views, as they have developed in view of the common ground discussions that have taken place with the Applicant to date. These are structured as follows:

Section 2.1 describes the nature conservation that may be affected by the Project and need to be considered.

Sections 2.2 – 2.6 contain Natural England's submissions in respect of the issues that concern it.

2. NATURAL ENGLAND'S CONCERNS AND ADVICE

2.1. Nature conservation designations that could be affected by the proposal

2.1.1. International conservation designations

- The Swale Special Protection Area (SPA) and Wetland of International Importance under the Ramsar Convention (Ramsar site)
- Medway Estuary and Marshes SPA/Ramsar site
- Thames Estuary and Marshes SPA/Ramsar site
- Queendown Warren Special Area of Conservation (SAC)

The interest features of the above sites are set out in section 4 of the Habitats Regulations Assessment (Document 3.1 – ES Vol. 2. Appendix 10.2. July 2018 – Deadline 1 version).

2.1.2. National conservation designations

- The Swale Site of Special Scientific Interest (SSSI)
- Medway Estuary and Marshes SSSI
- South Thames Estuary and Marshes SSSI
- The Swale Estuary Marine Conservation Zone (MCZ)

2.2. The principal issues

2.2.1. Natural England identified the following main issues in its Relevant Representations:

- a. Implications of People Over Wind and Sweetman vs Coillte Teoranta (ref: C 323/17)
- b. Noise and visual disturbance
- c. Air quality
- d. Water quality and resources

These issues will be discussed in corresponding sections below along with any updates on the progress or resolution of issues.

2.3. a. Implications of People Over Wind and Sweetman vs Coillte Teoranta (ref: C 323/17)

- 2.3.1. In our Relevant Representation, Natural England noted the recent ruling made by the Court of Justice of the European Union (the CJEU) on the interpretation of the Habitats Directive in the case of People Over Wind and Sweetman vs Coillte Teoranta (ref: C 323/17). The case relates to the treatment of mitigation measures at the screening stage of a Habitats Regulations Assessment (HRA) when deciding whether an appropriate assessment of a plan/project is required. The Court's Ruling goes against established practice in the UK that mitigation measures can, to a certain degree, be taken into account at the screening stage.
- 2.3.2. As a result, Natural England advised that any "embedded" mitigation relating to protected sites under the Habitat Regulations 2017 Regulation 63 (1) should be taken forward and considered at the appropriate assessment stage to inform a decision as to whether no adverse effect on site integrity can be ascertained.
- 2.3.3. The applicant has provided an updated Appendix 10.2 Habitats Regulations Assessment (June 2018 – Section 51 version). Natural England's view is that this version is procedurally correct in the light of the People over Wind ruling.

2.4. b. Noise and visual disturbance

- 2.4.1. The birds for which The Swale SPA/Ramsar/SSSI are designated are susceptible to disturbance caused by noise or visual presence. If they are subject to significant disturbance, this could result in harm to the population through reduced fitness and poor survival. Loud, intermittent noises cause the most disturbance and can result in reduced feeding and/or the birds taking flight.
- 2.4.2. Therefore, the applicant has modelled the predicted noise during construction and operation. In our Relevant Representation, Natural England noted that figure 10.5 of the Environmental Statement (ES) shows that peak noise levels within The Swale SPA, Ramsar and SSSI will reach 65-75 dB L_{Amax} during construction. Paragraph 6.29 of Appendix 10.2 (HRA Report June 2018 – Section 51 version) states that 20ha of the SPA/Ramsar will experience these noise levels. This may only be a small proportion of the designated site, but may have disproportionate impacts if this 20ha is used as a high tide roost (as there are fewer alternative sites), or if it is used by significant numbers of birds for feeding (suggesting that the mudflat provides a particularly important food source). Therefore, Natural England has advised the applicant's consultants to provide further information on the bird use of the mouth of Milton Creek, in order to support the conclusion that noise-related disturbance will not compromise the objectives of the SPA/Ramsar.
- 2.4.3. Figures 7.4 and 7.5 of the ES show that during normal operation, predicted noise levels within The Swale SPA, Ramsar and SSSI are not likely to exceed 50dB L_{Aeq} . It is therefore, Natural England's view that disturbance to birds is unlikely. Noise levels are higher when the steam release valves operate. However, Chapter 7 states that this will only occur in an emergency, and due to the fitting of a dump condenser that is not fitted to the existing K1 plant, this will occur less frequently than currently (less than 4 times a year). Therefore,

Natural England's view is that noise impacts during operation are not likely to be significant and will not require mitigation.

2.4.4. Marsh harrier breed in the reedbeds adjacent to the access road. The reedbeds are not designated, but the marsh harriers are part of The Swale SPA breeding bird assemblage. Therefore, the reedbeds can be considered functionally linked land, by providing supporting habitat to SPA species. However, Natural England agrees with the conclusion of Appendix 10.2, that marsh harriers are unlikely to be significantly affected by noise or visual disturbance during construction or operation.

2.4.5. It is Natural England's view that visual disturbance to coastal waterbirds, during construction or operation, is unlikely due to the distance to The Swale SPA/Ramsar site, and screening by existing buildings.

Light spillage during construction and operation has the potential to cause disturbance to birds using habitats around the application site. However, given the distance to the Swale SPA/Ramsar site, screening by existing buildings, and the use of best available technology to avoid light spill, Natural England's view is that lighting is unlikely to lead to adverse effects on the designated sites.

2.5. c. Air Quality

2.5.1. Appendix 5.4 of the ES sets out an 'Air Quality Assessment of Ecological Impacts' and concludes no significant impacts based on the process contribution (PC) from the proposal being less than 1% of the critical load/level for all sites and types of pollutant, apart from the predicted PC for NO_x levels at The Swale SPA. In this case the Predicted Environmental Concentration (PEC) only 47% of the critical level, and is, therefore, screened out as insignificant. Natural England agrees with the approach taken to thresholds for significance. However, whilst tables C2 and C3 in Appendix 5.4 consider the birds for which the SPAs are designated, they do not consider the habitat types for which the Ramsar sites are designated, which may have lower critical levels or loads than the bird species. Therefore, Natural England has requested that the applicant add these habitats to the tables in Appendix 5.4.

2.5.2. During construction, air quality impacts could potentially arise from HGV movements and from dust. Natural England agrees that emissions from vehicles can be screened out as the number of HGV movements per day will not exceed 100, which is the threshold set for significant change. It is also agreed that, provided best construction practice measures are followed, adverse effects from dust can be avoided.

2.6. d. Water quality and resources

2.6.1. There is a risk of pollution to surface waters during construction. However, Natural England agrees that standard pollution prevention measures, as part of the Construction Environment Management Plan, and set out in Table 9.14 in the ES, are sufficient to reduce the risk to The Swale SPA/Ramsar site.

2.6.2. During operation, process water will be discharged to the Swale via the applicant's effluent treatment works, and will continue to comply with the existing Environmental Permit. A Water Framework Directive (WFD) scoping assessment of the Permit has been carried out, which concluded that the objectives of the WFD will not be affected. As targets are aligned, it

follows that the objectives of the SPA/Ramsar will likewise be unaffected. However, Natural England has recommended that a MCZ assessment is also carried out, in accordance with the Marine and Coastal Access Act 2009.

- 2.6.3. As no changes to the current surface water drainage scheme for the site are proposed, Natural England agrees that there is not likely to be a significant effect from surface water flows.

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