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Our ref: 355509
Your ref: ExQ2 Further Written Questions



The Planning Inspectorate

BY EMAIL ONLY

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To whom it may concern

The Examining Authority's Further Written Questions and Requests for Information (ExQ2)

We note the Examining Authority's Further Written Questions issued on 1st June 2021, and have extracted those most relevant to Natural England.

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.

Compulsory Acquisition

Q2.2.3 (Applicant)

In response to ExQ1.3.12, the Applicant recognises that the public access rights under S193 of the Law of Property Act 1925 could be extinguished by the CA of Walton Common and acknowledges the possibility that those rights could be found not to apply to the exchange land. In such circumstances, the ExA considers this could result in a loss or diminution of existing rights. Should Art 33 of the dDCO be amended to include specific reference to s193 LPA 1925 as well as the Commons Regulation (West Tilbury) Provisional Order Confirmation Act 1893?

Whilst this question is not directed to Natural England, we can advise that for completeness the DCO should reference all of the legislation from which public rights are derived on Walton Common. It is not clear to Natural England how such rights can be extinguished without the replacement land being made available over which the original rights would be automatically transferred under s16 of the Commons Act 2006. We therefore agree that not to do so would result in a loss or diminution of existing rights.

Habitats and Onshore Ecology

Q 2.7.1 (Applicant)

In view of the importance attached to functionally linked land [see RSPB and Lydd Airport v. SSCLG and SST [2014] EWHC 1523 (admin)], and noting comments from NE [RR-022; PDD-012], please update the assessment of habitat loss and displacement in the Habitats Regulations Assessment Report [PDC-039]. The updated assessment should include consideration of how and to what extent the mudflats support features of the Thames Estuary and Marshes European Site. It is considered that statements such as 'considering the affected area is not within the SPA' are not consistent with the approach adopted by the court in the Lydd Airport case.

Natural England has continued its engagement with the applicant on this matter. Since our letter dated 1st February 2021 (Deadline 'D') Submission of Additional Information (including updated

HRA, now at 'March 2021' version), we can advise that:

- Whilst there is some uncertainty as to the precise area of direct habitat loss (accounting for incremental accretion over time from mudflat to saltmarsh), the area of habitat directly lost is not expected to be >1% of the available functionally linked land resource in this area of the estuary (including some on the south side of the river).
- Nevertheless our calculations indicate that for avocet and ringed plover, birds are present within the disturbance zone at densities comparable to the wider SPA / Ramsar site, which justifies the approach to consider this area as functionally linked to the SPA / Ramsar site.
- An additional recent third party data set is available from Goshem's Farm (under Thurrock Council reference [17/00224/FUL](#)) which also contains a helpful [intertidal invertebrate](#) prey density sampling report which references high prey density in the area affected by the project.
- We have some concerns that 0 counts for qualifying species during the survey period may not be representative of typical usage (those species being generally found within the SPA / Ramsar site during the same period), and although we recognise that any survey is a sampling exercise, this may under-represent the bird usage of the area.
- The HRA does not fully account for the decommissioning phase of the project, noting that the ease of removal of the causeway was a matter of some debate at ISH1. The applicant has offered to clarify and expand on this in due course.
- The importance of inner estuary areas during severe weather means that a precautionary approach should be taken (noting that recent surveyed winters have been either average or milder and may not fully represent these conditions).
- More fundamentally, if an alternative for delivery of AIL exists which is less harmful (which we understand from the Examination is the case), then this option should be selected as a preference. Such 'avoidance' is in line with the EIA and HRA assessment frameworks.

We will continue to work with the applicant to move closer to a Common Ground position on these matters where possible as the Examination progresses.

Q2.7.2 (Applicant / NE)

Please provide an update on the discussions between the Applicant and NE in relation to the outstanding matters referred to in the draft SOCG submitted at Deadline 4 [REP4-012].

With reference to section 3 of the [Deadline 4 SoCG](#), Natural England can comment on each topic in turn below:

- **HRA Matters:** please see comments above.
- **Water Vole translocation:** this matter needs to be revisited in light of the additional water vole impacts that are expected if the alternative AIL access is selected. We understand that a 140m stretch of water vole ditch habitat is to be lost in the eastern section, and that water vole presence is assumed (but not recently surveyed). Provision for water vole mitigation as part of the wider project is considered by the ES Addendum to be adequate for translocation purposes, however no reference to licensing requirements has been made, and it is not clear whether a Letter of No Impediment (LONI) is needed for the purpose of the Examination. We have made enquiries with the developer and will discuss requirements with them shortly. If a LONI is required, then Natural England will need to review a draft licence application submitted via our Pre-Submission Screening service (PSS).

- **Replacement Common Land:** this matter is being progressed via the separate Commons Act s16 application process. We can advise that Natural England has submitted its response to PINS on 26th May, and held a virtual meeting with the applicant's Common Land team on 13th May. Natural England does have outstanding concerns and we assume that the Examining Authority is able to source our response (but a copy is attached for information). We are not aware that the s16 application is to be amended, and that therefore we await the position of PINS on this application.
- **Noise Impact Thresholds:** Natural England is seeking internal specialist advice on these technical matters, and will advise on any implications of this advice in due course.
- **Sediment accretion, saltmarsh creation and mudflat loss:** In our opinion, the loss of the mudflat resource is most appropriately led by the HRA process for matters within our remit, although we recognise there is overlap with EIA requirements. This is because the HRA process will examine the significance of these losses to European ('Habitats') sites, whereas the EIA will examine these losses in their own right. As these areas are not designated it may be more appropriate for this to be led by the Environment Agency in a Water Framework Directive context but we defer to them on this matter. In any event, we cannot yet agree that the long-term loss of mudflat is not significant, because of the reasons outlined above.

We hope the above comments are helpful to you at this point in the Examination of this project.

Yours sincerely

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