

Date: 20 September 2021
Our ref: 14030
Your ref: EN010095



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BY EMAIL ONLY

Dear Max Wiltshire,

Application by Alternative Use Boston Projects Ltd. for Order Granting Development Consent for the Boston Alternative Energy Facility - Rule 6 Letters

Thank you for your consultation on the Rule 6 letter dated 17 August 2021. The following constitutes Natural England's formal statutory response.

1. Procedural changes

Natural England recognises that there have been changes to the Examination structure due to the current ongoing Covid-19 situation.

Natural England has also reviewed our engagement on Nationally Significant Infrastructure Projects (NSIPs) over the last 18 months and have identified some changes that we will be making going forwards.

Therefore, please accept this letter as Natural England's comments in relation to the contents of the Rule 6 letter and an explanation of how Natural England proposes to provide our statutory advice to the Examining Authority (ExA) during the Examination phase of the project.

2. Attendance at Preliminary Meeting

Thank you for the invitation to the Preliminary Meeting on the 28 September and 7 October 2021. Natural England can confirm **we will not attend**. We hope this letter will suffice in providing our input into the Hearings.

3. Annex C – Principal Issues

3.1 Item 1 - Air Quality

Natural England notes that impacts from changes in air quality on priority habitats is not included on the list and whilst this may be in part considered under *Item 7 Habitats, Ecology and Nature Conservation*; we advise that an update to the air quality assessment is required and relates to this item.

3.2 Item 5 - DCO/dML

Natural England advises that the DCO/dML should be updated to ensure that mitigation and/or compensation measures are adequately secured.

3.3 Item 7 – Habitats, Ecology and Nature Conservation

Although ‘*Generic issues in relation to missing or insufficient information*’ is highlighted in Annex E(H), Natural England draws the Examining Authority’s attention to the level of information that remains to be provided to demonstrate that the proposed development is in an appropriate location given its proximity to The Wash European Marine Site (NB: collective name given to the numerous overlapping designated sites). In our view the limited ecological data and evidence provided to support the Application is the principal outstanding concern and is integral to progressing this Application. Without relevant evidence to inform the magnitude/scale and significance of the impacts a more precautionary approach must be taken.

In addition, as with other NSIPs Natural England is advising on, we advise where there is disagreement and/or uncertainties on the significance of the impacts, and an Adverse Effect on Integrity cannot be excluded beyond all reasonable doubt, that an In Principle derogations case, including a compensation package, is provided as part of the Application. Or for this case, prior to the examination progressing beyond Deadline 1.

At this stage there is no clear indication when or whether this information will be submitted by the Applicant and we seek clarification on this critical matter.

Having this information at the start of the Examination would ensure that the maximum amount of time is then available to the Examining Authority and Interested Parties to review the evidence and explore the options to determine whether they are appropriate, can be secured and will be deliverable.

3.4 England Coast Path

Natural England notes that matters relating to public rights of way are not included as a principal matter but given that a diversion of the England Coast Path is required to deliver this project, and this is likely to be subject to a separate Habitat Regulations Assessment we advise that this matter is a priority issue to be addressed.

4. Annex D - Draft Examination Timetable

4.1 Statement of Common Ground

Natural England notes the request for the submission of a Statement of Common Ground (SoCG) at Deadline 1 on 19th October 2021. We note that the contents of a SoCG will be limited at this time as we are still working on numerous outstanding issues with the Applicant.

Nevertheless, whilst incomplete, we will set out those areas where there is common ground with the Applicant. The SoCG will, necessarily, be subject to change over the course of the Examination.

Natural England is also developing our own Risk and Issues Log to sit beside the Applicant-led SoCG. The updated Risk and Issues Log will be provided at all Deadlines, as it may be of assistance to the ExA in understanding Natural England’s current outstanding issues. This issues log is owned by Natural England and reflects our position; with the first iteration being submitted at Deadline 1.

Natural England note the request for updated SoCG at Deadlines throughout the Examination. However, SoCG requires a significant resource to update and agree. Therefore, we advise that the development of SoCG should not be to the detriment of the actual resolution of issues during the process and so Natural England is proposing not to issue SoCG mid-Examination. We will work with the Applicant and submit a final SoCG at Deadline 8 once all issues have been either resolved or progressed as far as possible. However, the regular update and submission of our Risk and Issues Log will assist the ExA to monitor the progress on outstanding issues.

4.2 Response to Deadlines

Throughout the Examination it is expected that many documents will be submitted and published on the PINS website. Whilst Natural England will check all documents; we will only conduct detailed review and provide feedback on documents deemed relevant to our statutory function and the issues we have raised. We will advise the ExA in writing at each Deadline of which documents we have reviewed.

We would like to highlight to the Examining Authority, that only new documents (version 1) or revised versions of outline documents/plans where amendments have been formally made will be responded to by Natural England at each relevant Deadline

If there is a document Natural England has not reviewed that the ExA wishes to have our opinion on then please inform us as soon as possible and we will endeavour to review ahead of the next Deadline or advise which Deadline comments could be expected. Any documents not listed within our Deadline responses should be assumed to have not undergone detailed review by Natural England.

Additionally, if the ExA wishes Natural England to have reviewed specific documents for discussion at the ISH, please advise as early as possible and no later than within the draft agenda which documents you wish to discuss so we can prepare appropriately. This will help ensure best value is obtained by all parties attending the ISH.

Unless there is a specific question posed by the ExA on another Interested Parties Relevant or Written Representations, Natural England will not provide comment on these Representations.

4.3 Accompanied Site Inspections

Natural England advises that, while we rarely attend site visits, any access to designated sites will require assent from Natural England under The Wildlife and Countryside Act 1981 (as amended) unless the visits are restricted to public rights of way.

4.4 Issue Specific Hearings

Natural England notes the Examination timetable has included a series of Issue Specific Hearings (ISH). The decision on attendance at any ISH will be based on the outstanding issues, wider resource requirements and ensuring best value. However, Natural England will continue to engage with the Applicant and other interested parties throughout the Examination to ensure issues are progressed and wherever possible resolved. We are currently engaging with the Applicant during the pre-Examination period and have recently taken part in a series of workshops aimed to address outstanding issues.

For all hearings we request that an agenda with times, themes and areas of discussions is provided by the Planning inspectorate at least 7 days before. Based on our experience from other NSIPs it would be helpful to Natural England and our specialists if the ISH agendas could be focused on specific questions from the ExA. This will enable us to appropriately prepare for the hearing; give due consideration to any issues both internally and externally with the Applicant beforehand; and provide robust evidence-based advice to the ExA. This will reduce the need for further discussion and advice post ISHs, prior to the next Deadline.

Our non-attendance at hearings should not be construed as a lack of concern on outstanding issues, or a lack of willingness to engage. As detailed above we are committed to proactively engaging with parties on this project and to gaining the best possible outcome.

4.5 Examination Timetable

4.5.1 Deadline 3

Natural England requests that this deadline is moved to allow more than the current four working days post Issues Specific Hearings to submit all of the requested information. This is due to

allowing sufficient time to provide a robust review of submissions and prepare our response.

4.5.2 Christmas Break

Due to Natural England offices closing between Christmas and New Year we welcome the break from examination deadlines over this period

5.3 Introduction of New Deadlines

During previous Examinations ExAs have allowed Applicants to submit documents in between Deadlines, effectively introducing additional Deadlines, for example, Thanet Extension and Norfolk Vanguard had several half deadlines.

Please be advised that we will be working with Applicant in between Deadlines under our Discretionary Advice Service. There is an expectation that the Applicant would then submit documents into Examination at the next appropriate Deadline. Half deadlines are not helpful as we are duty bound to review documents submitted at Deadlines, which could create duplication of effort reviewing out of date documents and confuses the process within short Deadlines. Should there be documents that the Applicant wants to submit between Deadlines we suggest these are issued at the next appropriate Deadline, and we will respond at the following Deadline, or if time does not allow the subsequent Deadline.

For any queries relating to the content of this letter please contact me using the details provided below.

Yours sincerely,

Lydia Tabrizi

Norfolk and Suffolk Team
Natural England

