

Date: 07 April 2022
Our ref: Case: 14030 Consultation: 387902
Your ref: EN010095



National Infrastructure Planning
The Planning Inspectorate
Temple Quay House
2 The Square
Bristol
BS1 6PN

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

T 0300 060 3900

BY EMAIL ONLY

Dear Max Wiltshire,

Boston Alternative Energy Facility (BAEF)

The following constitutes Natural England's formal statutory response for Examination Deadline 10.

1. Natural England Deadline 10 Submissions

Natural England has reviewed the relevant documents submitted by the Applicant at Deadline 9. 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. Natural England is submitting the following documents within the following thematic appendices:

- Appendix B9 – NE Comments on Final Waterbird Survey Report [REP9-032]
- Appendix C5 – NE Comments on Vessel Limits
- Appendix F7 – NE Comments on draft DCO [REP9-003] and Schedule of Changes to dDCO [REP9-028]
- Appendix H9 – Risk at Issues Log Deadline 10

2. Air Quality Resource

As previously highlighted, Natural England has had resource limitations in relation to providing further air quality advice. This has fundamentally been due to COVID complications. Unfortunately we continue to be unable to update our advice provided at Deadline 5 [REP5-014]. In recognition that this is the last deadline before the end of examination on 7th April 2022, we offer an alternative of responding to a pre determination consultation from the Secretary of State to any outstanding queries they may have relating to this matter.

3. Overview of Natural England's Position

Natural England (NE) believes opportunities have been missed because Alternative Use Boston Projects Limited (the 'Applicant') did not take full advantage of the pre-application phase for a) collecting the necessary data and b) consulting with interested parties on the impacts of the Boston Alternative Energy Facility/Project. This has resulted in an under-developed Application being considered during Examination. Although more information has been submitted during the Examination, it is our view that the approach to providing this information and the timeframes for doing so have significantly hindered us in our ability to provide statutory advice to the Examining Authority (ExA) on the scale and significance of the proposals. Furthermore, the ability to provide detailed and authoritative advice has been obstructed by the submission of conflicting project design parameters within the updated Environmental Statement chapters and supporting documents/plans.

We also express concern that aspects of the latter deadline submissions from the Applicant contain newly presented information and assessment material that we may not have previously seen due to the constrained nature of submission timescales e.g. compensation documents. In addition, where we have provided advice throughout the Examination, it remains unclear if/how that advice had been followed in subsequent document/plan iterations. Equally, it is unclear whether the proposed project design changes have been secured in the DCO/dML or a named plan.

The consequence of the above issues is that there was limited common ground between NE and the Applicant at submission, and limited progress has been possible since the start of the examination. This has meant we have been impeded from offering the ExA the level of advice and guidance necessary to support the Examination process. This is of particular concern in relation to advising on the appropriateness of mitigation and compensation measures that are required to minimise and offset impacts.

We query if/how the Applicant is proposing to respond to technical comments recently provided by NE in response to the draft Development Consent Order (DCO) document review. Unless this is promptly clarified and then addressed there is likely to remain limited 'common ground' with the Applicant.

It is the view of NE that there remain significant levels of doubt/uncertainty regarding the impacts of the project, and also the likely effectiveness of the mitigation and compensatory measures proposed. Despite these shortcomings, if the SoS is minded to consent this project (potentially with recourse to the derogations in the Habitats Regulations) a significant amount of work will remain to be done post-Examination to address the outstanding issues. We advise that any further statutory consultation in the post-consent phase will need to remain open and transparent as we consider that these are matters where an appropriate level of public participation is required.

4. Response to Rule 17

Please see below for our response to the Rule 17 questions.

Question to:	Question:	NE Response
Applicant, NE and RSPB	In order to provide more certainty that the proposed in principle compensation measures are deliverable and can be secured please: i) provide a 'letter of comfort' from the landowners who have agreed in principle that their land may be used as compensatory sites; and ii) provide a plan that more clearly identifies the location of the proposed sites in relation to the application site and the European sites. NE and RSPB may wish to comment.	Natural England has not been privy to any additional information from the Applicant in relation to this matter. As such our previous advice remains unchanged.
NE	It is noted that NE consider that the two compensation sites identified by the Applicant have the potential to compensate effects on some but not all of the impacted features at the application site and at the mouth of The Haven [REP9-058]. Please confirm the features for which the proposed compensation is unsuitable and that an adverse effect on integrity (AEol) cannot be ruled out.	Due to multiple uncertainties, Natural England's comments are over-arching rather than relating to particular species. Natural England advises that, based on the available information on both the scale of the impacts and the details of the compensation package, there is a risk that the compensation measures may

		<p>not fully offset the impacts due to:</p> <ul style="list-style-type: none"> • Unknown scale and significance of impacts; • Insufficient space/area to deliver improvements; • Disturbance limiting bird usage, and/or • Depending on the site management, the area may not be 100% suitable habitat. <p>This list is not exclusive as more issues may arise when more information is provided.</p>
NE	<p>It is unclear from differing comments in documents submitted at Deadline 9 whether NE consider the Habitat Mitigation Area to comprise a mitigation or compensation measure [REP9-063 and REP9-058]. Please confirm the position.</p>	<p>It is rare that there is a complex situation where there is a requirement to offset impacts to SPA species both with SPA boundary (MOTH) and functionally linked land (The Haven). The most analogous example to the BAEP situation is Able Marine Park¹. This situation makes determining what is required under mitigation/compensation somewhat challenging and, due to how the Applicant has presented the information, the messaging has become confused.</p> <p><u>HMA</u> Usually, where for example a warehouse is constructed in an area of functionally linked land, with no impacts within the SPA, the creation of a wetland in the adjacent field would be considered as mitigation rather than compensation under the Habitats Regulations. However, in the BAEP situation the HMA along The Haven will only help mitigate for the functionally-linked habitat loss, <u>but not the likely disturbance from associated activities (vessel movements)</u>. This will most</p>

¹ Example E16 Page 60 of [REDACTED]
[REDACTED]
[REDACTED]

		<p>likely need consideration in the compensation area as birds are likely to move between the two areas (please see REP8-023 for our latest advice on compensation measures and Natural England's concerns about recreational disturbance and the HMA).</p> <p>And, to complicate matters, a further material consideration - the impacts of creating the HMA on priority saltmarsh habitat - has not been addressed by the Applicant. Also, there are uncertainties as to if/when management of the HMA area will occur over the lifetime of the project to ensure it continues to mitigate any project impacts and not return to its original state.</p> <p><u>MOTH</u> For the AEol from disturbance at MOTH, compensation is required in a different area.</p> <p>The Applicant has amalgamated the mitigation and compensation within their derogations case, but without explicitly determining the requirements of the two measures or demonstrating that the compensatory package will address these. Due to the issues set out in our response to the previous ExA query, the quantum for the required measures remain unknown.</p>
NE and RSPB	<p>Golden plover The RSPB consider that golden plover should be listed as a feature of The Wash Special Protection Area (SPA) in its own right according to the 2001 SPA Review Site Account for The Wash [REP9-065]. It is not listed as a qualifying feature in the Conservation Objectives document, last updated in February 2019, on NE's website. Please would NE confirm the position. RSPB may wish to comment.</p>	<p>Natural England agrees with RSPB that the numbers of golden plover within The Wash SPA justify the protection of this species. And the conservation objectives as written would equally apply to this species if it were to become a named feature (i.e. wouldn't need updating). The protection of this feature is going through due process and until this has</p>

		completed we advise that measures should be taken to avoid/mitigate impacts to this species. In any event, golden plover forms part of the waterbird assemblage feature of the SPA.
Applicant and NE	In the absence of powers to enforce a vessel speed limit in The Haven to avoid/reduce collision risk for harbour seals please provide a joint statement on an agreed position on mitigation measures. If you are unable to arrive at a joint position, please confirm what your individual positions are.	Please see Appendix C5 at Deadline 9.
NE	In relation to Annex 1 of REP8-021, please identify the locations where there would be an AEol in relation to seal.	Natural England advises that there are impact pathways from underwater noise and interactions with vessels in The Haven and The Wash that haven't been fully mitigated for.
Applicant and NE	Draft Development Consent Order (dDCO) Schedule 11 REP9-033 states that dDCO Sch 11 paragraph 11 provides that "Unless otherwise agreed in writing by the Secretary of State, the compensation measures in place for habitat loss as a result of the construction of Work No. 4 must be maintained following the decommissioning of Work No. 4, unless the intertidal habitat is reinstated to an acceptable condition to enable waterbirds to return to use this area for roosting." How would it be determined that the intertidal habitat had been sufficiently restored and who would be involved in the decision? NE may wish to comment.	Natural England notes that this question is for the Applicant to answer. However, we would advise that it is essential that a specific definition describing what successful restoration is must be agreed as part of the agreement of any pre construction plans. This should include a consideration of the likely impacts, a timetable for expected recovery, details of monitoring and options for adaptive management should the monitoring highlight recovery is not occurring as expected, along with trigger points that define what would trigger the use of the adaptive management measures. These are broadly provided for within the DCO Schedule 11 condition 5 and 8, however, much of the detail will need to be agreed post consent. Please note this response does not alter Natural England's responses regarding the sufficiency of the proposed compensation provided in previous responses.
NE, RSPB,	The Applicant made a number of submissions at Deadline 9, for example	Please see Appendix B9 for our comments on REP9-032.

LWT	the Final Waterbird Survey Report [REP9-032] and the Fifth Report on Outstanding Submissions [REP9-033]. Please comment on these submissions identifying specific points of agreement, as well as specific points of disagreement. In the case of points of disagreement it would assist the Examining Authority if you would state clearly your position.	
-----	--	--

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 Area Team

[REDACTED]

[REDACTED]