



Department for
Business, Energy
& Industrial Strategy

1 Victoria Street
London
SW1H 0ET

Web: www.gov.uk/beis

To:

Our Ref: EN010095

The Applicant
Natural England
The Environment Agency

Date: 14 October 2022

Dear Sir or Madam,

Planning Act 2008 and The Infrastructure Planning (Examination Procedure) Rules 2010

Application by Alternative Use Boston Limited (“the Applicant”) for an Order granting Development Consent for the proposed Boston Alternative Energy Facility (“the Proposed Development”)

1. Following the completion of the Examination on 07 April 2022, the Examining Authority (“ExA”) submitted a Report and Recommendation in respect of its findings and conclusions on the application for the Proposed Development (the “Application”) to the Secretary of State for Business, Energy & Industrial Strategy (“the Secretary of State”) on 07 July 2022. The new statutory deadline for determining the Application is 10 January 2023.
2. The reason for the new deadline is that there are significant outstanding matters on which the Secretary of State requests the parties identified in bold to provide further information or updates as appropriate.

3. The Applicant

3.1. Is requested to provide without-prejudice additional mitigation measures and / or enhancements to the existing proposed mitigation measures to reduce disturbance effects to bird species of The Wash SPA, specifically mitigation of impacts as a result of:

- construction noise and vessel disturbance at the Application site;
- disturbance along The Haven; and
- disturbance at the mouth of The Haven;

and associated updates to documents such as the template Navigation Management Plan [REP8-011]. This should include, but not be limited to consideration of concerns raised by Natural England [REP8-024], regarding the Technical Note for Navigation Management and Ornithology [REP6-033] and evidence that adaptation of vessel movement parameters would mitigate impacts and/or can be secured [REP9-063].

- 3.2. Is requested to explain whether it considers that an updated assessment of impacts to harbour seal is required to account for an appropriate worst-case scenario, in light of its inability to enforce vessel speed limits. The Applicant is also requested to provide without-prejudice additional mitigation measures and / or enhancements to the existing proposed mitigation measures to reduce collision risk impacts to the harbour seals of The Wash and North Norfolk Coast SAC, with particular regard to concerns raised by Natural England in [REP10-036] and [REP10-038].
- 3.3. Is requested to propose measures to improve the effectiveness of the proposed Marine Mammal Observers in The Haven, and their ability to implement vessel course corrections. This should include detail of how mitigation will be secured.
- 3.4. Is requested to provide further information, beyond that already provided to the Examination, which may assist the Secretary of State in considering its without-prejudice case with regards to Imperative Reasons of Overriding Public Interest ("IROPI").
- 3.5. Is requested to provide without-prejudice compensation measures with regards to collision risk impacts on the harbour seal feature of The Wash and North Norfolk Coast SAC.
- 3.6. Is requested to provide further information regarding the without-prejudice proposed compensation sites for The Wash SPA, with regard to concerns raised by Natural England and the RSPB, such as in [REP9-058, REP9-059, REP10-036] and [REP10-043, REP10-045, REP10-046] respectively which were outstanding at the end of Examination, and any associated updates to documents including the Compensation Measures Document [REP8-006]. This should include, but not be limited to:
 - land survey data;
 - suitability of the habitat proposed to effectively address the ecological requirements of each of the affected individual species and that this does not displace existing qualifying features of the designated sites;
 - carrying capacity;
 - an update on compensation site selection, along with details of when the site is expected to be secured;
 - confirmation of how the purchase / lease of the proposed compensation site will be secured in the DCO;
 - details of alternative compensation measures to be adopted, should the preferred compensation sites not be secured;
 - an updated Proposed Development construction timetable which allows for the design, delivery and implementation of fully ecologically functional compensation measures before the predicted adverse effects occur; and

- how the proposed compensation will be adequately secured through the DCO / DML.

3.7. Is requested to provide evidence of its statement made in the Overall Summary of Case [REP10-019], that: *“The Crown Estate have provided consent pursuant to s135(2) of Planning Act 2008 by email to the Planning Inspectorate on 6 April 2022”*.

3.8. Is requested to provide a plan of Natural England’s suggested alternative to the proposed diversion route of the England Coast Path, as shown in Figure 1 of [REP2-047]. This is described in [REP5-015] as: *“This alternative would continue with approximately 200m of the northern section of BOST/14/4 and introduce a short new section of footpath (110m) which would join BOST/14/11.”*

4. Natural England

4.1. Is invited to comment on the implications for the Proposed Development of the proposed change to the Conservation Objectives for the harbour seal feature of The Wash and North Norfolk Coast SAC from “maintain” to “restore”, with particular regard to when this change may come into effect.

4.2. Is invited to confirm whether it considers that the ‘Habitat Mitigation Area’ is appropriate to mitigate the effects of the loss of functionally linked land at the Application Site.

4.3. Is invited to advise whether an adverse effect on integrity resulting from changes in air quality can be excluded and, if so, for which protected sites and features this advice applies, in light of the Applicant’s comments in [REP6-035] and otherwise.

5. The Environment Agency

5.1. Is invited to provide an update on its position regarding Environmental Permitting, with particular regard to air quality.

6. Responses to the requested information should be submitted by email only to: BostonAlternativeEnergyFacility@planninginspectorate.gov.uk by 23.59 on 11 November 2022.

7. Responses will be published on the Boston Alternative Energy Facility project page of the National Infrastructure Planning website as soon as possible after the deadline:

<https://infrastructure.planninginspectorate.gov.uk/projects/north-east/boston-alternative-energy-facility-baef/>

8. This letter is without prejudice to the Secretary of State’s consideration of whether to grant or withhold development consent for the Boston Alternative Energy Facility or any part of the project. Nothing in this letter is to be taken to imply what the eventual decision might be or what final conclusions the Secretary of State may reach on any particular issue which is relevant to the determination of the application.

Yours faithfully

pp. Gareth Leigh

Head of Energy Infrastructure Planning Delivery