

Date: 04 May 2023
Your ref: EN010120



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BY EMAIL ONLY

Dear Sir/Madam,

NSIP Reference Name / Code: EN010120

Title: Natural England's response to the Examining Authority's (ExA's) second written questions

Examining authority's submission deadline 09 May 2023

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.

For any further advice on this consultation please contact the case officer Alice Megaw at [REDACTED] [@naturalengland.org.uk](mailto:[REDACTED]@naturalengland.org.uk) and copy to consultations@naturalengland.org.uk.

Yours faithfully

Alice Megaw

Natural England's response to the Examining Authority's (ExA's) second written questions with a deadline of 09 May 2023

1.1. Natural England will provide a detailed response at Deadline 7, following expected submission of an updated Biodiversity Net Gain (BNG) Report, Biodiversity Metric, and assessment of operational air quality impacts on Barn Hill Meadows Site of Special Scientific Interest (SSSI). In this absence of these documents, we are not in a position to update our position at this stage.

1.2. Our response to the relevant Examining Authority's (ExA's) second written questions (issued 19 April 2023) is detailed in Table 2a.

Table 2a: Natural England response to Examiner's second written questions			
ExA question ref	Question addressed to	Question	Answer
BIO.2.1	Applicant/NE	Could the Applicant/ NE provide an update on progress with the District Level Licensing application in relation to GCNs	<p>As outlined in the Statement of Common Ground (SoCG) Between Natural England and Drax Power Limited dated April 2023 (AS-032), Natural England require a First Stage Payment (FSP) to be made before an Impact Assessment and Conservation Payment (IACPC) can be counter-signed by Natural England management and issued.</p> <p>Following issuing of the FSP invoice to the Applicant, the Applicant has requested re-issue of the invoice to WSP, on behalf of the Applicant. We are now awaiting our finance partner to complete this request. Unfortunately, due to the financial year end, there has been a delay in processing this. The invoice will be re-issued to the consultant as soon as possible to enable payment of the FSP.</p>
BIO.2.2	NE	Could NE confirm whether it considers that dDCO R10 sufficiently secures the surface water drainage measures during operation.	<p>Natural England considers that dDCO R10 is appropriate to secure the relevant surface water drainage measures, although, as set out in the SoCG Between Natural England and Drax Power Limited dated April 2023 (AS-032), Natural England's comments regarding the term '<i>substantially in accordance with...</i>' and its proposed application in the context of mitigation measures relied upon in the conclusions of the HRA remain as detailed in Table 1 and Table 2 of our Written Representation (REP2-085)).</p> <p>We acknowledge the Applicant's statement in the SoCG that "<i>Without the term 'substantially, 'in accordance with' can be construed as meaning 'exactly the same as'. This is not appropriate for any Requirement in the draft DCO as it is a</i></p>

			<p><i>final plan to be developed based on the detailed design of the Scheme and any update in legislation or guidance. It is therefore important that the term ‘substantially’ remains as part of this Requirement in order to build in the flexibility needed for the plan to be developed in response to the greater level of detail that will be known at a later stage.”</i></p> <p>However, we reiterate that there is potential uncertainty around whether this could lead to changes that mean the measures committed to in the HRA are not strictly implemented, and therefore the conclusions of the HRA could be undermined.</p> <p>We welcome reference in the SoCG to ensuring that <i>“the mitigation outcomes that have been committed to are still delivered”</i> and recommend that this should be confirmed in the relevant documents.</p>
BIO.2.3	NE	In its D5 submission [REP5-030], Biofuelwatch raised two questions in relation to NE’s D4 submission [REP4-041]. Would NE like to respond to these points?	<p>In response to Biofuelwatch’s question 1 on Key Issue 20, it is acknowledged that the use of modelling to predict pollutant deposition levels will be subject to uncertainty. To mitigate for this uncertainty, precautionary/ conservative assumptions have been applied in the model, for the scheme alone and in combination with other plans/projects. The identification of appropriate in-combination plans/projects, and the incorporation of their emissions in the model has been undertaken in accordance with PINS guidance¹ and good practice. Natural England has no reason to suggest further uncertainty needs to be applied to the assessment, which is designed to be precautionary.</p> <p>Natural variation in deposition levels can occur as a result of factors such as changes in meteorology, nearby farming activities, and fluctuations in human activity. The level of this variation is unquantified and site-specific, but the Institute of Air Quality Management (IAQM) states that changes of 1% of</p>

¹ Advice Note Seventeen: Cumulative effects assessment relevant to nationally significant infrastructure projects Published August 2019 (version 2)

the critical level/load are not discernible from such fluctuations in the background levels. In addition, average background levels of pollution obviously have substantial variation within them. A 1km x 1km grid square will have much higher and much lower levels within the grid area than the cited background deposition – especially where local sources such as agricultural infrastructure or roads are present. Even removing such highly localised variation, the average background levels of N deposition across Thorne Moor SAC range from 18.3 - 20.2 kgN/ha/yr (taking the 3-year average N deposition 2018-2020 on APIS). Against this, the 0.063 kgN/ha/yr maximum additional N deposition from the proposed development in-combination with other plans and projects, is within the levels of regional variation.

Any conclusion that a certain addition of a pollutant will be within the realms of natural variation for any particular protected site is necessarily subjective, and Natural England does not specifically use a quantum of natural variation in its decision-making process. However, having regard to the site-specific considerations in this case, including evidence provided by the applicant in the appropriate assessment (section 4.3.75-4.3.85 of the HRA), and the fact that effective and reliable mitigation is proposed for the BECCS project itself, Natural England was able to accept the conclusion that the additional nitrogen and acid deposition would not result in an adverse effect to integrity of the SAC.

Responding to question 2, it is correct that when critical loads for a protected site are exceeded in the background (as, for example, at Lower Derwent Valley SAC/ Ramsar and Thorne Moor SAC) extra caution must be taken when allowing development (alone or in combination) that will add to this background exceedance, even by very small amounts. The question whether such additions to a site above its critical load would automatically result in an adverse effect was addressed by the UK Courts (Compton v Guildford Borough Council

			<p>2019)² . In this case, the claimant was arguing that a local plan to re-develop green belt land was “bound” to add to pre-existing exceedances of critical levels for NOx, thereby having an adverse effect on the integrity of an SPA. However, the court rejected this assumption, highlighting that the impact of the development on the site features is also integral in the assessment and that exceedance informs decisions, but is not definitive. Thresholds should be used to identify the possibility of risk of harm to a designated feature, rather than be interpreted as an indicator of actual harm.</p> <p>Natural England therefore considers that exceedance of the critical load is an indicator of potential, long term risk to the qualifying habitats from air pollution. However, an exceedance alone does not necessarily undermine the site’s conservation objectives or mean that a site is deemed to be unfavourable. A site-specific assessment is required before such a conclusion can be reached. Having regard for this, therefore, once screened into appropriate assessment, there is no numeric value that will always be acceptable or not acceptable at a particular site. Any decision must be preceded by a consideration of the site’s conservation objectives and consider issues including (but not restricted to):</p> <ul style="list-style-type: none">• the qualifying habitats and species and their sensitivity to pollution according to scientific literature;• any environmental factors that could indicate a higher point in the critical load could be applicable;• mitigation to be employed and whether this is appropriate, reliable and quantified;• any trends in pollution in the area and committed measures to reduce that pollution; and• in-combination developments from the same and different sectors that would add to the pollution load locally.
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² [Compton Parish Council & Ors v Guildford Borough Council & Anor \[2019\] EWHC 32426](#)

			<p>For European sites, a key consideration is always whether the proposal will undermine the conservation objectives of the site – for example, will it counteract overall actions to restore deposition of air pollutants to below critical loads? Such consideration is critical to ensure that multiple small additions of pollutants do not result in continued ecological damage.</p> <p>In this case, Natural England agreed with the conclusions in the applicant’s HRA that the proposed development will not impact on measures to reduce emissions from existing sources (such as Drax itself, via increasingly stringent environmental permit conditions and the National Emissions Ceiling Regulations) and from the dominant sources of N deposition in the area (agricultural operations and imports from other countries via long range transport). Proposed mitigation will substantially decrease acid deposition from the project and this mitigation will be ensured by monitoring as a condition of the environmental permit. It is therefore accepted in this case that addition of the cited in-combination amounts of acid deposition and nitrogen deposition to the protected habitats would not undermine the conservation objectives even though critical loads are already exceeded at the protected sites.</p>
BIO.2.4	NE	<p>Could NE confirm that it is satisfied that the latest version of the OLBS [REP5-013] and REAC [REP5-011] satisfactorily secure mitigation and BNG.</p>	<p>Natural England welcomes the additional detail provided within the OLBS [REP5-013] and REAC [REP5-011]. However, as highlighted in paragraph 1.1 above, Natural England are awaiting the updated Biodiversity Metric and Biodiversity Net Gain (BNG) Report anticipated at Deadline 6, in which the applicant is providing results of updated BNG calculations and “<i>additional explanatory text summarising the mechanisms by which 10% BNG is secured.</i>” (REP5-017) Therefore, we are not able to update our position at this stage.</p>