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Your ref: EN010132



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Dear Andrea Mageean

NSIP Reference Code: EN010132

Natural England's comments in respect of West Burton Solar Project

Examining authority's submission deadline: 07 December 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 Andrew Stubbs and copy to consultations@naturalengland.org.uk.

Yours faithfully

Andrew Stubbs

Planning & Environment Senior Adviser

WRITTEN REPRESENTATIONS

PART I: Natural England's Updated advice on matters relevant to the natural environment (Starting at Page 2)

PART II: Natural England's detailed comments on the Development Consent Order (DCO) (starting on page 10)

PART III: A summary of Natural England's up to date advice on matters relevant to the Natural Environment (starting at page 12)

Natural England's Written Representations

Part I: Natural England's Updated advice on matters relevant to the natural Environment

Summary of Natural England's Advice

Natural England have been engaged by the applicant following the submission of our relevant representations; work is underway on a statement of common ground (SoCG). The statement is as yet unfinished; however, we do not anticipate any of the areas remaining under discussion to become fundamental areas of disagreement.

In summary, the main subject of ongoing discussion with the applicant is outstanding matters relating to Soils & Best and Most Versatile land, namely the detail of the oSMP and restoration of the site following decommissioning, however, progress is being made towards agreement on these matters.

Part I of these written representations provides details of Natural England's advice in relation to the DCO application. This advice identifies whether any progress in resolving issues has been made since submission of our relevant representations (RR-233). Our comments are set out against the following sub-headings which represent our key areas of remit as follows:

- International designated sites
- Nationally designated sites
- Protected species
- Biodiversity net gain
- Nationally designated landscapes
- Soils and best and most versatile agricultural land
- Ancient woodland and ancient/veteran trees
- Connecting people with nature (National Trails, open access land and England Coast Path)

Our comments are flagged as red, amber or green:

- **Red** are those where there are fundamental concerns which it may not be possible to overcome in their current form
- **Amber** are those where further information is required to determine the effects of the project and allow the Examining Authority to properly undertake its task and or advise that further information

is required on mitigation/compensation proposals in order to provide a sufficient degree of confidence as to their efficacy.

- **Green** are those which have been successfully resolved (subject always to the appropriate requirements being adequately secured)

Internationally Designated Sites - GREEN

Natural England's overall position regarding internationally designated sites has not changed since submission of our Relevant Representations (RR-233).

Our position regarding impacts to internationally designated sites is as set out in our Relevant Representation (RR-233). This is also summarised within our Written Representation Part III.

It should be noted that paragraph 4.1.1 of the applicant's iHRA states:

'According to the Conservation of Habitats and Species Regulations 2017 (as amended), the network of national sites receiving protection under this legislation is limited to SACs and SPAs. Notably, Ramsar wetland sites are no longer considered part of this network although in effect receive protection through their overlap with SACs and SPAs.'

Natural England have discussed this with the applicant, as it is also government policy that Ramsar sites, potential SPAs, possible SACs and sites used to compensate for adverse effects on European Sites are considered in the HRA process. This is described in paragraph 181 of the National Planning Policy Framework:

'181. The following should be given the same protection as habitats sites: a) potential Special Protection Areas and possible Special Areas of Conservation; b) listed or proposed Ramsar sites; and c) sites identified, or required, as compensatory measures for adverse effects on habitats sites, potential Special Protection Areas, possible Special Areas of Conservation, and listed or proposed Ramsar sites.'

The overlap between the SAC/SPA designations and Ramsar designation is noted, both geographically and with regard to the designated features. However, this should not warrant the omission of consideration of the Ramsar designation in its own right.

All but one of the Ramsar site's features are also features of the SAC/SPA. Natterjack Toad are a feature of the Ramsar site only. Due to the physical separation of the site from the proposed development, and the limited range of the Natterjack Toad, Natural England do consider that impacts on this feature are unlikely, however, this should be noted within the application documents for completeness.

Nationally Designated Sites - GREEN

Natural England's position regarding nationally designated sites has not changed since submission of our Relevant Representations (RR-233).

Our position regarding impacts on nationally designated sites is as set out in our Relevant Representation (RR-233). This is also summarised within our Written Representation Part III.

Protected Species - GREEN

Natural England's position regarding European protected species has changed since submission of our Relevant Representations (RR-233).

Our updated advice, as set out below, is based on our engagement with the applicant regarding the Statement of Common Ground. The wording of section ECO-09 of the SoCG is not yet completed, however, given the absence of any identified need for a licence at this stage, Natural England consider the applicant has taken the necessary steps to reduce the likelihood of Protected Species Licencing becoming an impediment to the implementation of the DCO. As such, we have re-categorised this subject to **GREEN**.

Biodiversity Net Gain Provision - GREEN

Natural England's position regarding provision of biodiversity net gain has not changed since submission of our Relevant Representations (RR-233).

Our position regarding biodiversity net gain provision is as set out in our Relevant Representation (RR-233). This is also summarised within our Written Representations Part III.

Whilst the Biodiversity Net Gain plans are welcomed, Natural England consider the Biodiversity Net Gain requirement (Requirement 9) could be strengthened to specify a minimum of 10% biodiversity net gain, in the event that post-consent design alterations impact the Biodiversity Metric calculations.

Nationally Designated Landscapes - GREEN

Natural England's position regarding nationally designated landscapes has not changed since submission of our Relevant Representations (RR-233).

Our position regarding nationally designated landscapes is as set out in our Relevant Representation (RR-233). This is also summarised within our Written Representation Part III.

Soils and Best and Most Versatile Agricultural Land – AMBER

Natural England's overall position regarding soils and the best and most versatile agricultural land has not changed since submission of our Relevant Representations (RR-233), although progress has been made with regard to the issues raised in those representations.

Our updated advice, as set out below, is based on discussions held with the applicant regarding the Statement of Common Ground.

Where matters previously raised in Natural England's relevant representations are not further discussed here, it can be considered that Natural England have no further comments or concerns.

The omission of assessment of the impact of all elements of the development on soils and Best & Most Versatile land – GREEN

Within the latest version of the SoCG received by Natural England, the applicant states:

'The Applicant's position is that the effect of the Scheme on agricultural land resource across each of the components referred to by NE is the same.'

There will be no permanent loss or sterilisation of agricultural land to substation and BESS structures, as noted in paragraph 19.9.3 of the ES [APP-057].

All elements of the development, including tracks, substation and BESS, will be decommissioned with the land restored to its current extent and ALC grade using soil material stored within the Site. Defra R&D project LE0206, Evaluation of Mineral Sites Restored to Agriculture (<https://sciencesearch.defra.gov.uk/ProjectDetails?ProjectId=3621>) demonstrates that the more challenging restoration of landfill sites is routinely achieved without loss of ALC grade.

Biodiversity opportunity areas will not entail any loss of, or degradation to, the agricultural land resource, best and most versatile land or otherwise. As noted in Paragraph 19.6.5 of the ES [APP-057] ALC assessment is deliberately limited to features of the land and soil that are beyond the practical influence of land management.'

Natural England note the justification provided. Where commitment is made for restoration of the site to the same ALC grade, and an appropriate Soil Management Plan is implemented, would raise have no further concern. However, presentation of the ALC grades across the site, and clear representation of the amount of land (including BMV) which will not be affected for the lifetime of the development, would be beneficial to inform the Planning Inspectorate's assessment of the overall impact of the development. However, it is acknowledged that the ALC survey itself is satisfactory; as such Natural England do not raise the representation of the data as a major concern, but an additional recommendation. Hence this matter has been reclassified to **GREEN**.

Soil Management Plan - AMBER

Natural England made a number of comments regarding the oSMP in our relevant representations. Aside from the restoration of the site following decommissioning, all of these have been addressed by the applicant through the statement of common ground. Each matter raised in our relevant representations is set out below (in bold) along with our additional advice and a Red/Ember/Green classification for each point:

- 1- The proposed requirements in oSMP section 8 should make reference to the Defra Construction Code of Practice for the Sustainable Use of Soils on Construction Sites. The British Society of Soil Science has published the Guidance Note Benefitting from Soil Management in Development and Construction which sets out measures for the protection of soils within the planning system and the development of individual sites, which we also recommend is followed. **GREEN****

The applicant has stated within their SoCG (SOI-04) that the oSMP is to be updated to include reference to this guidance. In addition, the applicant has also proposed to use the Institute of Quarrying Good Practice Guide for Handling Soils in Mineral Workings (2021), which is welcomed.

- 2- oSMP section 4.1.1 sets out the requirement for soil sampling along the cable route. As discussed previously, soil sampling along the cable route should be made a requirement**

of the DCO, to ensure operations and restoration are correctly informed and the cable route is restored to it's current ALC grade. AMBER

Section 4.1.1 of the oSMP specifies the requirement for further soil survey along the cable route. Natural England advise that this should also be updated to specify that the cable route will be restored to its current ALC grade post-construction. This is necessary in order to conclude that the project will not cause any permanent loss of Best and Most Versatile land.

- 3- oSMP section 7.1.2 states 'A map of topsoil units will be prepared as a requirement of the SMP and retained to ensure topsoil units are restored to their original location', which is welcomed. The stockpiled soils should be labelled and protected from trafficking and damage. Any soil stockpiles in place for more than 6 months need to be seeded. GREEN**

The applicant has stated within the SoCG (SOI-04) that:

'Soils stored in bunds will be labelled and recorded. Soil bunds retained through the operational phase of the development will be seeded. 7.16 Outline Soil Management Plan [APP-138 / APP-325] will be updated to include this for Deadline 1.'

Natural England welcome this and have no further concern.

- 4- The restoration criteria need to be set out in the detailed SMP, including the restored ALC grade for all land within the Order Limits. This could be set out similarly to the proposals for mapping stored soils in section 7.1.2. AMBER**
- 5- Section 8.7 of the oSMP sets out the details of the decommissioning requirements, however, Natural England consider that specific requirement for restoration of arable land to its former ALC grade, should be secured through the SMP. This would comprise an example of implementing good practice to assure restoration of the land to the baseline ALC grade, minimising the potential loss of soil functions. AMBER**

Comments on points 4 & 5 above:

The applicant has stated within the SoCG (SOI-04):

'The oSMP [APP-138 / APP-325] will include the requirement for the appointment of a suitably qualified soil scientist who will assess disturbed and undisturbed land within the Sites for any degradation of the baseline ALC Grade and soil functionality. It should be noted that ALC assessment assumes a good standard of land management even if this is not apparent at a site. Remediation of any soil degradation will not be limited to only that needed to maintain the ALC Grade baseline. The oSMP will be updated to include this for Deadline 1.'

Natural England welcome this clarification and the appointment of a soil scientist to identify any degradation of the baseline ALC grade and soil functionality. Whilst it is acknowledged that the oSMP will be updated to reflect this, Natural England consider that a specific requirement for the restoration of the order limits to the same ALC grade would not inhibit this and is necessary in order to conclude that the project will not cause any permanent loss of Best and Most Versatile land.

Through discussions regarding the SoCG, the applicant has agreed to this, however, the wording of any update has not yet been finalised.

Section 8.7.4 notes that where problematic areas are identified by a soil scientist, these will be remediated prior to their return to arable production. To ensure restoration has been effective, Natural England would also recommend that post-restoration sampling/soil pits are excavated to confirm success.

It is acknowledged that the current 1988 ALC methodology may no longer be relevant when the site is restored. If the 1988 ALC methodology is superseded, its replacement should be adopted to inform the restoration of land to its current ALC grade.

Natural England will continue to work with the applicant to ensure the above updates are incorporated appropriately.

- 6- Areas of the site which are not to be stripped or used for stockpiling, haul routes or compounds must be clearly marked by signs and barrier tape and protected from trafficking and construction. GREEN**

- 7- The Scope of the oSMP should also be expanded to include the soil management of the soil which has remained in situ. Although there is no soil movement proposed in these areas, soil trafficking will occur during decommissioning and therefore mitigation measures need to be in place to minimise the potential impact on the soil resource, most notably soil compaction, which can have a major detrimental impact on the soil structure. This needs to be checked and monitored via aftercare. GREEN**

Comments on points 6 & 7 above:

The Applicant has stated within the SoCG (SOI-04):

'The SMP will include measures to control traffic within the Sites (to be carried through into the CEMP and CTMP), avoiding any unnecessary movements off the temporary track network and further restricting any vehicle access off the tracks until the soil has dried to below the plastic limit. This traffic control does include identification of Biodiversity opportunity areas, avoiding any vehicle traffic over such areas that is not directly related to the establishment and maintenance of these areas.'

This is welcomed; however, we recommend that this should be referenced within the oSMP for clarity.

Time Limited Consent - GREEN

Natural England welcome the amendment made to the draft DCO requirement 21, to implement a 60 year time limit on the consent. The wording of this requirement appears to be incorrect, as it states that:

'The date of decommissioning must be no later than 60 years following the date of final decommissioning'

It is assumed this should be 60 years following the date of final **commissioning**. Natural England's comments on the wording of this requirement are also noted in our Written Representations Part II below.

Further advice relating to Soils and Best and Most Versatile land

In addition to that provided above, additional advice has been provided in relation to other large solar projects in the East Midlands. Natural England feel that it would be beneficial to share this with the applicant.

- The detailed ALC Survey data should be used wherever possible to inform restoration practises, i.e., to ensure the soil is restored to the same depth and profile described during the ALC survey.
- The proposals do not currently include any monitoring of soil health or land quality during the operational phase. Issues with soil protection may occur where, for example, vegetation cover fails to establish, or areas of bare ground appear during operation. Natural England would recommend ongoing monitoring to prevent any unexpected impacts to soil health and/or land quality. It is noted that vegetation management will be secured via the oLEMP, however this should be cross-referenced within the oSMP to ensure the role of this in protecting soil is apparent during the operational period.
- Although arable reversion to grassland has been shown to benefit soil quality (through increased Soil Organic Matter (SOM)), it is unclear what impact solar arrays will have on soil properties such as carbon storage, structure and biodiversity. For example, as a result of changes in shading; temperature changes; preferential flow pathways; micro-climate; and vegetation growth caused by the panels. Therefore, it is currently unknown what the overall impact of a temporary Solar development will be on soil health. In the absence of this information, we suggest that the developer could commit to a programme of soil health monitoring for the lifetime of the project to support development of the evidence base around long-term impacts to soil health from solar.

Ancient woodland and ancient/veteran trees

Natural England's position regarding ancient woodland and ancient/veteran trees has not changed since submission of our Relevant Representations (RR-233).

Our position regarding ancient woodland and ancient/veteran trees is as set out in our Relevant Representation (RR-233). This is also summarised within our Written Representation Part III.

Connecting people with nature (National Trails, open access land and England Coast Path)

Natural England's position regarding access has not changed since submission of our Relevant Representations (RR-233).

Our position regarding access is as set out in our Relevant Representation (RR-233). This is also summarised within our Written Representation Part III.

Natural England's overall conclusions

Natural England's only remaining concerns are regarding soils and Best and Most Versatile land, of which we are in dialogue with the applicant to work to resolve. The remainder of the issues regarding the natural environment within our remit have been resolved through the Statement of Common Ground.

Natural England will continue to work with the applicant, including engaging our soil specialists to ensure the new information provided is considered appropriately, and any changes in our advice will be captured within the Statement of Common Ground.

Natural England's Written Representations

PART II: Natural England's detailed comments on the Development Consent Order (DCO)

Part II of these representations provides Natural England's detailed comments on the Development Consent Order. This table supersedes Part III of our Relevant Representations (RR-233); however, its contents are largely the same due to the limited changes made in our advice.

Page			
43	Requirement 7 – Landscape and Ecological Management Plan	Natural England welcomes the inclusion of a requirement for the LEMP.	GREEN
43	Requirement 8 – Ecological Protection and Mitigation Strategy	Natural England welcomes the inclusion of a requirement for the EPMS.	GREEN
43	Requirement 9 – Biodiversity Net Gain	Natural England welcome the inclusion of a requirement for a Biodiversity Net Gain strategy to be produced. Although we note the significant calculated gains for biodiversity within the Biodiversity Net Gain Report, we recommend that this requirement could make it a necessity for a minimum of 10% Net Gains in habitat, hedgerow and river units to be delivered.	AMBER
44	Requirement 13 – Construction Environment Management Plan	Natural England welcomes the inclusion of a requirement for the CEMP.	GREEN
44	Requirement 14 – Operational Environment Management Plan	Natural England welcome the inclusion of a requirement for the OEMP.	GREEN
45	Requirement 17 - Permissive Paths	Natural England welcome the specific requirement for the proposed permissive footpath; timing of it's opening.	GREEN

45	Requirement 18 – Public Rights of Way	Natural England welcome the requirement for a Public Rights of Way Management plan to retain access throughout all development phases.	GREEN
45	Requirement 19 - Soils Management	Natural England welcome the requirement for production of a detailed soil management plan, which must be substantially in accordance with the oSMP	GREEN
47	Requirement 21 – Decommissioning and Restoration	Natural England welcome the inclusion of a 60-year time limit within requirement 21. However, the wording of this requirement required amendment to state 'The date of decommissioning must be no later than 60 years following the date of final commissioning .'	AMBER

Natural England's Written Representations

Part III: A summary of Natural England's advice

Part III of these representations summarises Natural England's position, and the reasons for this position, on all the areas which represent the key areas of Natural England's remit. This incorporates the advice provided within our relevant representations (RR-233) and our updated advice provided in Part I of these Written Representations.

Natural England will continue engaging with the applicant to seek to resolve the outstanding concerns throughout the examination. Natural England advises that the matters indicated as 'amber' will require consideration by the Examining Authority during the examination.

Natural England's Written Representations, Part III

Table 3: A Summary of Natural England's advice				
NE Key Issue	Topic	Risk Rating	NE Summary	DCO Requirement?
International designated sites	HRA assessment of impacts alone	GREEN	<p>Natural England concur with the applicant's conclusion of no Likely Significant Effects.</p> <p>While a hydrological link exists between the order limits and the Humber Estuary SAC, Natural England considers the low likelihood and small scale of potential pollution events from the development activities, distance to the SAC and embedded mitigation (not included specifically to avoid impacts to the site), suitable to rule out an impact from the proposal on this SAC. (De Minimis effects)</p> <p>The Order limits do not constitute Functionally Linked Land for the species associated with the Humber Estuary SPA, nor Thorne and Hatfield Moors SPA; thus, effects on these two designations can be ruled out.</p>	CEMP to be secured by DCO requirement

			The physical and hydrological separation of Birklands and Bilhaugh SAC, Thorne Moor SAC & Hatfield Moor SAC means effects on these sites can be ruled out.	
	HRA In combination assessment	GREEN	The information to support a HRA includes consideration of other nearby projects (Cottam Solar project, Gate Burton Solar Project, Tillbridge Solar Project, and the 'Shared Cable Route Corridor') including rationale for the absence of in-combination effects from these projects together. Natural England concur with the conclusion that the West Burton Solar project will not act in combination with these projects to cause a significant effect on internationally designated sites.	
Nationally designated Sites	Impacts to any SSSIs	GREEN	Due to the separation from the order limits of any SSSIs, it is considered that significant impacts are unlikely.	N/A
Protected Species	Requirement for Protected Species Licences	GREEN	Based on the survey work to date, the applicant has not identified any need for protected species licences. As a result, the submission of draft protected species licences is not possible and the production of a LoNI is not considered necessary. It must be noted that where post consent surveys indicate the need for a licence, this must be applied for, and determined, in the usual manner.	N/A
Biodiversity Net Gain	Delivery of Biodiversity Net Gain	GREEN	The Biodiversity Net Gain Metric provided indicates the development will give rise to gains for biodiversity in the magnitude of 86.80% for habitat units, 54.71% for hedgerow units and 33.25% for river units. The DCO requirement for Biodiversity Net Gain could be strengthened by including reference to a minimum BNG provision (i.e. 10%), however this is not a requirement as BNG is not yet mandatory.	LEMP to be secured by DCO requirement.

Nationally Designated Landscapes	Impacts to Nationally Designated Landscapes	GREEN	The proposed development is not located within, or within the setting of, any nationally designated landscapes, so Natural England considers impacts of the scheme on nationally designated landscapes to be unlikely.	N/A
Soils and Best and Most Versatile Agricultural Land	Assessment of the impact of all elements of the development on soils and Best & Most Versatile Land.	GREEN	Subject to minor amendments to the oSMP (as discussed within these representations) no permanent loss, or reduction in quality, of agricultural land should occur as a result of any element of the proposed development. During the operational phase, there is likely to be a reduction in agricultural productivity across the order limits.	N/A
	Soil Management Plan	AMBER	The majority of matters raised regarding the applicant's oSMP have been resolved as a result of further information being provided via the statement of common ground. The remaining concern lies around the specific commitment to restoration of the order limits to their current ALC grade. The applicant has agreed to include this, but the detail of amendments to the oSMP are yet to be finalised.	SMP to be secured by DCO requirement
	Agricultural Land Classification (ALC) Survey	GREEN	Natural England are satisfied that the detailed ALC survey undertaken across the order limits is appropriate. We are also content with the requirement for further survey along the cable route post-consent.	SMP to be secured by DCO requirement
Ancient woodland and ancient/veteran trees	Damage to Ancient Woodland	GREEN	There is no Ancient Woodland or ancient/veteran trees within the order limits or in close proximity; Natural England consider impacts to these features to be unlikely.	N/A

Connecting people with nature	National Trails, Open Access Land or Coast paths	GREEN	There are no National Trails, Open Access Land or Coast paths within the order limits; as such, no impacts to these features are likely.	N/A
	Public Rights of Way	GREEN	All Public Rights of Way will be retained, and the intention is to keep all routes open through all phases on the development, which is welcomed. Provision of an additional permissive footpath through West Burton 2 is also welcomed.	Public Rights of Way Management Plan to be secured by DCO requirement

