

Date: 29 August 2024
Our ref: 486366
Your ref: EN010139

Byers Gill Case Team
National Infrastructure Planning
byersgillsolar@planninginspectorate.gov.uk

BY EMAIL ONLY

Dear Byers Gill Case Team

NSIP Reference Name / Code: Byers Gill Solar / EN010139
Interested Party Ref.: 20048645

Title: Natural England's Written Representations and response to the Examining Authority's first written questions on the application by RWE Renewables UK Solar and Storage Limited for an Order Granting Development Consent for the Byers Gill Solar Project

Examining Authority's submission Deadline 2 with a date of 29 August 2024.

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 Nick Lightfoot (██████████@naturalengland.org.uk) and copy to consultations@naturalengland.org.uk.

Yours sincerely

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Natural England's Written Representations

PART I: Summary and conclusions of Natural England's advice.
PART II: Natural England's detailed advice (starting on page 7)
PART III: Natural England's response to the Examining Authority's (ExA's) first written questions (page 13)
PART IV: Natural England's detailed comments on the Development Consent Order (DCO) (starting on page 14)

Part I: Summary and conclusions of Natural England's advice

Summary of Natural England's advice

In our Relevant Representations, Natural England set out that we are satisfied with the proposals and considers that there are no significant matters to resolve. There have been no changes to the proposal that affect our advice and our position remains the same.

As previously stated, Natural England concurs with the conclusions of this proposal's Habitats Regulations Assessment and is satisfied that Likely Significant Effects are not likely to arise.

Part I of these Written Representations provides a summary (above) and overall conclusions of Natural England's advice. This advice reiterates our Relevant Representations (RR-373). 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
- Soils and best and most versatile agricultural land
- Ancient woodland and ancient/veteran trees

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)

1. Internationally designated sites

- 1.1. Natural England's position regarding internationally designated sites has not changed since submission of our Relevant Representations (RR-373).
- 1.2. Our position regarding impacts on internationally designated sites is as set out in our Relevant Representations (RR-373). Further detail on our reasoning for this is given against each impact pathway within our Written Representations Part II.

- 1.3. Natural England is satisfied that 'green' issues are unlikely to result in adverse effects on the integrity of the following internationally designated sites, subject always to the appropriate mitigation/compensation as outlined in the application documents being adequately secured.
 - Teesmouth and Cleveland Coast Special Protection Area
 - Teesmouth and Cleveland Coast Ramsar Site
 - Thrislington Special Area of Conservation
- 1.4. Summary Position: **Green**
Natural England is satisfied that the proposed development will not give rise to Likely Significant Effects on any internationally designated sites. We agree with the conclusions presented regarding direct and indirect impacts (NE1), as well as Functionally Linked Land (NE2).

2. Nationally designated sites

- 2.1. Natural England's position regarding nationally designated sites has not changed since submission of our Relevant Representations (RR-373).
- 2.2. Our position regarding impacts on nationally designated sites is as set out in our Relevant Representations (RR-373). Further detail on our reasoning for this is given against each impact pathway within our Written Representations Part II.
- 2.3. Summary Position (NE3): **Green**
Natural England is satisfied that the proposed development will not damage or destroy any of the notified features of any SSSI in its vicinity.

3. Protected species

- 3.1. Natural England's position regarding European protected species has not changed since submission of our Relevant Representations (RR-373).
- 3.2. Our position regarding impacts on protected species is as set out in our Relevant Representations (RR-373). Further detail on our reasoning for this is given for each species within our Written Representations Part II.
- 3.3. Summary Position (NE4): **Green**
Natural England notes that RWE have applied to our District Level Licencing Scheme (for Great Crested Newts) and that they are in the process of securing a certificate.
- 3.4. Natural England is not providing bespoke advice on the protected species information provided in the Environmental Statement (ES) for this project.
- 3.5. Natural England has not received submission of draft protected species licence applications for review. Without draft protected licence applications we are unable to issue Letters of No Impediment or provide detailed comments on potential impacts to protected species.

4. Biodiversity Net Gain Provision

- 4.1. Natural England's position regarding provision of biodiversity net gain has not changed since submission of our Relevant Representations (RR-373).

- 4.2. Our position regarding biodiversity net gain provision is as set out in our Relevant Representations (RR-373). Further detail on our reasoning to support our Relevant Representations is set out in our Written Representations Part II.
- 4.3. We note the Examining Authority's question (GCT.1.19) regarding the applicant's biodiversity net gain calculation and refer them to Table 2 for Natural England's response.
- 4.4. Summary Position (NE5): **Green**
Natural England welcomes the commitment to delivering significant net gains for biodiversity on this project and recommends that a requirement is added to the DCO to secure the proposed approach.

5. Soils and best and most versatile agricultural land

- 5.1. Natural England's position regarding soils and the best and most versatile agricultural land has not changed since submission of our Relevant Representations (RR-373).
- 5.2. Our position regarding soils and best and most versatile agricultural land is as set out in our Relevant Representations (RR-373). Further detail on our reasoning to support our Relevant Representations is set out in our Written Representations Part II.
- 5.3. Summary Position (NE6): **Green**
Natural England advises that the proposed development is not likely to result in a significant loss of best and most versatile land and welcomes the inclusion of a final Soil Resources Management Plan in the draft DCO.

6. Ancient woodland and ancient/veteran trees

- 6.1. Natural England's position regarding ancient woodland and ancient/veteran trees has not changed since submission of our Relevant Representations (RR-373).
- 6.2. Our position regarding ancient woodland and ancient/veteran trees is as set out in our Relevant Representations (RR-373). Further detail on our reasoning to support our Relevant Representations is set out in our Written Representations Part II.
- 6.3. Summary Position (NE7): **Green**
Natural England advises that the proposed development is not likely to impact on ancient woodland or ancient/veteran trees.

7. Natural England's overall conclusions

- 7.1. Natural England has no outstanding concerns about the project for the following reasons:
- There are no European sites, Ramsar sites, Sites of Special Scientific Interest or nationally designated landscapes located within the vicinity of the project that could be significantly affected,
 - The although the project site currently supports some habitats of ecological interest, the majority will be retained or enhanced as a result of the proposed development,
 - There are no other impacts from this project that could significantly affect areas within our remit.
- 7.2. Natural England welcomes the ambition to deliver significant net gains for biodiversity as set out in *6.4.6.6 Environmental Statement Appendix 6.6 Biodiversity Net Gain Assessment* which will have a positive effect on the natural environment by providing valuable habitat for ground nesting and waterbirds and species-rich meadow habitat. This is in accordance with the principles set out in paragraph 180 of the National Planning Policy Framework. Natural England notes that this commitment is not reflected in a proposed Requirement of the draft DCO. Natural England therefore advises that a requirement should be secured by a suitably worded requirement in the DCO, if the project is approved.
- 7.3. Natural England will continue engaging with the applicant to seek to resolve outstanding concerns throughout the examination.

Natural England's Written Representations

Part II: Natural England's detailed advice

Part II of these Representations reiterates Part II of our Relevant Representations. There are no significant issues ('red' and 'amber' issues) that in our view remain outstanding. Part II details the 'green' issues which were also set out in our Relevant Representations (RR-373) (subject always to the appropriate requirements being secured adequately).

Natural England will continue engaging with the applicant to seek to resolve any concerns that come to light throughout the examination.

Natural England's Written Representations, Part II, Table 1

Table 1: Natural England's detailed advice						
NE key issue ref	Topic	Issue summary (C) – construction phase (O) – operational phase	NE commentary and advice on further details about the project to enable assessment or further evidence/assessment work required	NE comment on mechanism for securing resolution, e.g. mitigation/compensation	Matters that must be secured in the DCO (with DCO/DML or omission ref as applicable)	Risk Red/Amber/Green
International designated sites						
NE1	International designated sites	(C) and (O)	<u>Direct and Indirect Effects</u> Natural England is satisfied that RWE have undertaken a thorough Habitats Regulations Assessment screening assessment. We note and agree with the conclusion that Likely Significant Effects to the aforementioned designated sites can be ruled out.	N/A	N/A	Green
NE2	International designated sites	(C) and (O)	<u>Functionally Linked Land</u> Natural England notes and agrees with the conclusions regarding potential impacts to land that is functionally linked to the Teesmouth and Cleveland Coast SPA/Ramsar. RWE have demonstrated that	N/A	N/A	Green

Table 1: Natural England's detailed advice						
NE key issue ref	Topic	Issue summary (C) – construction phase (O) – operational phase	NE commentary and advice on further details about the project to enable assessment or further evidence/assessment work required	NE comment on mechanism for securing resolution, e.g. mitigation/compensation	Matters that must be secured in the DCO (with DCO/DML or omission ref as applicable)	Risk Red/Ambler/Green
			<p>the only area within the vicinity of the proposal that could be considered as being functionally linked is outwith the redline boundary and will not be affected during the construction, operational or decommissioning phases.</p> <p>Furthermore, we welcome the inclusion of biodiversity enhancement areas that will specifically benefit ground nesting birds and waterbirds (including curlew and lapwing).</p>			
National designated sites (biodiversity and geodiversity)						
NE3	National designated sites (biodiversity & geodiversity)	(C) and (O)	<p>We have discussed with RWE about the creation of a species-rich hay meadow in the biodiversity enhancement area that is located closest to Newton Ketton SSSI, which is designated as one of the few remaining unimproved hay meadows locally. Although RWE have indicated that they intend to deliver this, it has not been made explicit in the submitted documents.</p> <p>Natural England recommends that this outcome is specifically stated in the 6.4.2.14 <i>Environmental Statement Appendix 2.14 Outline Landscape and Ecology Management</i></p>	OLEMP updated to include location specific details on habitat improvements	N/A	Green

Table 1: Natural England's detailed advice						
NE key issue ref	Topic	Issue summary (C) – construction phase (O) – operational phase	NE commentary and advice on further details about the project to enable assessment or further evidence/assessment work required	NE comment on mechanism for securing resolution, e.g. mitigation/compensation	Matters that must be secured in the DCO (with DCO/DML or omission ref as applicable)	Risk Red/Amber/Green
			<i>Plan</i> (OLEMP) and linked to the corresponding management activities			
Protected species						
NE4	Protected species	(C) and (O)	<p><u>Great Crested Newts</u> Natural England notes that RWE have applied to our District Level Licencing Scheme and that they are in the process of securing a certificate. We have no further comments on this here.</p> <p><u>Other European Protected Species</u> Natural England has adopted <u>standing advice</u> for protected species, which includes guidance on survey and mitigation measures. Natural England is not providing bespoke advice on the protected species information provided in the ES for this project.</p> <p>A separate protected species licence from Natural England or Defra may be required. Applicants should refer to the guidance at <u>Wildlife licences: when you need to apply</u> to check to see if a mitigation licence is required.</p> <p>Applicants can also make use of Natural England's charged service <u>Pre-Submission</u></p>	Requirement for mitigation has not been assessed by Natural England.	N/A	Green

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NE key issue ref	Topic	Issue summary (C) – construction phase (O) – operational phase	NE commentary and advice on further details about the project to enable assessment or further evidence/assessment work required	NE comment on mechanism for securing resolution, e.g. mitigation/compensation	Matters that must be secured in the DCO (with DCO/DML or omission ref as applicable)	Risk Red/Ambler/Green
			<p>Screening Service for a review of a draft wildlife licence application. Natural England can then review a full draft licence application to issue a Letter of No Impediment (LONI) which explains that based on the information reviewed to date, that it sees no impediment to a licence being granted in the future should the DCO be issued. See Advice Note Eleven, Annex C – Natural England and the Planning Inspectorate National Infrastructure Planning for details of the LONI process.</p>			
Biodiversity net gain						
NE5	Biodiversity net gain	(C) and (O)	<p>We welcome the ambition to deliver significant net gains for biodiversity across the proposed development area, as set out in <i>6.4.6.6 Environmental Statement Appendix 6.6 Biodiversity Net Gain Assessment</i>.</p> <p>We support RWE's approach to creating habitats that will benefit waterbirds and ground nesting birds, as well as areas of species-rich meadow. These habitats will broadly support features that are notified as part of designated sites in the vicinity of the proposed development.</p>	N/A	We recommend that a requirement is added to the DCO to secure the target level of BNG.	As BNG is not a mandatory requirement, we have not assigned it a RAG status.

Table 1: Natural England's detailed advice						
NE key issue ref	Topic	Issue summary (C) – construction phase (O) – operational phase	NE commentary and advice on further details about the project to enable assessment or further evidence/assessment work required	NE comment on mechanism for securing resolution, e.g. mitigation/compensation	Matters that must be secured in the DCO (with DCO/DML or omission ref as applicable)	Risk Red/Amb/ Green
			Although BNG is not yet mandatory for NSIPs, we recommend that the proposed increases are secured by a suitably worded requirement in the DCO. These are stated in the Environmental Statement as a target increase for BNG of 87.83% across all biodiversity unit types and 108.12% net gain in hedgerow units.			
Soils and best and most versatile agricultural land						
NE6	Soils and best and most versatile agricultural land	(C) and (O)	<p>Natural England welcomes that the draft DCO includes a requirement that a final Soil Management Plan is submitted and approved prior to the commencement of the development.</p> <p>We consider that the proposed development, if temporary as described, is unlikely to lead to significant permanent loss of BMV agricultural land, as a resource for future generations.</p> <p>Based on the information provided in 6.4.9.1 <i>Environmental Statement Appendix 9.1 Agricultural Land Classification and Soil Resources</i> and 6.4.2.12 <i>Environmental Statement Appendix 2.12 - Outline Soil Resources Management Plan</i>, as well as</p>	Final design to focus built structures on Grade 3b and 4 land.	We recommend that a requirement is added to the DCO to secure this approach.	Green

Table 1: Natural England's detailed advice						
NE key issue ref	Topic	Issue summary (C) – construction phase (O) – operational phase	NE commentary and advice on further details about the project to enable assessment or further evidence/assessment work required	NE comment on mechanism for securing resolution, e.g. mitigation/compensation	Matters that must be secured in the DCO (with DCO/DML or omission ref as applicable)	Risk Red/Ambler/Green
			<p>discussions with RWE, this application is likely to affect 30 ha of BMV agricultural land.</p> <p>We consider that the proposed development, if temporary as described, is unlikely to lead to significant permanent loss of BMV agricultural land, as a resource for future generations. This is because the solar panels would be secured to the ground by steel piles with limited soil disturbance and could be removed in the future with no permanent loss of agricultural land quality likely to occur, provided the appropriate soil management is employed and the development is undertaken to high standards.</p> <p>Some components of the development, such as construction of a sub-station, may permanently affect agricultural land. RWE has committed to minimising these impacts through an approach to design whereby built structures such as access tracks, substations and compounds that would require soil stripping and disturbance have been directed toward the lower quality land available. This would limit longer-term impacts to small</p>			

Table 1: Natural England's detailed advice						
NE key issue ref	Topic	Issue summary (C) – construction phase (O) – operational phase	NE commentary and advice on further details about the project to enable assessment or further evidence/assessment work required	NE comment on mechanism for securing resolution, e.g. mitigation/compensation	Matters that must be secured in the DCO (with DCO/DML or omission ref as applicable)	Risk Red/Ambler/Green
			<p>areas of which less than 20 ha is BMV agricultural land.</p> <p>We recommend that this approach is secured by a suitably worded requirement in the DCO.</p>			
Ancient woodland and ancient/veteran trees						
NE7	Ancient woodland and ancient/veteran trees	(C)	<p>Natural England notes the conclusions set out in 6.4.7.7 <i>Environmental Statement Appendix 7.7 Arboricultural Impact Assessment</i>, which state that there are no ancient woodlands in the vicinity of the proposed development and that no veteran trees will be removed or encroached on to deliver the proposed development.</p> <p>We note that there are many candidate veteran trees across the site and support any efforts to retain them.</p>	N/A	N/A	Green

Natural England's Written Representations

PART III: Natural England's response to the Examining Authority's (ExA's) first written questions, reference PD-004, with a deadline of 29 August 2024

Table 2: Natural England's response to Examiner's initial questions			
ExA question ref	Question addressed to	Question	Answer
GCT.1.19	Applicant and Natural England	The Applicant states, in paragraph 3.3.5 of the Planning Statement [APP-163] that the Proposed Development is anticipated to provide an 88% net gain in area habitat Biodiversity Units (BUs) and 108% net gain of hedgerow BUs and that this is significantly over the forthcoming mandatory requirements – but how do these Biodiversity Units relate to Biodiversity Net Gain?	Biodiversity Net Gain (BNG) is measured or quantified in Biodiversity Units (BUs). Although Nationally Significant Infrastructure Projects are not required to demonstrate the statutory 10% Biodiversity Net Gain at this time, this project has voluntarily used the same approach (including using the DEFRA metric) to demonstrate what the net gains for biodiversity will be as a result of this proposal. It is Natural England's understanding that the percentage increase in BUs compared to the baseline is the percentage increase in BNG.

Natural England's Written Representations

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

Part IV of these Representations provides Natural England's detailed comments on the DCO and detailed comments on issues not addressed in the DCO. These comments reiterate our Relevant Representations, as there have been no changes that substantively change our position.

Table 2: Natural England's comments on the DCO			
Page	DCO/DML or Omission ref	Natural England's comments	Risk (Red/Amber/Green)
36	Schedule 2, Requirement 4	Construction environmental management plans (CEMP): We welcome that this requirement secures the CEMP, and highlights this must be substantially in accordance with the Outline CEMP. We advise this is an essential requirement.	Green
36	Schedule 2, Requirement 5	Decommissioning and restoration: We note this requirement is for decommissioning and restoration and advise this is an essential requirement. We advise that Natural England are consulted on this plan once finalised, if impacts to designated sites during decommissioning are identified.	Green
37	Schedule 2, Requirement 10	Soil Management: We welcome that this requirement secures the soil management plan (SMP), and highlights this must be substantially in accordance with the Outline SMP. We advise this is an essential requirement. We have recommended that a requirement is added to the DCO to secure an approach to design that minimises more damaging impacts to best and most versatile land, which could be included in this requirement.	Green
38	Schedule 2, Requirement 12	Landscape and ecological management plan (LEMP): We welcome that this requirement secures the LEMP and advice this must be substantially in accordance with the Outline LEMP. We advise this is an essential requirement. We have recommended an update to the Outline LEMP in Table 1 (NE3), which we will work with RWE to confirm.	Green
38	Schedule 2, Requirement 13	Implementation and maintenance of landscaping: We welcome that this requirement secures the implementation and maintenance of landscaping. As much of the landscaping will contribute to the final BNG percent increase figures, we recommend that the management and maintenance of landscaping	Green

Table 2: Natural England's comments on the DCO			
Page	DCO/DML or Omission ref	Natural England's comments	Risk (Red/Amber/Green)
		should be secured for at least 30 years. Although BNG is not a mandatory requirement for NSIPs, this approach would best reflect the aims of the Environment Act 2021.	
	Schedule 2	Biodiversity Net Gain: We note that there is not yet a requirement in the DCO that secures a level of BNG delivery. We recommend that one is added and suggest that it should capture the target levels of increase that have been set out by RWE in 6.4.6.6 <i>Environmental Statement Appendix 6.6 Biodiversity Net Gain Assessment</i> .	As BNG is not a mandatory requirement, we have not assigned it a RAG status

