

Date: 14 January 2022  
Our ref: 378982  
Your ref: TR010044



Menaka Sahai  
The Planning Inspectorate

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**BY EMAIL ONLY**

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Dear Menaka

**NSIP Reference Name / Code: TR010044 A428 Black Cat to Caxton Gibbet Road  
Improvement scheme – Third Written Questions  
User Code: 20028237**

Thank you for your email of 22 December 2021 notifying Natural England of the Examining Authority's Third Written Questions.

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.

Our responses to questions directed to Natural England, and questions to 'all parties' relevant to our remit, are provided in the table below.

Reference	Question	Natural England response
Q3.1.2.1	<p><b>Environment Act 2021</b></p> <p>The ExA is aware that the Environment Act 2021 received royal assent on 9 November 2021.</p> <p>a) All Parties and the Applicant are invited to explain, with reasons, whether the assent of the Act, including with regard to Air Quality, Biodiversity, Water, Waste and Monitoring.</p> <p>b) More specifically, Section 99 and Schedule 15 of the Act and the subsequent amendments to the Planning Act 2008 will require certain NSIPs to increase biodiversity by 10% compared to predevelopment values. Do you believe there are any implications on the Proposed Development, if so explain with reasons, including if relevant, how any additional measures could be delivered.</p>	<p>a) In our view assenting of the Environment Act 2021 is unlikely to have any implications for the Proposed Development given the transition period to develop the framework of regulations and statutory guidance, before requirements become mandatory.</p> <p>b) Please see our comments above. We have provided comments on the Applicant's biodiversity metric calculation below, in response to Q3.3.2.1.</p>
Q3.3.2.1	<p><b>Metric for calculating BNG</b></p>	As indicated in our response

	<p>a) NE, following discussions at ISH4 [EV-060] and the submissions at D6 [REP6-036] [REP6-030] [REP6-068] [REP6-062] confirm if you consider the Applicant's calculation for BNG using the DEFRA 2.0 metric shows a net loss or net gain or neutral finding.</p> <p>b) NE, if you consider the calculations to show a net gain, and based on your current position that you are satisfied that the delivery of the Proposed Development would achieve genuine gains in biodiversity when compared with existing conditions [REP6- 017], why do you still feel that the ES should be updated with the findings of the DEFRA 2.0 metric?</p> <p>c) NE, in what way do you believe that the findings of the DEFRA 2.0 metric would revise the assessment of the effects of the Proposed Development on biodiversity in the ES with reference the NPS NN (Paragraph 5.33) which requires the Applicant to maximise opportunities resulting in beneficial biodiversity or geological features in and around developments? Applicant and LAs may respond.</p> <p>d) Applicant, explain the reasons and criteria that would be determine the use of DEFRA 2.0 for road NSIPs [REP6-030] [REP6-062], and if those criteria be relevant here. NE and LAs may respond.</p> <p>e) NE and LAs, with particular reference to Rules 3 and 5 of the DEFRA User Guide [REP6- 068] and the Cambridgeshire Council's position [REP6-062 Sections 3, 4, and 6] comment on the Applicant's position at ISH4 [EV-060] that a quantitative increase of low quality habitat outweighs or is equivalent to the high value habitats being replaced. Applicant may explain.</p> <p>f) Applicant and NE, the Cambridgeshire Councils raise concerns regarding the loss of habitats of medium/ high distinctiveness and that further on-site and off-site compensation is required [REP4-059, Q2.3.2.1] [REP6-064] [REP6-062 Sections 3, 4, and 6]. What are your views on this and how it could be delivered?</p>	<p>to the ExA Second Written Questions [REP4-070] it is not within Natural England's remit to review and comment on biodiversity metric calculations; however; in response to a query from the Local Authorities, Natural England's BNG specialists have advised that the Applicant's metric calculation appears to have incorrectly applied the Defra 2.0 Metric rules on trading down of habitat distinctiveness. On this basis Natural England believes the c.16% BNG calculation may be incorrect and our advice is that the trading down rules should be correctly applied to inform a revised metric calculation.</p> <p>If the revised metric confirms that the Proposed Development will deliver significantly lower BNG, the Applicant should identify opportunities for biodiversity off-setting, for example through enhancement of existing woodlands and parkland etc.</p> <p>The Applicant has indicated that the biodiversity net gain calculation is separate to the assessment of the biodiversity impacts of the scheme presented in Chapter 8 of the ES. Natural England accepts this and is satisfied that the calculation does not affect the conclusions of the ES.</p>
Q3.3.4.1	<p><b>Ouse Washes SPA and Ramsar site</b></p> <p>a) Applicant, comment on the discrepancy between the Ouse Washes SPA qualifying features listed in the 1992 citation provided by the Applicant at Deadline 6 [REP6-030 Appendix A] and the 2019</p>	<p>b) Natural England would welcome confirmation from the Applicant that all the features listed in the RIES [PD-013, Table 2.1] have</p>

	<p>Supplementary Advice on conserving and restoring site features produced by NE and referenced at Footnote 5 of the RIES [PD-013].</p> <p>b) Applicant, confirm whether all the features listed in the RIES [PD-013, Table 2.1] have been assessed for LSE in the NSER [APP-233]. NE to comment.</p> <p>c) Applicant, comment on whether the SPA and Ramsar species population estimates in the NSER [APP-233, Appendix F, Table 1] are reliable given the age of the datasets, and what implications this has on the assessment of the loss of wetland and arable habitat? NE to comment.</p> <p>d) The NSER [APP-233, Appendix F] states that the populations of SPA and Ramsar qualifying waterbird features occurring within the Proposed Development boundary are not significant, applying a threshold for significance of 5% of any of the citation populations. What is the Applicant's justification for using a 5% threshold? NE to comment.</p>	<p>been assessed in the NSERc)</p> <p>c) Natural England believes that the species population estimates in the NSER are taken directly from the SPA and Ramsar citations; these would have been based on datasets available when the sites were designated.</p> <p>d) Natural England would welcome the Applicant's clarification on the application of a 5% population threshold; however, based on location / distance (approx. 30km) we believe that birds recorded within the Proposed Development boundary are unlikely to be part of the SPA species populations.</p>
Q3.3.4.2	<p><b>Eversden and Wimpole Woods SAC</b></p> <p>a) Applicant and NE, following your meeting on 23 November 2021, provide an update regarding [REP4-044, Paragraph 4.2.7]:</p> <ul style="list-style-type: none"> <li>• justification of the survey approaches undertaken at Transect locations 3, 5, 7 &amp; 8, and at Pillar Plantation; and</li> <li>• justification as to why Natural England's recommendation to survey 40 crossing points [REP1-032] was scoped out of the assessment.</li> </ul> <p>b) Applicant and NE highlight any areas of disagreement, if any, regarding the scope of the 2018 surveys and the current survey. If there are disagreements, can they be resolved without the applicant undertaking more survey work?</p> <p>c) Applicant and NE, with reference to the approach to the 2018 survey are you satisfied that the baseline has been characterised reliably in terms of Barbastelle but also other bats. Explain with reasons. If there are concerns with the scope, approach of the survey, and as such the baseline, has the Applicant addressed these issues in the current survey round? Explain with reasons.</p> <p>d) Applicant, list with EL reference, or ensure copies have been submitted to the Examination, of all surveys/ reports that have led to the conclusion of no likely significant effects on the SAC, including</p>	<p>a) Natural England has yet to see the responses to our most recent queries regarding the justification of survey approaches for the referenced crossing points (issued to NH on 10 December 2021). Please note that Natural England has requested this information several times since August 2021, as documented in REP4-044 and, as referenced in updates to Appendix C of the Applicant's <i>9.54 Barbastelle Bat Surveys and Mitigation Technical Note</i>. We are still awaiting a breakdown and reasoning for why 33 (of the 40 in total) of the crossing points were scoped out.</p> <p>b) Until we have the justification for why the 33 other crossing points were scoped out for further survey, we are not able to agree that the 2018 surveys were sufficiently robust.</p>

the Cambridgeshire Bat Group and the South Cambridgeshire District Council survey referenced at WQ3 [EV-059]. Details of the times and dates of the surveys should be included. NE/ LAs what is your view of these surveys / reports?

e) Applicant and NE, as stated by the Applicant at ISH4 [EV-059] the full suite of 2021 surveys of the Barbastelle bats of the SAC, including the hibernation suitability at Pillar Plantation, will not be completed until after Deadline 6 has passed, with the consequent reports to be submitted later. In this context, Applicant and NE provide by Deadline 8 your reasoned positions as to whether an Appropriate Assessment is required for the HRA.

The only transect survey and static detector survey that was undertaken in the eastern section was transect 6. The justification for only surveying April, July and September was based on habitat suitability being assessed as low. Natural England considers the survey on transect 6 to be adequate and hence would not require additional survey effort in 2022. However, it is noted (as raised previously in our email to the Applicant on 10/12/2021) that there is a large section between transect 8 and transect 6 that was not subject to any surveys (transect, static detectors or crossing point). Justification is required to why a further transect was not undertaken between transect 8 and 6. This justification should also apply to the other areas along the route where there is a break between 1 transect and another (i.e., between transects 5 and 8, transects 4 and 5, transects 3 and 4, and transects 2 and 7).

Notwithstanding the above, it may well be necessary to undertake top up surveys depending on when construction commences.

c) See above comments. We would like to see the justification for scoping out the other 33 other potential crossing points (and respective crossing structures - as applicable) before we can fully comment on this question. Should the justification be sound for scoping out these 33 crossing points, then we may be satisfied that these surveys could be used as a robust baseline on which to determine the activity of

		<p>barbastelle and other bats and thus used to develop the monitoring regime.</p> <p>d) We would like to see a full report containing all the survey information. If the ES section for bats is updated with the additional survey information we would want to see the additional/ new information highlighted. We have not seen a full report containing all surveys and this includes the results from the Cambridgeshire Bat Group and South Cambridgeshire District Council survey.</p> <p>e) Natural England's position remains that the level of survey and assessment undertaken to inform the HRA equates to an Appropriate Assessment, as required by Regulation 63 of the Conservation of Habitats and Species Regulations 2017 and European Court of Justice caselaw, cited in the HRA, including 'People Over Wind'. On this basis we believe that the HRA should be re-labelled as an Appropriate Assessment.</p> <p>The HRA should reference all relevant survey data used to support assessment conclusions alone and in combination.</p>
<p>Q3.3.5.1</p>	<p><b>Adequacy of mitigation measures</b></p> <p>a) Applicant, for the identified bat crossings of the Proposed Development identify all existing and proposed landscaping features that will help guide bats to these crossing points. What assurance can the ExA have that the proposed landscaping will function as intended?</p> <p>b) What landscaping or other measures will help guide other animal species, including mammals, birds, amphibians to these crossing points?</p> <p>c) Applicant, provide examples of the evidence referred to at ISH4 [EV-060] showing that bats will</p>	<p>As indicated in our response to WQ2 the principles of bat mitigation measures are being agreed between the Applicant and Natural England, through ongoing discussions as set out in the '<i>9.54 Barbastelle Bat Survey and Mitigation Table Technical Note</i>' (Rev 3, 20/12/21). However, we still require further information to be satisfied with the principles of the location, design and</p>

	<p>use multi-purpose underpasses, including ones used by humans.</p> <p>d) What evidence is there that other animal species will use such multipurpose underpasses?</p>	<p>suitability of bat mitigation measures, including underpasses and other measures to minimise severance of bat flight paths. We are aware that detailed mitigation measures, including construction mitigation and a sympathetic lighting strategy, will be agreed at the detailed stage, through relevant plans including the Biodiversity Mitigation Plan. Whilst the Applicant is seeking to provide information to address NE's concerns we will require additional time to review this. NE is therefore unable to offer any further comment in response to the ExA's questions regarding the adequacy of bat mitigation measures.</p>
<p>Q3.6.3.1</p>	<p><b>First Iteration EMP</b></p> <p>a) Applicant, set out a schedule of the fundamental changes proposed in the First Iteration EMP [ref]. Is there any relevance to the colour coding in the track change versions [REP6-007]?</p> <p>b) All relevant Parties comment, if you have concerns, to the changes proposed in the First Iteration EMP [REP6-008].</p> <p>c) The ES provides detail of construction related activities that would fall outside the defined construction working hours [APP-071 Annex K, paragraph 1.4]. Applicant, no reference to 'departure' is made in the updated First Iteration EMP [REP6-008, 1.4.3 a. or b.] Therefore, would the departure of delivery vehicles from site and the departure of vehicles from the works compounds fall within the scope of the set construction hours?</p> <p>d) All Parties, provide comment as to whether those activities referred to in First Iteration EMP [REP6-008, 1.4.3 a or b] are reasonable to be excluded from the set construction hours set out in the ES. How would they be controlled?</p>	<p>Natural England has undertaken a brief review of the track changes version of the First Iteration EMP [REP6-007]. With regard to matters in our remit the changes appear largely to include updates on bat mitigation and submission of species licences and minor edits to wording and references. We therefore have no concerns with the updates to First Iteration EMP.</p>
<p>Q3.14.1.1</p>	<p><b>Surveys</b> Are you satisfied with the Applicant's Agricultural</p>	<p>Natural England has reviewed the Applicant's 9.69</p>

	<p>Technical Note on Soils and Agricultural Land? Do you have any outstanding concerns in this regard?</p>	<p><i>Agricultural Technical Note – Soils and Agricultural land Classification (December 2021)</i> and considers the survey methodology and results to be acceptable in providing a baseline assessment of land quality in the areas where a detailed survey has been carried out.</p> <p>In areas where access was not granted rather than rely upon the Regional 1:250 000 Series ALC map, a more detailed desk assessment of likely grades could have been carried out, making use of the findings of the field survey on the same soil types. The affected area amounts to nearly a third of the Order Limits. The findings of this assessment could then have been reported in place of paragraph 3.6.25. Nonetheless these areas are likely to be best and most versatile (BMV), as reported, but an indication of the balance of Grade 2 to Subgrade 3a could be made. This in turn would affect the conclusion in paragraph 4.1.1. Section 4 does not refer to this large area of land for which no detailed survey data is available.</p> <p>Natural England would prefer to see a revision to the report, from paragraph 3.6.25 onwards, to take account of a detailed desk assessment of likely grading for the unsurveyed areas.</p>
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We hope the above comments are helpful. Natural England has no substantive comments to make in response to other questions.

Natural England  
14 January 2022

For further information please contact:

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