



THE PLANNING ACT 2008

THE INFRASTRUCTURE PLANNING (ENVIRONMENTAL
PROCEDURE RULES) 2010

ABLE MARINE ENERGY PARK ORDER APPLICATION

Summary Written Representations of Natural England

Applications by Able Humber Ports Limited for:

The construction and operation of a new quay, called the Able Marine Energy Park, and associated development on the south bank of the River Humber.

Site at Immingham, North Lincolnshire

Infrastructure Planning Commission ref: TR030001

Summary Written Representations

1. Natural England's Written Representations provide Natural England's statutory advice in respect of the potential impacts of the proposed development on the natural environment. Natural England's Written Representations expand upon the issues raised in Natural England's Relevant Representations, submitted 2 April 2012, in view of discussions that have taken place with the Applicant to date. By Annex D to its letter of 31 May 2012 the Examining Authority has asked parties, including Natural England, a number of questions. For ease of reference a table directing the reader to the parts of the representations where answers are provided is at Annex C to the Written Representations.

Overview of the sections of Natural England's Written Representations

Introductory and background information

2. The introductory and background sections of Natural England's Written Representations are as follows:
 - 2.1. Section 2 sets out the status and functions of Natural England.
 - 2.2. Section 3 provides information on the legislative framework which applies in this case, with reference to the relevant pieces of environmental law and policy.
 - 2.3. Section 4 introduces the statutory nature conservation designations and interests in the area of the proposed development. Further information relating to each of these sites is provided in Annexes A and B to the Written Representations. The relevant protected sites potentially affected by the proposed development are as follows:
 - The Humber Estuary Special Protection Area ("SPA")
 - The Humber Estuary Special Area of Conservation ("SAC")
 - The Humber Estuary Ramsar site
 - The Humber Estuary Site of Special Scientific Interest ("SSSI")
 - North Killingholme Haven Pits SSSI
 - 2.4. Sections 5 and 6 provide an overview of the Humber Estuary and the impacts upon it arising out of the proposed development. Section 5 provides detailed comments regarding the natural attributes of the Humber Estuary and in particular the bird interest situated in it, including the black-tailed godwit, redshank and curlew populations of the Killingholme Marshes foreshore. The discussion in Section 6 focuses on the loss of habitat in the SAC, SPA, Ramsar and SSSI designated sites as a result of the direct and indirect impacts of the proposed development. Natural England's views in this section are provided on the following:
 - The loss of approximately 34ha of mudflat from the SAC and 40ha from the SPA, together with a loss of a further 13.5ha of estuary (subtidal) habitat from the SAC. In addition to this, the Environment Agency has estimated further losses of habitat as a result of the development due to a process known as 'coastal squeeze'. This may lead to the loss of a further 10ha of intertidal habitat over a 100 year period. In Natural England's view, the loss of intertidal

mudflat is the most significant impact of the proposal.

- The numbers of bird species present on Killingholme Marshes foreshore, in significant numbers, and the various impacts on the birds arising out of the development through disturbance and the loss of habitat.

Natural England's conclusion is that the impact of the proposal is very significant in the context of the integrity of the EU sites.

- 2.5. Section 7 provides the background to Natural England's assessment of the issues. In this section Natural England highlights the fact that whilst a number of meetings have taken place with the Applicant to seek agreement on issues, Natural England's ability to assist the Examining Authority in the examination of this application is hampered by the number of outstanding pieces of information yet to be provided by the Applicant with regards key aspects of the proposed development. Table 7.1 and paragraph 7.4 sets out those pieces of information which have been received and are yet to be received.
- 2.6. A discussion is then provided on the mitigation associated with the application and the design alternatives. Here the point is made that there has not yet been a single comprehensive and coordinated strategy of mitigation measures and that further mitigation may be necessary in light of further information that is yet to be provided. Compensation is also discussed, including its location and the experience of other compensation sites on the Humber Estuary. Information regarding Natural England's assessment of the EU sites and their conservation objectives is also provided.
- 2.7. To assist the Examining Authority in its determination of this application, Natural England has also provided a discussion on how, in its view, it should approach the assessment of integrity and coherence in accordance with EU Commission guidance and CJEU case law.

Summary of Issues

3. Section 8 contains Natural England's statutory advice with regards the issues of concern arising as a result of the proposed development. Natural England identified five main issues in its Relevant Representations, the most important of which related to the provision of compensation at Cherry Cobb Sands. In addition to these main issues it identified a number of subsidiary issues of which further evidence or other work was required (these were further issues which had not been resolved satisfactorily as part of the pre-application process). In summary, the main issues are the following.
 - 3.1. **The main outstanding issue - proposed compensation site at Cherry Cobb Sands:** Here, the Applicant originally proposed a 100ha managed realignment site at Cherry Cobb Sands on the north bank of the Humber, opposite the development site. It was understood that this would provide a ratio of 2:1 compensation for the loss of mudflat, together with above 1:1 compensation for the loss of designated estuary features of the SAC. Given the fact that the compensatory habitat would not be available at the time that the existing habitat would be lost, the Applicant has proposed providing a 38ha wet grassland site at Old Little Humber Farm whilst the managed realignment site at Cherry Cobb Sands develops benthic interest. Natural England's position on this proposal was that in principle there was a sufficient degree of confidence that the proposed amount of compensation would be sufficient, although Natural England noted residual doubts as detailed modeling work had not yet been provided.

- 3.2. However, recent communications with the Applicant and its consultants, Black and Veatch, have indicated that it may not be possible to provide a compensatory ratio of 2:1 (mudflat habitat creation to mudflat loss) at Cherry Cobb Sands. It appears that the managed realignment site will rapidly accrete and is likely to become saltmarsh habitat more quickly and at a higher rate than previously anticipated.
- 3.3. The Applicant's consultants have said that they will carry out further work to investigate these concerns. On the basis of the information that Natural England has so far received, there are serious doubts on the ability of Cherry Cobb Sands to deliver adequate and effective compensation for the loss of the mudflat at Killingholme Marshes.
- 3.4. Natural England's position is that in order to comply with the requirements of the Habitats Regulations, equivalent functional ecological habitat must be provided as compensation both for the loss to the protected features (estuary habitat and intertidal mudflats) but also for the impacts on birds, especially the black-tailed godwit, which are currently feeding in internationally important numbers on the mudflats that will be lost. Currently, there is considerable uncertainty not only over the detailed design, but over what exactly is proposed as compensation by the Applicant. This makes it impossible for Natural England to give any firm advice on the adequacy of the compensatory measures in these Written Representations. Nor is it possible to conclude that the compensatory measures proposed will maintain the coherence of the Natura 2000 network as required under Regulation 66 of the Habitats Regulations.
- 3.5. Natural England's advice in this case is that it will be necessary to provide a compensatory ratio of at least 2:1. This is not a standard requirement, there is no generic compensation ratio that would apply to all species and habitat types. In this case, the ratio of 2:1 was proposed by the Applicant, but it is considered that the need for a 2:1 ratio is underpinned both by common sense and a good understanding of the specific ecological conditions involved. This is based in particular on two interrelated factors: the ecological quality of the area that will be lost and the uncertainty of being able to establish equivalent habitat at Cherry Cobb Sands.
- 3.6. A 2:1 ratio is likely to be sufficient to meet the requirements of seven of the eight SPA species displaced (shelduck, ringed plover, dunlin, lapwing, bar-tailed godwit, curlew and redshank), albeit an element of uncertainty remains. For black-tailed godwits, however, it remains possible that 2:1 may not prove to be sufficient, which means that a strict monitoring programme will be required. One of the key functional aspects for the compensation is to maintain feeding opportunities for black-tailed godwits. However, once the design is selected that maximises creation of mudflat with the minimum succession to saltmarsh, the diversity and abundance of invertebrates (and consequently both the species and numbers of birds that will colonise) largely depends on the prevailing environmental conditions at the site selected. It is not possible to undertake specific habitat management prescriptions that would ensure that the mudflat selected would mirror the mudflat lost and the birds it supports.
- 3.7. There are two factors for the Examining Authority to have regard to in respect of the timing of compensation. First, compensation should be available to birds for the same period of time as the area of lost habitat would have otherwise been present. In other words, the compensation should be like for like on a temporal basis, taking into account natural change. Secondly, compensation should be available at the time that the habitat compensated for is lost. As Cherry Cobb Sands will not be

mudflat for a number of years after the Killingholme Marshes foreshore is destroyed, the Applicant offered to provide a 38ha wet grassland site at Old Little Humber Farm whilst the managed realignment site develops benthic interest. So far limited details have been provided by the Applicant about Old Little Humber Farm, however these details have cast significant doubt over whether Old Little Humber Farm can provide wet grassland habitat within the timescales required and for the species affected by the development.

- 3.8. A discussion is also provided on the experience of other managed realignment sites on the Humber as well as the need for the Applicant to consider other options which in Natural England's view would offer more realistic possibilities for the delivery of the required compensation without affecting additional areas of the designated site.
- 3.9. **Disturbance of Humber Estuary SPA/Ramsar waterbirds:** It is Natural England's position that the piling operations required during the construction of the Marine Energy Park are likely to result in disturbance to SPA and Ramsar waterbird species. The Applicant has calculated that there will be a 6ha functional loss of habitat owing to disturbance. It is assumed that this area has been calculated by mapping the area contained within a buffer surrounding the development. The size of the buffer will be determined by the disturbance distance selected. The 275m distance selected in the Applicant's shadow Habitats Regulations Assessment Report (paragraph 6.3.8) appears to Natural England to be reasonable.
- 3.10. **Designated site habitat loss; lack of proposed compensation for the SAC and Ramsar site:** The shadow Habitats Regulations Assessment prepared on behalf of the Applicant states that the berthing pocket will be over-dredged to the natural bedrock and then backfilled to -11m with stone aggregate. The impact of this work, including, for example, the loss of approximately 7.7ha of subtidal estuary mud habitat, is not assessed either in the shadow Habitats Regulations Assessment or in the Environmental Statement. Natural England advises that this impact should be assessed by the Examining Authority as part of its Habitats Regulations Assessment. Sufficient information will be required to allow this to be done. Since Natural England submitted its Relevant Representations it has requested further information relating to this matter and has spoken with the Applicant's consultants. During this discussion the information relating to dredging was again requested, but has only been partially received. Natural England hopes that the Applicant provides this information shortly so that it can advise the Examining Authority appropriately in its Comments on the Written Representations.
- 3.11. **Mitigation for great crested newts (Area B):** The Applicant submitted a draft European protected species licence (a mitigation licence) application to Natural England on 16 February 2012. Natural England's Regulation team assessed the draft licence application and concluded that it failed to meet the three licensing tests. Natural England advised the Applicant (in its letter dated 4 April 2012) that it was not possible to issue a 'letter of comfort' at that stage and provided details of the further information required to address the issues of concern. Since the application was first submitted, Natural England has been working with the Applicant to help ensure that their draft licence application meets Natural England's protected species licensing requirements. A revised draft licence application was received by Natural England on 12 June 2012 and is currently being reassessed by our Regulation team.
- 3.12. **Biodiversity mitigation; breeding birds:** Natural England is concerned that the significance of the impact of the proposal on biodiversity was not fully represented in the main chapters of the Environmental Statement, as breeding bird survey data had been omitted. With regard to the duty under section 40 of the NERC Act to have

regard to the conservation of biodiversity, Natural England advised that sufficient opportunities to mitigate the impacts on breeding birds should be provided. Natural England has now received an updated report on breeding birds from the Applicant and is satisfied that the baseline data is now accurate. However Natural England does not believe that the impacts of the development are accurately predicted in a number of cases. Natural England has therefore advised the Applicant to provide further information to determine whether impacts on some species of breeding bird can be mitigated through the provision of onsite habitat creation and enhancement. This information is awaited.

3.13. **Other issues identified in Natural England's Relevant Representations:** In addition to the main issues identified by Natural England above, there are a number of other issues which Natural England advised should be addressed by the Applicant and the Examining Authority as part of the application process in order to ensure that the project is acceptable from a nature conservation perspective. These issues were set out in the appendices to Natural England's Relevant Representations. They fall into three overlapping categories:

- Issues on which further evidence or assessment work is required
- Issues where further work on mitigation and compensation proposals is required
- Issues that should be dealt with under the DCO requirements

3.14. To assist the Examining Authority, Natural England has divided these outstanding issues into those issues which have been resolved with the Applicant (set out in Table 8.1) and those issues which remain outstanding.

3.15. Natural England has also provided input into the Examining Authority's screening and appropriate assessment matrixes and this is provided at Annex H of the Written Representations. If the Examining Authority are content with this approach we would be happy to continue to complete the tables during Examination Process and in light of further environmental information received.

3.16. Having provided a summary of the issues, Natural England has provided in Section 9 its comments on the draft DCO. This includes Natural England's views on those issues that should be dealt with under the DCO requirements together with its initial comments on the draft DCO. This section reiterates the comments Natural England made in its Relevant Representations.

3.17. Finally, in Section 10, Natural England confirms its resolve to seek the resolution of remaining issues through Statement of Common Ground meetings with the Applicant. Failing satisfactory agreement with the Applicant, Natural England will advise the Examining Authority on those issues which will require their consideration as part of the Examination Process.

Conclusion

4. Natural England's view has been that there is no reason in principle why obstacles to the project could not be overcome; however serious concerns have now been raised about the adequacy of the compensation proposed. Natural England's satisfaction in relation to the other issues is subject to being provided with further information and details on those matters. In some areas, the Applicant has provided the further information or assurances necessary and issues have been resolved. However, in other areas, issues remain. As

stated above, Natural England's primary concern with regards this application is the proposed compensation site at Cherry Cobb Sands. Despite further meetings in recent weeks with the Applicant's consultants in which further modelling information has been provided many of Natural England's concerns have not been alleviated. In fact, some of the concerns have increased, in particular with regard to the proposed compensatory measures. Natural England hopes to be in a position to advise the Examining Authority further on the issue of compensation in its comments on others' Written Representations at the end of July, by which time it is hoped the Applicant will have provided further information, either in respect of the ability of Cherry Cobb Sands to provide adequate compensation or in respect of a viable alternative package (with or without Cherry Cobb Sands) which is capable of delivering adequate compensation.