

Written submissions to the Examining Authority on behalf of Mr S. Kirkwood, the tenant farmer of land at Cherry Cobb Sands, East Yorkshire, identified in the application by Able (UK) Ltd as nature compensation land under IPC reference TR030001.

Introduction

1. This submission is made by Hickling-Gray Associates, Chartered Town and Country Planning Consultants, of 11, Saturday Market, Beverley, East Yorkshire, HU17 8BB, on behalf of Mr S. Kirkwood
2. Mr S. Kirkwood is the tenant farmer currently occupying around 100ha of land at Cherry Cobb Sands, East Yorkshire, identified within application reference TR030001 submitted by Able (UK) Ltd.
3. The proposed use of the land at Cherry Cobb Sands is as replacement inter-tidal mudflats to compensate for the loss of similar land at North Killingholme, where the applicants wish to construct a new manufacturing and port facility to serve the emerging renewable energy market.
4. Mr Kirkwood (“the objector”) wishes to register his opposition to the use of land at Cherry Cobb Sands as replacement nature conservation land (not to the construction of the proposed new port / manufacturing facility per se) and **hereby submits formal notification of his wish to make oral representations at the Issue Specific Hearing on the Draft Development Consent Order to be held on Tuesday 11th September, 2012.**
5. Previously, (March 2012), the objector has submitted representations in support of the following assertions: -
 - (i) There may not be a need for any compensation land to be provided in connection with the proposed development;
 - (ii) If such provision is found to be necessary, however, the site at Cherry Cobb Sands (CCS) is not the most suitable alternative and the site identification process was not robust, transparent, or objective;
 - (iii) Data, including some baseline survey information, and assumptions, relied upon in the ES, is either out of date, inaccurate, and / or leads to uncertainty;
 - (iv) The proposed measures will not create the conditions necessary to provide “like for like” compensation and will not, therefore, maintain the overall integrity of the Natura 2000 site;
 - (v) The proposed development at CCS will lead to increased silting at the outfall of Stone Creek to the detriment of land drainage in South Holderness and users of the Stone Creek Boat Club;
 - (vi) The applicants have paid inadequate attention to the issue of land contamination and the potential need to use and/or move soil and other materials from, to, and within, the site, and;
 - (vii) The likely effect on footpath users has been under-valued.

6. Additional submissions on these issues, over and above those submitted in March 2012, are set out below.
7. Following the Preliminary Meeting held on 24th May, the ExA issued a first list of questions relating to these (and other) issues - with a second list of questions due to be issued by 7th August - and the objector awaits the responses to these questions with interest.
8. The objector intends to review the responses to the first and second list of questions (due by 27th July and 4th September respectively), and to submit further representations at the Specific Issue Hearing for the Compensation Site to be held on 11th September, 2012.
9. In addition, the objector hereby notifies the ExA that he is hoping to commission the Institute of Estuarine and Coastal Studies at the University of Hull to provide him with a critique of the proposals for the compensation site focussing on the ability of the site to provide "like for like" biodiversity in the short, medium, and long terms (providing additional material under points (i) - (v) above).

The need for nature compensation land

10. The objector has previously asserted that the mud flats that will be lost as a result of the proposals will be replaced naturally within the Humber Estuary and therefore, that no compensatory land is required in order to maintain the integrity and cohesion of the Natura 2000 site.
11. The objector intends to ask IECS to comment on this assertion and will report any findings to the Issue Specific Hearing in September (and circulate their report beforehand if available).
12. Natural England's response to Questions 78 - 92 will be relevant to this issue.

Loss of agricultural land

13. The objector has previously commented upon the loss of high quality farmland and suggested that it has been given very little weight in the assessment of alternative compensation sites.
14. It is noted that DEFRA have been asked to comment upon this aspect in the first list of questions (Question 54 - which, incidentally should refer to 100 hectares not 39.5 ha of highly productive land that would be lost), and their response is awaited with interest.
15. The objector has asked the NFU for a view on this matter and will report their comments (if any) at the Issue Specific Hearing to be held on 11th September, 2012.

Alternative sites

16. The ExA has asked the applicants to provide additional information on the site selection process, (Questions 18 and 19).
17. If a case for the provision of nature compensation land is found to exist, the objector maintains that the site at CCS is not the most appropriate choice.
18. The objector maintains that there are 5 other sites included within the submitted documentation that appear to represent more suitable alternative nature compensation opportunities than CCS, namely: Site 3, Little Humber; Site 8, Outstray Farm; Site 10, Skeffling; Site 12, New Holland; and Site 15, Halton Marshes.
19. The applicants' answers to Questions 18 and 19 will be assessed by the objector and a response will be presented at the Issue Specific Hearing in September.

Increased Flood Risk to Sands House

20. Another important consideration missing from the applicants' analysis of alternative sites is the increased risk to domestic properties from flooding resulting from the proposed development.
21. In the present case, as Drawing No. 121726-5000-004 Rev. A shows, the proposed re-alignment of flood defences at Cherry Cobb Sands brings the objector's dwelling within the "Danger to All" category - with a subsequent impact on property values, risk to life and property, and on his position under the European Convention on Human Rights.
22. The objector considers that this aspect of the proposals has not been considered either by the applicants or the Examining Authority and requests that the views of the Environment Agency are sought on this matter in the second list of questions to be issued in August.

Inadequate data / lack of future management plan and mitigation strategy

23. Further doubts regarding the robustness of the alternative sites assessment arise from paragraph 4.1.4 of Annex 30.1 which states that "no data or ground levels has been obtained" for any of the possible alternative sites.
24. The objector is unclear how the applicants could possibly have reached an informed conclusion regarding alternative sites without such basic information, and cites this as an example of the less than robust manner in which the site selection process has been undertaken, (a further example being the absence of any "clearly defined implementation and management objectives" for the CCS site).
25. The objector has reservations about some of the data sources used in the application. In the examples cited previously, it was the absence of adequate data that caused concern (regarding site levels and natural

mudflat creation); in the case of nature conservation issues, it was the age of the data used.

26. Recently, increased erosion rates have been reported along the coastline immediately north of the Humber Estuary, which will lead to increased silting within the Estuary. Such factors do not appear to have been taken into account in the application.

27. These concerns were expressed in the objector's previous submissions (April 2011 and March 2012) and have been identified by the ExA in Questions 8, 13, 14, 17, and 22.
28. The objector maintains his view that the application is very poorly informed with regard to future maintenance and monitoring of the nature compensation site at CCS (in the event of the development proceeding) and that there are no contingency arrangements in the event of a breach of the proposed defences, unanticipated silting, or habitat failure.

Not "like for like" compensation
29. The objector maintains his opinion that the proposed compensation provisions at CCS will not produce "like for like" conditions as required under the Stage 4 notes in the methodological guidance¹, which requires the compensatory provisions to "address in comparable proportions, the habitats and species negatively affected in as close proximity as possible.....and to provide comparable functions..." to the affected site.
30. Previously, the objector has submitted direct quotations from Natural England setting out what the phrase "like for like" means in this context, together with references from the submitted material that appear to confirm the objector's opinion that the proposals will not produce "like for like" conditions on the compensation site.
31. The objector also draws the Panel's attention to comments from Mr Neil Etherington, (the applicant's nature conservation adviser), reported in the Withernsea Gazette² stating that, in his opinion, the CCS site would revert to salt marsh. The objector believes this process will mirror that of reclaimed land to the land east of Stone Creek where the Yorkshire Wildlife Trust (YWT) are currently grazing sheep in an attempt to improve its ecological value.
32. The objector intends to ask IECS to address the issue of "like for like" compensation and to form an independent opinion, which will be reported to the Issue Specific Hearing.
33. Furthermore, the ExA has asked Natural England a number of questions that will also help to resolve the issue of "like for like" compensation,

¹ Habitats Directive Methodological Guidance; Oxford Brookes University Impacts Assessment Unit, November 2001.

² 22nd March 2012.

(Questions 78, 82, 83, 90, and 91) and the objector awaits NE's response to these questions with interest - especially in light of the recently published Conservation Objectives for the Humber estuary SAC and SPA³

Increased silting

34. The objector (together with other interested parties) is concerned that the proposed development of the land at CCS for nature conservation purposes could lead to increased silting within the Estuary at the mouth of Stone Creek.
35. This possibility is acknowledged in Annex 32.1 of the ES, which states (at paragraph 2.3.5) that "a problem may arise..." in this respect, once again reflecting the uncertain nature of data submitted with the ES and Article 6 assessment.
36. In the ES the applicants assume that sedimentation levels will be identical to those at Paull Holme Strays - an assumption that is challenged by the objector, and which the IECS critique will be asked to comment upon.
37. Unfortunately, the applicant's scientific adviser from Messrs Black and Veitch, Dr Keillor, has been prevented from speaking to the objector on this matter.
38. The objector (and others) is also concerned that proposals to create a new inlet / outlet channel at Stone Creek will reduce velocities and therefore increase the likelihood of silting both within Stone Creek and at its outfall into the Estuary.
39. These concerns are clearly shared by the ExA as reflected in Questions 38, 39 and 40.
40. The objector remains of the opinion that the applicants have carried out insufficient survey work and technical analysis to predict with any reasonable degree of certainty, the likely effects of the proposed development on Stone Creek and its outfall into the Humber Estuary.

Soil suitability and land contamination

41. The objector has previously expressed concerns that the nature, location and extent of contamination within the compensation site has not been established by the applicants - resulting in further site investigation work immediately prior to the Preliminary Meeting on 24th May.
42. To date, the objector has not seen the full results of this further survey work and is not aware of any subsequent amendments to the application as a result.

³ European Site Conservation Objectives for the Humber Estuary Special Protection Area (Code UK9006111) and Special Area of Conservation (UK0030170): Natural England, June 2012.

43. The ExA has asked the applicants to supply this information in Question 22 and the objector awaits such information with interest.
44. The objector has previously expressed concern about the suitability of soil from the site being used to construct the proposed new flood defences - but notes that there are no questions addressing this issue in the first list of questions.
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45. The objector considers that the absence of any assessment of such significant environmental, social, and economic effects represents a serious failure of the ES, in breach of the current (2011) EIA Regulations.
- The footpath diversion
46. The objector has previously registered an objection in support of that made by The Ramblers to the proposed re-routing of the coastal footpath inland, behind the proposed flood defences. Although the objector does not intend to submit any further evidence on this matter, he maintains his opinion that the proposed diversion represents a degradation in the quality and utility of the coastal footpath.

Hickling-Gray Associates (on behalf of Mr S. Kirkwood)
June 2012