

**PINS – TR030001**

**(24<sup>th</sup> September 2012)**

**Planning Act 2008**

**Infrastructure Planning (Examination Procedure) Rules 2010**

**Able - Proposed MEP, Killingholme**

**Associated British Ports (10015525)**

**Representations in relation to the responses to the ExA's First Round  
Questions and Applicant's Comments**

**Terrestrial Ecology**

**Prepared by**

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## Introduction

1. In their response to the written representations, ABLE UK had commented on the evidence presented by me in respect to terrestrial ecology. The relevant sections are paragraphs 22.30 to 22.60 inclusive (Document reference: TR030001/APP/19).
2. Some of these issues have already been discussed during the issue specific hearings and to save repetition are not covered in detail here.

## Invertebrates paragraphs 22.31 – 22.35

3. Invertebrates are often overlooked during ecological surveys, as has been the case here. There are a number of reasons why invertebrate surveys should have been carried out.
  - records of a BAP species such as white-letter hair streak warrant further investigation.
  - the close proximity of the SSSI supporting good invertebrate populations
  - the scoping exercise recommended invertebrate surveys.
4. There are legal obligations regarding BAP species (Section 41 of the Natural Environment and Rural Communities Act 2006) and to overlook these in the assessment is a major omission. I use white-letter hair streak as an example as without survey work it would be impossible to know what mitigation would be required. Able claim the application may have taken a precautionary approach to this species (although the detail of the mitigation is not given) but the information has not been gathered to provide an understanding of what other invertebrates might be present.
5. Given the lack of data, reliance on assessments that were outside the development area, and previous records of rare species, the application cannot conclude that the impacts upon terrestrial invertebrates is likely to be insignificant.
6. I have now been able to review the 2006 Phase 2 survey which was not included in the EIA and was only released as part of the Supplementary Environmental Information (Annex 11.27). It is interesting to note that in paragraphs 5.2 and 5.3 of the report the potential invertebrate interest within the site is noted. In paragraph 5.2 it is stated that '*Examples of these grasslands on site are floristically poor, but may be rich in invertebrates*'. In paragraph 5.3 the following is stated '*One pasture within the development area (Site 2A) was floristically diverse and was uniformly classed as U1f grassland. Although the species are not individually rare, this pasture provides abundant nectaring and food plants for many invertebrates. These invertebrates in turn may attract a variety of fauna to feed at the site including bats, birds and amphibians.*'

## Vascular Plants paragraphs 22.36 – 22.39

7. As stated in my written representation, the letter I was referring to was from North Lincolnshire Council (13<sup>th</sup> October 2010) which was reproduced in the Scoping Opinion (ref TR030001/APP/14b). The letter begins on page 152 of the PDF file. On page 154 the requirements for ecological information are set out and in Appendix 2 further information is given where it is stated that any notable records of species [vascular plants] or communities should be highlighted in the Phase 1 survey. I can only reiterate that ABLE UK has not done this. The Phase 2 survey of 2006 was out of date and cannot be relied upon. ABLE UK has conceded in paragraph 22.39 of its report that the Phase 1 survey of 2010 was carried out outside the optimal survey period for botanical surveys. The Phase 1 survey of 2010, therefore, cannot have recorded notable species as the majority would not be apparent at these times of year (i.e. April and September).

## **Bats paragraphs 22.40 – 22.44**

8. The subject of bats was covered, albeit briefly, during the issue specific hearing.

## **Great Crested Newts paragraphs 22.45 -22.46**

9. The additional surveys of Great Crested Newts of May 2012 do not appear to have been published. The survey data may have been supplied to Natural England but has not been provided either to the hearing or to the public.
10. Paragraph 22.46 of the Applicant's Comments referred to the correspondence with Natural England on the draft Great Crested Newts license which is reproduced in Appendix WR22.1 of the same documents. This is the second draft application and it is clear that Natural England is still not satisfied the test of Favourable Conservation Status can be met. Of particular concern is the opinion expressed by Natural England that adequate and appropriate survey work has still not been completed. It should be noted that NE has not been provided with an assessment of the use of drainage ditches by GCN and as noted in NE's assessment further survey work may be required. If these ditches are suitable for Great Crested Newts then this would mean that the baseline data, upon which the EIA was based is incomplete. The EIA would also need to be updated to reflect the results of the May 2012 surveys.

## **Systematic evaluation Paragraphs 22.47 – 22.51**

11. ABLE's response to my criticisms of the ecological chapter further illustrates the lack of rigour that was employed to assess the ecological impacts. In paragraph 22.47 the author combines baseline with evaluation. It is incorrect to do this, as these are not the same process. The baseline data describes the ecological receptors currently present (or should do) where as the evaluation determines the *value* of those ecological receptors. This process is correctly described in paragraph 11.3.11 but the rest of Chapter 11 then fails to engage this process.
12. Evaluation is a critical part of the EIA process and is described in detail within the IEEM guidelines (Guidelines for the Ecological Impact Assessment in the United Kingdom IEEM 2006). This part of the EIA process quite simply has not been completed. The evaluation process is critical because the output of this part of the process is then used to assess the significance of the impacts. For example, the loss of an ecological receptor which is only of value at the site level may not be significant and may not warrant mitigation. The loss of a feature which is of international importance is likely to be of much greater significance and warrant more detailed mitigation. This is not an esoteric or academic exercise but one which is fundamentally necessary to the EIA process.
13. In its response ABLE UK refers to paragraph 11.6.59 which it claims undermines my argument. However rather than undermining it, it illustrates the problem rather well. Paragraph 11.6.59 is dealing with the impacts upon habitats and contains the *only* evaluation in Chapter 11 of the value of the ecological receptors. The habitats are assessed as being of only site value, as opposed to county, regional, national or international. Nowhere else in Chapter 11 are the value of the ecological receptors assessed. The ES fails to assess the value of the breeding birds, wintering birds, great crested newts, bats, water voles or any other receptors assessed to the assemblage of these receptors.
14. In paragraph 22.49 of ABLE UK's document my objectivity is challenged on the basis of the circular argument that I cannot conclude that the assessment is grossly underestimated if I consider the baseline data to be insufficient. I consider the assessment to have undervalued the ecological resource and the impacts upon that resource, even based on the poor data presented. Had the appropriate level of survey been completed (and, for example the bat roosts which I interpret to be present in the site, had been identified), it is probable that the gap between the true evaluation of the ecological resource and that assessed in the ES would widen further. I believe that any experienced, independent ecologist with a moderate understanding of EIA and the IEEM guidelines would have come to the same conclusion.

15. Paragraph 22.50 responded to my assessment of the key ecological impacts and the proposed mitigation/compensation. ABLE's response suggests that I have not understood the role of the Cherry Cobs Sands or Old Little Humber Farm in compensating for the ecological impacts. I mentioned the two compensation sites however because the impact mentioned includes SPA interest. I accept however that my sentence at the end of my paragraph 4.25 may have been poorly drafted in that it did not refer directly to mitigation area A . For the sake of clarity it should read

'4.25 It is my view that ecological losses detailed in the ES, namely;

loss of European Protected Species (bats and great crested newts;

ii) loss of National Biodiversity Habitats (ponds, hedgerows and, neutral grassland);

iii) loss of species protected under Schedule 5 of the Wildlife and Countryside Act 1981 (water vole);

iv) loss of pasture and arable land that supports species designated under the SPA (e.g. curlew);

v) loss of breeding bird habitat (including 12 reds list species and species listed under Schedule 1 of the Wildlife and Countryside Act 1981 (little ringed plover and possibly barn owl)) and

vi) loss of a Local Wildlife Site;

must be regarded as highly significant. Such significant losses require commensurate mitigation and/or compensation, which is not provided by either Cherry Cobb Sands, or Old Little Humber Farm or mitigation Areas A and B.

That said, I do note that Old Little Humber Farm has now been withdrawn for the applicants proposals, which does rather confirm my original expression of concern.

### **Loss of terrestrial habitat paragraphs 22.52 – 22.59**

16. In paragraph 22.53 ABLE UK has stated that Mitigation Area A is not designed to present any mitigation for bats. They refer to paragraph 11.2.26 of the ES Volume 1, [this is a typographical error, and should read 11.7.26].

17. The role of Mitigation Area A for bats seems to be confused. During the issues specific hearings ABLE's witness stated that the margins of Mitigation Area A would be planted up with scrub that is aimed to replace the woodland that will be lost within the development and this would provide foraging habitat for bats. This contradicts their written statement.

18. This does not alter my view the mitigation for bats is wholly inadequate that the proposed corridors within the development will be too brightly lit to be used by bats and that Mitigation Area A will not provide sufficient compensation to balance the loss of habitat that is being used by bats.

19. With reference to Water Voles, while the new ditches may be 15 meters wide they provided an entirely different function and character when compared to the existing ditches. Given that no details of the design of the water vole mitigation are given it is difficult to understand how they will provide a habitat that is favourable for water voles. The description of the ditches in paragraph

4.4.39 suggests that ditches will be designed to cope with the increased runoff that will be created by the development. While water voles can cope with a certain amount of flooding I have serious concerns that the extreme fluctuations in water levels will not be appropriate for maintaining healthy populations of water vole.

### **sHRA In-combination assessment paragraphs 22.55 – 22.59**

20. These paragraphs perpetuate the misconceptions that ABLE UK has over how to carry out the in combination assessment. ABLE UK has however presented an updated in combination assessment which addresses the flaws I had raised.

### **The Compensation Site paragraph 22.60**

21. Although ABLE UK considered my criticism to be '*mere conjecture; an attempt to create a cloud of doubt*' they now appear to have accepted my arguments and have replaced the Old Little Humber Farm compensation site with one next to Cherry Cobb Sands.

22. Too little information has been supplied for me to express any views on the adequacy of what is now being proposed.