

23rd November 2012

Planning Act 2008

Infrastructure Planning (Examination Procedure) Rules 2010

Able - Proposed MEP, Killingholme

Associated British Ports (10015525)

Representations regarding additional information submitted by

Able UK October 12th 2012

TR030001

Terrestrial Ecology

Prepared by

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Introduction

1. ABLE UK submitted a large volume of additional data to the hearing on October 12th 2012 (121012_TR030001_Leslie Hutchings of Able Humber Ports Limited). This document sets out ABP's comments on those documents that are pertinent to terrestrial ecology. The document references used here follow ABLE UK's nomenclature, however it should be born in mind that the EX numbers used overlap with previous additional information so for example EX 11.26 refers to both Water Vole Mitigation and an earlier supplemental document, EX11.26 Pumping Station.

Ex 11.27 Breeding Bird Mitigation

2. ABLE UK had been criticised by Natural England for its approach when assessing the impacts of the development upon breeding birds within the development site. The original figures used were based on assumptions of future use of the industrial areas by breeding birds once the development was in place. These assumptions could not be justified and revised figures have now been presented (see Table 1 on the unnumbered page at the end of EX11.27 Breeding Bird Mitigation (not to be confused with Table 1 on page 2 of the same document)).
3. ABLE has now revisited the numbers of birds that will be lost to the development. These figures are summarised here in Appendix 1. In many cases the losses are greatly increased. Taking Skylark as an example the loss of this species has increased from -13 to -28 breeding pairs. Skylark are a red list¹ species and of 'Medium' sensitivity yet more than doubling the loss of this species is still considered to be 'negligible' impact. No additional mitigation has been put forward to mitigation/compensate the loss of these breeding birds yet the assessment within the ES has not been updated.
4. It should also be noted that mitigation area (presumably Area A) currently supports 14 breeding pairs of Skylark. The change in management of Area A to wet grassland and rough grassland strip will mean that the area is not longer suitable for nesting Skylark. Instead of 28 pairs being lost the true figure is 42 pairs.
5. It is clear that the original assessment of the impact of the development on breeding birds was fundamentally flawed. The revised figures are still an underestimate and the mitigation/compensation is over optimistic and cannot be relied upon.
6. Finally the impact upon the breeding bird assemblage has still not been assessed. The original estimate of the total loss of breeding pairs of all species was 237 this has now been increased to 549 yet no attempt has been made to revisit the assessment presented within the EIA.

¹ Eaton MA, Brown AF, Noble DG, Musgrove AJ, Hearn R, Aebischer NJ, Gibbons DW, Evans A and Gregory RD (2009) Birds of Conservation Concern 3: the population status of birds in the United Kingdom, Channel Islands and the Isle of Man. British Birds 102, pp296–341.

Ex 11.32 Environmental Monitoring and Management Plan: 2. Terrestrial Habitat - Killingholm (Draft)

Ex 28.3 Part 7 EMMP Plan 3 Compensation habitat – Cherry Cobb Sands RTE/Managed realignment site and associated wet grassland area.

7. ABLE UK has submitted three draft EMMPs for the Terrestrial Habitat, Cherry Cobb Sands and Marine Environments. Set out below are ABP's general comments on the approach to the EMMPs.
- Much of the content of the EMMPs is more suited to inclusion into the Environmental Statement and the baseline data should have informed the EIA process.
 - There is a lack of detail of what is to be done, when using what methods and what feed back loops will be put in place.
 - The documents do not address dredging compliance or impacts around the deposit grounds.
 - All monitoring should be for a minimum of ten years
 - The role of the Environmental Steering Committees must be more than simply "advisor in nature". The role of the steering group should be clearly defined by a legal agreement and actions decided by the group should be binding. This is particularly important where compensation proposals are untried and adaptive management may be necessary.
 - Monitoring data should be made public and available to scrutiny to allow for wider advances in mitigation/compensation procedures.
 - Baseline data should be updated particularly where the current baseline is considered to be inadequate (eg bats) or where no baseline data has yet been collected (eg Cherry Cobb Sands Wet Grassland (see below)).
8. The EMMP 3 Compensation habitat – Cherry Cobb Sands, RTE/managed realignment and associated wet grassland was superseded by the submission of a revised report (version 3) on November 12th 2012 less than 14 hours before the subject was due to be discussed in the issue specific hearing.

Ex 28.3 Final compensation proposals

9. It should be noted that these compensation proposals include additional changes to the proposed compensation. Not only is there the introduction of the RTE but the boundary of the intertidal part of the scheme has been modified at the northern end of the site.

EX 28.3 Part 2 Baseline of North Killingholme Foreshore

10. This part of the additional information sets out the baseline conditions for North Killingholme Foreshore (or Marshes) both in terms of the physical and biological

conditions. As baseline data this should have been submitted as part of the EIA and it is a mystery why this has only been presented at this late stage in the process.

11. The content of this document was discussed during the hearing of 12th and 13th of November. Natural England has criticised the level of detail for the infauna data for NKM and requested more survey data which ABLE UK agree to. However it is unclear how ABLE UK can have made an accurate assessment of the impacts of the scheme if they had not established a sufficient baseline for the infauna of the site. Without knowing how much biomass the area that is to be lost supports, it is impossible to know what the target biomass should be for the compensation mudflat and whether the compensation will sufficiently balance the losses of feeding resource. The target level for infauna (measured in Ash Free Dry Weight or converted equivalent) should be set not as a minimum that will support waders – as suggested in the document but to reflect the levels recorded at the site which is to be lost. These levels have yet to be established.

EX 28.3 Final Compensation Proposals Part 3 Development and Operation of the Intertidal Habitat Site.

12. Serious questions have been raised about whether the proposed operation of the RTE is possible given the proposed ground levels (as explained by Peter Whitehead).
13. It is also clear that the frequent dredging that will be required to prevent the RTE from succeeding to salt marsh will have a serious negative impact upon the infauna of the mud and the ability of the mud flat to support the necessary biomass to maintain bird populations. Other questions include.
 - The impact of discharges from the RTE/MR to the Humber
 - Effects of increased erosion of the RTE/MR on Cherry Cobb Sand Creek
 - Impacts of maintaining the RTE fields flooded upon the feeding waders
 - Taking into account the various structures, channels, salt marsh colonisation, will the RTE/MR provide sufficient mud flat habitat?
 - Will BTG use areas close to the embankments?
 - What room is there for adjustment if the compensation is found to underperform?

Ex 28.3 Final Compensation Proposals Part 4 Wet Grassland and Roosting Site.

14. This document sets out the designs for the proposed wet grassland site which is adjacent to the intertidal compensation site at Cherry Cobb Sands. The proposal is subject to a separate planning application that has been submitted to the East Riding of Yorkshire Council. The proposal has not been subject to EIA or HRA assessment (see below).
15. ABLE UK has made it clear during the hearings that the proposal is considered to be temporary but will be available for as long as required. Given that wet grassland has been designed to perform a key function (a roosting site for Black Tailed Godwit close to the new feeding site) and this is a permanent function is difficult to see how this

can be temporary. If the compensation fails to provide this function then further compensation will be required.

16. Further more paragraph 118 of the National Planning Policy Framework states that

- *“the following wildlife sites should be given the same protection as European sites:*

- sites identified, or required, as compensatory measures for adverse effects on European sites, potential Special Protection Areas, possible Special Areas of Conservation, and listed or proposed Ramsar sites.”*

17. Decommissioning of a compensation site would therefore not be consistent with paragraph 118 of the NPPF as the site would be protected as if it were fully designated. Furthermore, because of the way that the Birds Directive works, all areas that meet the criteria for SPA designation must be treated in that same way whether formally designated or not. If the compensation is successful and supports the number of Black Tail Godwit in the numbers that are currently found on the development site then the site would meet the SPA selection criteria and could not be decommissioned.

Part 6 EIA Review

18. This document aims to review the EIA in the light of the changes to the compensation package that is present, specifically the introduction of the RTE and the replacement of Old Little Humber Farm wet grassland with Cherry Cobb Sands Wet Grassland Scheme.

19. The assessment of the CCSWGS is not informed by ecological survey data. The only surveys that are specific to the site are the badger surveys. The approach employed has been to extrapolate the data collected for Cherry Cobb Sands and assume that the Wet Grassland site supports the same species. Such an approach is not justified either from a scientific point of view nor established EIA procedure.

20. The new compensation proposal needs to be subject to legal requirements of the EIA Directive and Regulations and the assessment based upon full ecological survey of the site.

21. The new CCSWGS compensation proposal needs to be subject to Habitats Regulations Assessment that will be carried out by the ExA. This is necessary as the conversion of the compensation site from its current landuse could in its self have a *likely significant effect* upon the European site. The applicant has however not provided the necessary ecological survey data (e.g. bird surveys) that would allow the ExA to make this assessment.

Ex 28.3 Part 8 Over-Compensation Proposal

22. This is an entirely new proposal (October 12th 2012) and one which has not been subject to EIA. It is unclear whether the proposal would be put in place as it seems to be conditional on the outcome of the Appropriate Assessment.

23. The area of land that is put forward for the over-compensation has, it would appear, already been included as a possible location for ecological mitigation for the Able

Logistics Park Proposals (planning application reference (PA/2009/0600)) which is the subject of a resolution to grant permission from North Lincolnshire Council subject to the signing of legal agreements. It is difficult to see how this area of land can be used for compensation if the Logistics Park Proposals are developed in the way they are envisaged. No explanation of this issue has been provided by ABLE.

Ex 35.14 Cherry Cobb Sands Compensation Site: Bird Survey Results August 2010 to April 2011

24. The bundle of documents issued by ABLE UK on October 12 included the above report that was under the label of EX 35.14. The reason for including this document in the bundle is entirely opaque. At first sight the EX 34.14 is the same as EX34.4 which was is an annex to Chapter 35 of the original ES. On closer examination however it is clear that the documents are different as Ex 35.14 is dated 8th November 2011 while EX 35.4 is 20th June 2011. Both documents are marked as 'final' and both have the same reference number. It is entirely unclear as to which document is relevant to the assessment and whether the changes are significant to the assessment.

Appendix 1 Summary of impacts upon breeding birds

| | Previous predicted change (number of pairs) Ref EX11.16 | Updated predicted change (number of pairs) Ref EX11.27 |
|--------------------------|---|--|
| Mute Swan | 0 | -1 |
| Greylag Goose | 0 | 0 |
| Shelduck | -4 | -10 |
| Gadwall | 0 | 0 |
| Teal | 0 | 0 |
| Mallard | -4 | -13 |
| Shoveler | -1 | -1 |
| Pochard | 0 | 0 |
| Tufted Duck | 0 | 0 |
| Red-legged Partridge | +2 | -9 |
| Pheasant | -9 | -15 |
| Little Grebe | 0 | 0 |
| Marsh Harrier | 0 | 0 |
| Sparrowhawk | 0 | -2 |
| Buzzard | 0 | 0 |
| Kestrel | -1 | -1 |
| Water Rail | -1 | -1 |
| Moorhen | -3 | -5 |
| Coot | 0 | 0 |
| Oystercatcher | -2 | -4 |
| Avocet | 0 | 0 |
| Little Ringed Plover | +2 | -2 |
| Ringed Plover | +3 | -3 |
| Lapwing | +2 | -7 |
| Stock Dove | 0 | -12 |
| Woodpigeon | -31 | -75 |
| Collared Dove | 0 | 0 |
| Great Spotted Woodpecker | 0 | 0 |
| Skylark | -13 | -28 |
| Swallow | -13 | -17 |
| Meadow Pipit | +3 | -16 |
| Yellow Wagtail | -6 | -6 |
| Pied Wagtail | +1 | -10 |
| Wren | -10 | -16 |
| Dunnock | -3 | -5 |

| | | |
|---------------------|-------------|-------------|
| Robin | -4 | -4 |
| Blackbird | -6 | -10 |
| Song Thrush | -2 | -2 |
| Mistle Thrush | -5 | -5 |
| Grasshopper Warbler | 0 | 0 |
| Sedge Warbler | -8 | -21 |
| Reed Warbler | -3 | -9 |
| Blackcap | -5 | -5 |
| Garden Warbler | -2 | -4 |
| Lesser Whitethroat | -3 | -5 |
| Whitethroat | -15 | -36 |
| Chiffchaff | -1 | -1 |
| Willow Warbler | +1 | -3 |
| Spotted Flycatcher | 0 | 0 |
| Long-tailed Tit | -3 | -5 |
| Blue Tit | -8 | -12 |
| Great Tit | -8 | -10 |
| Willow Tit | 0 | 0 |
| Treecreeper | -1 | -1 |
| Magpie | -2 | -8 |
| Carrion Crow | -1 | -10 |
| Starling | 0 | 0 |
| House Sparrow | 0 | 0 |
| Tree Sparrow | -16 | -18 |
| Chaffinch | -19 | -25 |
| Greenfinch | 0 | 0 |
| Goldfinch | -9 | -19 |
| Linnet | +13 | -54 |
| Bullfinch | -2 | -4 |
| Yellowhammer | -7 | -7 |
| Reed Bunting | -6 | -12 |
| Total losses | -237 | -549 |