

From: Wilson, Susan <susan.wilson@naturalengland.org.uk>
Sent: 21 December 2020 15:40
To: Richard Cram <rcram@ableuk.com>; Gooch, Hannah <hannah.gooch@naturalengland.org.uk>
Cc: Tailor Kishor <k.tailor@humberlep.org>; Forecast, Lauren <Lauren.Forecast@naturalengland.org.uk>; Neil Etherington <netherington@ableuk.com>
Subject: RE: AMEP Non material Change Application

Hi Richard

Thank you for your email, I have added notes as below. Do you require an amended letter or is this sufficient?

Regards

Susan

Susan Wilson
Senior Adviser of the Coast (Northern England)
Based in Yorkshire and Northern Lincolnshire Team
Natural England

My normal working days are Monday to Thursday.

From: Richard Cram <rcram@ableuk.com>
Sent: 18 December 2020 14:39
To: Wilson, Susan <Susan.Wilson@naturalengland.org.uk>; Gooch, Hannah <Hannah.Gooch@naturalengland.org.uk>
Cc: Tailor Kishor <k.tailor@humberlep.org>; Forecast, Lauren <Lauren.Forecast@naturalengland.org.uk>; Neil Etherington <netherington@ableuk.com>
Subject: AMEP Non material Change Application

Susan, Hannah

As discussed during our telecon yesterday, I expect it would be helpful to the SoS if we could resolve those matters highlighted in your attached correspondence so that there was no residual cloud of doubt in your advice. Taking the points in sequence as they arise in your letter:

1. *'It may take a number of years for the site to fully meet its mitigation objectives and this should be addressed within the sHRA'.*

This passage could be read to mean that some programme restriction should be applied to the development as amended that is not applied in the consented scheme. I understand that you did not mean this to be inferred. As we discussed, the approved TEMMP envisaged that the wet grassland habitat created to mitigate for the loss of FLL would take at least 2-4 years to reach some objectives (refer to the TEMMP, Objective SPA3) and these objectives remain the same in the TEMMP that NE has approved in principle for the alternative site. So

there is no change in the anticipated time for the alternative habitat to reach optimality. I understand that you agree that this time lag is not likely to give rise to any likely significant effect. Can you confirm this is your position.

NE comment: we can confirm that this is our position.

2. *'We advise that these are separate issues and NE's comment should not be used to evidence that the relocation will be beneficial. Separate evidence should be used to show that there will be no likely significant effect on the designated site.'*

As I mentioned in the meeting, the SHRA does not state that the relocation will be beneficial, merely that the relocation is likely to have a 'neutral or beneficial effect on the abundance of the assemblage', (underline added). In your role as the appropriate national conservation body, NE's opinion on matters is plainly very important (see for example *Akester [2010] EWHC 232 (Admin)*, at paragraph 112, <https://www.bailii.org/ew/cases/EWHC/Admin/2010/232.html>) and the SHRA merely draws attention to your own expert opinion that the combined proposal is '*potentially (of) significant value to SPA birds*'. We do not appear to be quoting the passage out of context. The principal evidence that we rely on however, to ascertain no likely significant effect on the waterbird assemblage, is that the mitigation site is only required (so far as the European site is concerned) to mitigate the impacts on curlew, see the approved TEMMP, paragraph 2.6.1. Further that the alternative site is within the observed commuting distance for the curlew (paragraph 5.6.11 of the SHRA), and that NE has previously agreed with the HMWG HRA (Application Statement, Appendix C, final sheet, e-mail Alistair Welch to Andrew Taylor). Finally of course, the fact that the draft TEMMP is approved in principle by NE. The final piece of evidence being a compelling point since the SoS plainly gave significant weight to the fact that a TEMMP had been agreed in his original HRA for AMEP (see at paragraph 7.1.3 of the SHRA), relevant abstract from original HRA below:

9. The Secretary of State notes Natural England's opinion that Mitigation Area A, taken with the management and monitoring measures to be agreed under the Terrestrial EMMP, is sufficient to avoid an adverse effect on the site integrity of the SPA (PR 10.68). He notes also the Panel's view that the draft Terrestrial EMMP submitted at the end of the examination formed a firm basis for finalising measures that would fully mitigate the impacts on habitats and species of the AMEP development on land at North Killingholme (PR 10.76-78). Since the details of this and the other EMMPs have now been agreed between the applicant and Natural England, the Secretary of State is satisfied that the Terrestrial EMMP will ensure that the objectives of the mitigation measures relevant to the SPA (as well as other habitats and species) will be achieved.

Can you confirm the evidence base is sufficient, taken with the rest of the SHRA, to conclude no adverse effect on integrity (AEOI).

NE comment: NE's comment related to the beneficial effect of having a larger mitigation area (ie the size of the mitigation area) not specifically the change in the location of the habitat area. However we are satisfied that sufficient information has been provided to address the point and that the change in location of the mitigation area will not result in an adverse effect on the SPA/ Ramsar features.

3. *'However Natural England advises that additional information is required to confirm that SPA/ Ramsar waterbirds birds using the Killingholme intertidal frontage will not be adversely impacted from the relocation of the terrestrial mitigation area.'*

In response, we reiterate the points made above and the associated evidence. It is only the impact on curlew that needs to be considered and the alternative site is within the observed commuting distance for this species.

Can you confirm the evidence base is sufficient, taken with the rest of the SHRA, to conclude no AEOL.

NE comment: the information provided in sHRA 5.6.11 on curlew commuting distances covers this point, and provides evidence that the relocation of the mitigation area will not result in an adverse effect on curlews commuting between the inter tidal frontage and HMWG site.

4. *'It is unclear why the red line boundary remains in the same location, although it understood that this would now be removed from the DCO development limits.'*

The boundary delineates the Order land and is unchanged. Please refer to the draft amendment Order which redefines the Order Limits to preclude development on the site of the 'former Mitigation Area A' under the DCO. Can you confirm this clarifies the matter.

NE comment: point is clarified.

Kind regards

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