

Date: 06 July 2018
Our ref: Tilbury 2 Deadline 5 Response
Your ref: TR030003



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Dear Sir/Madam,

NSIP Reference Name / Code: Tilbury2
User Code: TR030003

Thank you for your consultation on the above dated the 19th of June 2018.

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

Written Submissions of Oral Cases from the June Hearings

Biodiversity, Ecology and Natural Environment – Terrestrial and Marine Ecology

- | | |
|---|---|
| 3.2.1. Natural England (NE), Marine Management Organisation (MMO), Environment Agency (EA) | <i>Environmental Mitigation and Compensation Plan (EMCP). With reference to the Applicant's updated version of the EMCP, requested by ExA to be submitted by 20 June 2018 ...</i>

i. What are the views of NE, MMO and EA in particular on the updated EMCP? |
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In providing comments on the proposed off-site compensation site for invertebrates, the Examining Authority is reminded that Natural England's overall position on the adherence to the mitigation hierarchy is unchanged. We do not consider that sufficient regard has been had to the avoidance of the areas of most significant habitats within the Order limits. Whilst some limited retention of the most important substrates is proposed, large areas will be translocated offsite, away from the important node for invertebrate conservation (as evidenced by the recent Cumulative Environmental Assessment) centred around the wider Tilbury Power Station. Natural England has previously emphasised this point, and although we have sought to engage with the Port to discuss alternative site layouts (e.g. 16th March 2018 meeting, minute, paragraph 10), no alternative on-site layout which retains the most important habitats in-situ has been proposed as far as we are aware. Whilst some adjustment to the overall hierarchy of nature conservation impacts has been discussed this has not extended to alternative layouts which avoid landtake of the most sensitive areas (centred on the Lytag site).

Our comments here focus on the general suitability of the site. We will provide more technical comments on the EMCP as further details emerge.

Compensation Site Search Criteria

Natural England's ability to engage meaningfully on off-site compensation options has also been hindered by the Port's unwillingness (for reasons of commercial sensitivity) to disclose the particulars of off-site options. Requirements to enter non-disclosure agreements for this purpose are unusual in our experience, and the very recent submission of off-site details, has delayed the consideration of this item until late into the Examination period. Some agreement was however reached with the Port's ecologists over search criteria for compensation sites, which were proposed by the Port in an email to us (dated 17th April 2018, and our reply dated 30th April 2018). Whilst agreement in principle was reached (with some caveats) on most of these seven criteria, Natural England considered that an eighth criterion was appropriate to be added as follows: *"Sites without any existing nature conservation or environmental outcomes have already been agreed as part of permitted schemes (whether these have been implemented or not). Several sites already have permissions for agreed ecology / environment-led restoration or landscaping schemes, but for which implementation has not yet commenced (or only partially completed). It is important that any background checks are made to ensure that any compensation scheme can demonstrate genuine uplift in quality, accounting for any previously agreed outcomes already permitted."*

On this eighth criterion Natural England can advise that it has been engaged in discussions with both the operator (Corys) and tenant (Essex Wildlife Trust) of the Mucking landfill site for some years, having been consulted on the planning permissions required to operate and restore the site (see appendix 1). Overall, we understand that the wider landfill site already benefits from long-term and funded security for nature conservation afteruses, as part of extant planning permissions. A management plan for the site exists, which covers the area proposed for receipt of translocated substrates and subsequent management by a conservation organisation. This makes it a sub-optimal choice for compensation site selection, which preferably should seek to secure land which can be brought into favourable additionally funded conservation management, which would not otherwise be realised, under any current permissions. Therefore whilst the Mucking landfill site has some ecological features in its favour, (see below) it is not clear to us that existing permissions for restoration to nature conservation afteruses have been factored into its selection.

Demonstrating Uplift in Scale & Quality

In view of the above, it is necessary in our view for the Port to demonstrate that the site selected has sufficient headroom above the permitted afteruses to be able to demonstrate that the required outcomes can be achieved, in scale and quality. The Examining Authority will also be aware that the proposed compensation scheme is hindered by multiple layers of uncertainty as to the outcomes sought, including factors such as: the distance from the donor site; the timelag to achieve required national significant quality, the experimental nature of the exercise, and the replicability of local site circumstances. These factors each require degrees of upscaling to account for such uncertainty, and it is not clear to us that this has been sufficiently audited in the ECMP. We note that the EMCP intends to use 10ha of restoration phase landfill for this purpose, compensating for 9ha of open-mosaic habitats to be translocated (EMCP paragraph 8.5, accounting for 0.3ha to be retained in-situ, and some of the remainder to be translocated within the Order limits. The balance of on- and off-site translocations is not clear within the EMCP, and so currently we cannot reach a view as to whether the off-site compensation area is adequate in scale and quality to achieve the stated objectives.

On the question of uplift in quality, this also should consider that some areas of otherwise lower value habitats can be important for supporting notable species (e.g. tussocky grassland as a nesting habitat for certain carder bees, which are s41 species). It should also consider that there are non-invertebrate objectives at the Mucking landfill site, such as provision for ground nesting birds in otherwise lower-

quality grassland areas, in particular skylark, meadow pipit, and scrub habitats for scrub-nesting birds. Natural England respectfully suggests that unpicking these existing funded commitments to accommodate additional invertebrate objectives of the scale and quality required is both challenging and undesirable.

Planning History

Natural England understands that restoration of the Mucking landfill site is governed by planning permission 06/00663/TTGCND, and associated management plans. These documents and agreed outcomes should be referenced within the ECMP, to explore whether or to what degree headroom exists above existing permitted outcomes. Plans and figures associated with the 2006 permission (e.g. Figure 4 restoration and afteruses masterplan) indicate extensive areas of species rich grassland were proposed. It is not immediately clear from the plans supplied how the target area for receipt of substrates aligns with areas of species rich or amenity grassland respectively.

We appreciate that subsequent amendments to the restoration plan have been made during the interim period, including the 13/01014/NMA to allow the import of substrates linked to the London Distribution Park, and we commented along similar lines for that application (see our letter dated 11th November 2013 attached as appendix 2). Our request that changes to the restoration scheme can be clearly audited to demonstrate the necessary headroom in quality its off-site compensation is therefore not without precedent for the Mucking landfill site.

Baseline Survey & Monitoring Data

In seeking to demonstrate the adequacies of the proposed site for the intended purpose, Natural England understands that some baseline survey information exists which the Examination would benefit from, including a Peter Harvey invertebrate report, and any monitoring available from the LDP compensation site. The analysis of headroom should also consider any existing management plan(s) for the areas affected.

Ecological Criteria

It would be helpful for the applicant to provide a commentary around how well the proposed off-site compensation site aligns with the eight criteria described in our email exchange on this point.

Paglesham Site

We have not provided particular comment on the Paglesham site (not having made representations on either reptiles or coastal grazing marsh), but other interested parties may wish to.

3.11.1. Natural England (NE)	Overall, what are NE's views on the conclusions of the HRA Stage 2 Report [REP4-018] that the proposed Tilbury2 project will not adversely affect the integrity of the Thames Estuary and Marshes Special Protection Area (SPA)/Ramsar site, alone or in combination with other plans or projects?
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Natural England is not yet able to agree with the conclusion that there will not be an adverse effect on integrity. The Cumulative Effects Assessment identifies a number of potential in combination impacts which need to be considered further through the Habitats Regulations Assessment ('HRA'). Natural England remains unconvinced by the applicant's position that further more detail Cumulative Effect Assessment is not possible at this time due to lack of information and considers that further

consideration is required to address uncertainties relating to the significance of habitat value, sedimentation and pollution risk and disturbance of SPA birds.

Natural England remains of the view that significant information is available for this development and adjacent sites and that some level of quantitative assessment should be possible.

It appears unlikely that common ground will be reached on the question of which projects should be scoped into the in-combination assessment. Natural England understands that the Examining Authority has commissioned its own REIS study, as a means to reach an independent opinion on this issue, respecting its view as the competent authority under the Habitats Regulations. Natural England is required to be consulted as part of this process, and we will be pleased to comment on this study when requested to do so.

3.11.2. Natural England (NE) Is NE content with the explanation of zone of influence of disturbance to birds set out in paragraph 4.1.3 of the HRA Stage 2 Report [REP4-018]?

We have already indicated that we do not consider that the identified Zone of Influence is sufficiently evidenced or sufficiently precautionary. Table 17.30 Predicted Construction Noise Levels at Incremental Distances of the ES identifies that at a distance of 300m some construction activities will remain above 60 decibels which according to the Waterbird Disturbance Mitigation Toolkit would still fall within the highest risk category for bird disturbance.

At the hearing further information was requested regarding the Goshem's Farm application (Thurrock Planning ref: 17/00224/FUL) where bird disturbance was noted at a distance considerably greater than 300 metres on the mud flats near Coalhouse Point. Natural England acknowledge that this is based on field observation by an experienced professional rather than a scientific study and therefore details such as decibel readings are not available.

It is, however, significant because it relates to the specific environment in which this development is to take place and an activity that will be required during port construction (i.e. piling). Wind conditions, for example, were considered to be a contributing factor along with the open nature of the estuary. The test of Likely Significant Effect is considered to be a 'low bar' and that the precautionary principle applies to HRA. This area is considered to be environmentally sensitive and the development is proposed for a site with contiguous habits to the SPA. A clear pathway exists for noise disturbance and this therefore needs to be considered in greater detail through an appropriate assessment.

In addition, previous impact assessment work associated with redevelopment works at the wider Tilbury Power Station site have used a 500m zone of influence, such as the White Young Green report, dated March 2011. This report was commissioned by RWE, for the then proposed replacement power station, known as Tilbury C, and will presumably be available from RWE, could be supplied by Natural England, or may already be available to the Port.

It is noted that emphasis is placed upon the Waterbird Disturbance Mitigation Toolkit (IECS, 2013) – the TIDE toolkit – when defining zones of influence. We note that on page 15 of the toolkit, it is stated that *“it is emphasised that the above are only ‘rules of thumb’ and will often require additional detailed assessment on a site per site basis, selecting a range of modifying parameters such as species assemblage detail, time of year, intertidal morphology, flood protection bank details, adjacent habitat, background activity etc. This information is designed for initial high level planning not detailed impact assessment.”* With this in mind, we respectfully suggest that all available data sources are used to inform

the impact assessment process, and we have elsewhere referenced additional sources which provide contextual data and observations to inform this aspect of the HRA.

We note that the use of a 300m disturbance zone of influence is carried into the in-combination assessment of the project with both Tilbury Energy Centre and Lower Thames Crossing. Our concerns about its use therefore also apply to the in-combination assessment.

It is further noted that the in-combination assessment limits its scope to overlapping impacts (e.g. paragraph 6.3.2). In preparing its assessment via the RIES process, the Examining Authority is invited to confirm current project timetables for the projects in scope for in-combination assessment. This should allow for project timetable slippage and a margin for error. Nevertheless it is important also – perhaps within the context of the Cumulative Environmental Assessment – to consider the prolonged disturbance of functionally linked land caused by progressive development of adjacent areas whether these technically overlap or not. We suggest that the displacement effects (amounting to a loss of resource) caused by successive projects should be scoped into the HRA process, in order to establish clear parameters from the outset around how these projects might proceed, in order to maintain their function as supporting habitat to the SPA / Ramsar site.

We acknowledge that development has, and will continue to take place within this setting, but careful planning and programming is required and this should be informed by comprehensive consideration through HRA frameworks.

3.11.5. Natural England (NE)	The HRA Stage 2 Report [REP4-018] includes a revised assessment of air quality impacts on designated ecological sites (Appendix 7). This explains that the original assessment (Appendix 6 of the HRA Stage 1 Report [APP-060]) underestimated the concentrations and deposition rates as a result of the model setup. It confirms that the updated numbers, while larger than presented in the 2017 report, are still extremely small and so do not materially change the conclusions of the HRA.
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Is NE content with the revised air quality assessment?

Natural England notes that the concentrations and deposition rates identified are relatively small. However given that the Cumulative Effects Assessment ('CEA') identifies air quality as the most likely impact on SPA/Ramsar habitats the HRA needs to consider its contribution in light of the Wealdon Judgement.

3.11.6. Natural England (NE)	Paragraph 8.3.2 [REP4-018] sets out an intention to regularly monitor disturbance during the construction phase through a Bird Monitoring and Action Plan (BMAP). It is noted that this is not required for mitigation nor is relied upon to reach a conclusion of no adverse effect on integrity (AEOI).
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Does NE agree with this conclusion?

In principle Natural England does not consider that monitoring can be considered mitigation compliant with HRA since it can only assist in addressing an impact which has already occurred. Monitoring can, however, be useful as an added precaution where no adverse impact is anticipated securing an iterative evaluation during construction and operational phases and has value when linked to mitigation measures.

Since Natural England are not currently in agreement regarding adverse effect on integrity we feel unable to advise further at this stage.

Natural England
6th June 2018



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Thurrock Council
Development Control
Civic Offices
New Road
Grays
Essex RM17 6SL

For the attention of Kirsty Towler

T.C PLANNING	
RECEIVED	07 AUG 2006
FILE	

Our reference: C-1862B-P
Your reference: 06/00664/TTGCND

1 August 2006

NT/KT

Dear Sir/Madam

Proposal: 06/00664/TTGCND Duplicate proposals for the restoration of the former sand and gravel working site at Mucking without complying with conditions 2, 4, 14, 42 and 43 of planning permission APP/M1595/A/00/1035822 granted by the Secretary of State on appeal on 20 September 2001 (which in turn was a planning permission to develop the site without complying with conditions 1, 6, 7, 8 and 9 of planning permission THU/806/85 dated 9 June 1986. It is proposed that modified conditions should be submitted for the above conditions).
Location: Cory Waste Management Site, Mucking Wharf Road, Mucking

Thank you for consulting English Nature on the above proposal. Your letter was received by this office on 4 July 2006.

This letter represents our consultation response under Regulation 48(3) of the *Habitats Regulations 1994*¹ and Section 28 of the *Wildlife and Countryside Act 1981* (as amended).

English Nature broadly welcomes the aspirations of land restoration set out within the planning application and supports the consultative approach adopted by the applicants to date. We also believe that the delays in restoration caused by this application are likely to be adequately mitigated for by the proposed restoration scheme.

Whilst we have had detailed discussions with the applicants leading up to the planning application, we advise that there are still areas that need more detailed consideration and/or assurances to enable your authority to meet the legal or duties set out within PPS9. We have sought to advise how these could be achieved within the planning framework, and are happy to be involved in providing further advice as necessary.

¹ The Conservation (Natural Habitats, &c.) Regulations 1994

TTGDC²'s satisfaction in advance of allowing public access. *This seeks to ensure that public access is appropriately managed and the nature conservation interest of the SPA & Ramsar site is not likely to be adversely affected.*

- v) Footpath 218 (immediately adjacent to the River Thames) depicted as a permissive path on Figure 4 of the Planning Application must be 'stopped-up' at the southernmost boundary of the application site. *This seeks to ensure that public access is appropriately managed and the nature conservation interest of the SPA & Ramsar site is not likely to be adversely affected.*

These measures should ensure that the proposed development avoids a likely significant effect on Thames Estuary and Marshes SPA & Ramsar site and Compensation Site A, alone and in combination with other plans and projects. Within this context, we believe the restoration plans will provide significant opportunities to enhance the area for the special interest of this designated site by providing additional supporting habitat and ensuring that access is effectively managed for the benefit of wildlife and people.

Consultation under Section 28I(2) of the *Wildlife and Countryside Act 1981* (as amended)

The conservation features under consideration for the European and/or Ramsar site are also the features of interest for which Mucking Flats SSSI Site of Special Scientific Interest is notified. As such, English Nature's advice on the European and/or Ramsar sites also applies in relation to the SSSI.

Local Planning Authorities should note that under Section 28I of the *Wildlife and Countryside Act 1981* (as amended), **should the Council be minded to grant permission contrary to English Nature's advice you must ensure that:**

- a copy of the decision notice is given to us detailing the date and terms of the permission and how, if at all, you have taken account of our advice; and
- the permission does not permit operations to begin before 21 days after this notification is given to English Nature.

If the application is amended with additional information, English Nature should be re-consulted for a further 28 days.

Protected Species

The protection afforded certain species of animal and plant is explained in Part IB and Annex A of *ODPM Circular 06/2005 Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System*.

Great Crested Newts

English Nature understands there are areas that are likely to be affected by activities associated with the proposed development and that these activities may take place within 500 metres of suspected Great Crested Newt breeding waterbodies. Currently no surveys have identified the population levels within waterbodies. Suitable surveys providing an estimate of

effective mitigation is agreed with TTGDC², in consultation with English Nature. (Note: The exclusion zone should include at least a 600metre buffer area around the breeding GCN sites but exclude areas that are unsuitable GCN forage habitats, as agreed in consultation with TTGDC² and English Nature – see attached Figure 9.5).

- vii) No development activity authorised under this planning permission should be undertaken within currently restored areas and perimeter areas until suitable survey work is undertaken to establish the population levels of reptiles in these areas and effective mitigation is agreed with TTGDC², in consultation with English Nature.

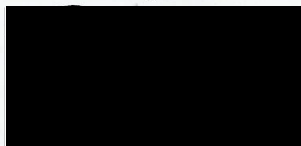
The applicants should be informed that planning permission, if granted, does not absolve them from complying with the relevant law, including obtaining and complying with the terms and conditions of any licences required as described in Part IV B of the Circular 06/2005.

If the application is amended, English Nature should be re-consulted for a further 21 days in accordance with Circular 08/2005.

Please forward a copy of the decision notice to our office at the above Colchester address.

Should you have any additional concerns relating to the content of this letter, please contact me at the above Colchester address.

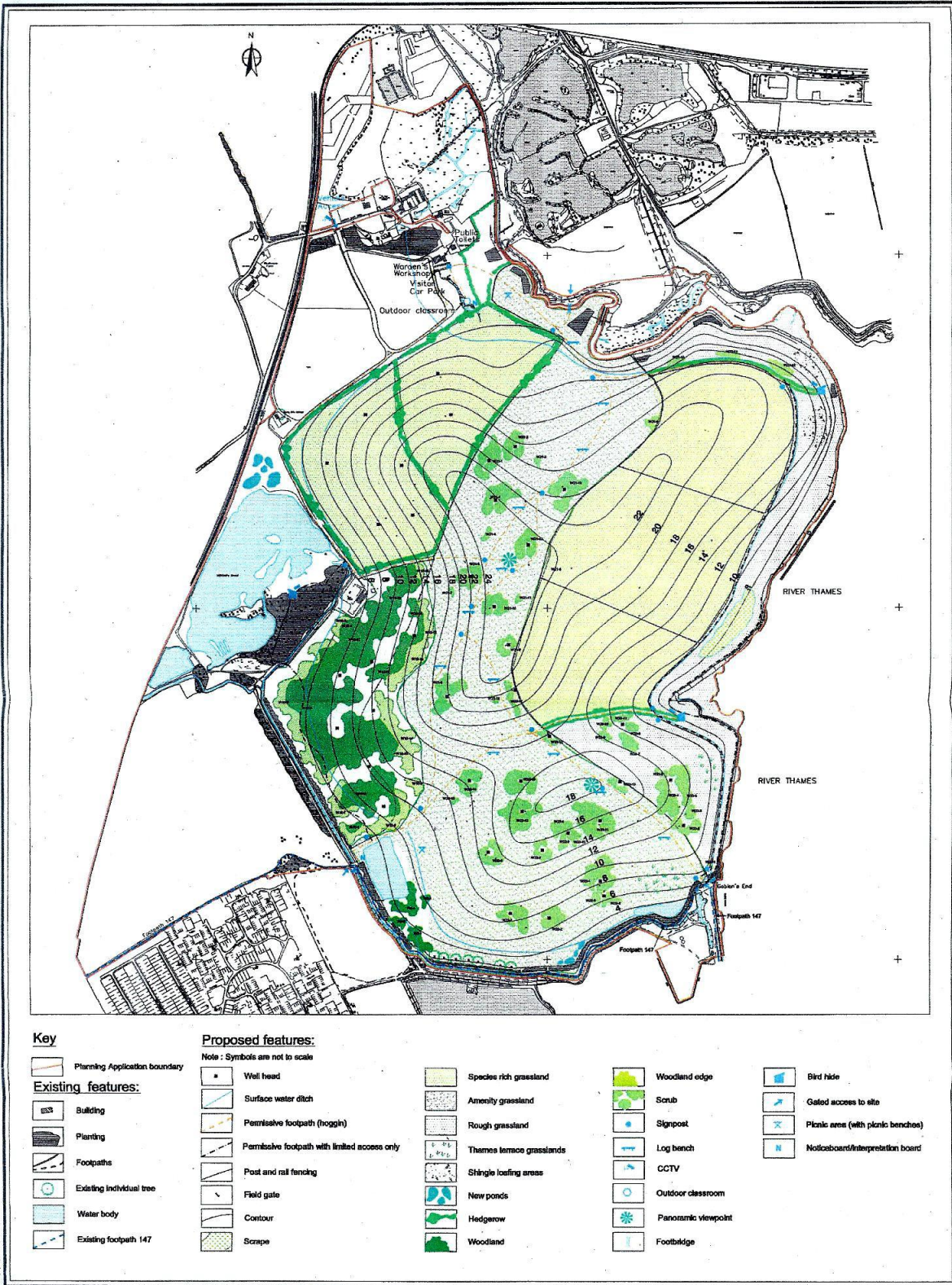
Yours sincerely



Neil Fuller
Conservation Officer
Colchester
neil.fuller@english-nature.org.uk

Enc: Figure 9.5

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NOTE:
Provided by E4Environmental Ltd, May 2006



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PROPOSED EXTENSION TO
MUCKING LANDFILL, INCLUDING
ENHANCED AFTERUSES
FIGURE 4
RESTORATION AND AFTERUSES

Appendix 2

Date: 11 November 2013
Our ref: 101535
Your ref: 13/01014/NMA

Matthew Gallagher
Planning Development Officer
Thurrock Council

BY EMAIL ONLY



Customer Services
Hornbeam House
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Crewe
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CW1 6GJ

T 0300 060 3900

Dear Mr. Gallagher ,

Planning consultation: 13/01014/NMA The application for non-material amendment proposes that the approved habitat be amended on an area of 3.5 hectares. The habitat will change from grassland to a chalk substrate with PFA dunes.

Location: Cory Environmental Ltd Mucking Wharf Road Stanford Le Hope Essex SS17 0RN

Thank you for your consultation on the above dated 21 October 2013 which was received by Natural England by email of the same date.

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

WILDLIFE AND COUNTRYSIDE ACT 1981 (AS AMENDED)

1. No objection – no conditions requested

This application is in close proximity to Mucking Flats Site of Special Scientific Interest (SSSI). Natural England is satisfied that the proposed development being carried out in strict accordance with the details of the application, as submitted, will not damage or destroy the interest features for which the site has been notified. We therefore advise your authority that this SSSI does not represent a constraint in determining this application. Should the details of this application change, Natural England draws your attention to Section 28(1) of the *Wildlife and Countryside Act 1981* (as amended), requiring your authority to re-consult Natural England.

2. Additional Comments

Natural England understands that this application seeks planning permission to accommodate compensatory habitats for invertebrates on the Mucking landfill site, arising from development of the London Distribution Park at North Tilbury (ref. Planning Application Statement). We believe this relates to application 10/50157/TTGOUT, although this is not explicit in the statement. We understand that the associated s106 application (dated 27th March 2012) requires the submission of an Ecological Mitigation and Compensation Strategy (EMCS), to include “details of habitat creation and enhancement related to off-site provision for invertebrates within the Site” (Part 3, 2(a)(ii)). We assume that this application facilitates this off-site provision, and note this context.

We understand therefore, that this current application does not seek to determine the *adequacy* of this off-site compensation (which presumably would comprise a separate submission of the EMCS), but instead addresses the suitability of the application site for such compensation. We therefore offer no

comment in this letter regarding whether the application site meets the requirements of the compensation scheme in relation to the development of the North Tilbury Distribution Park. Rather, we comment here on the suitability of the Mucking Landfill site to accommodate those objectives for invertebrate compensation in the context of the agreed restoration scheme at the landfill site. In reaching a decision on this application, the Council must ensure that the proposed non-material amendment does not compromise what the agreed restoration scheme at the landfill site is expected to deliver. In our view, insufficient information is available to us within this submission to reach a view on this point, however we suggest that the following guiding principles should be used to determine the suitability of this site for the stated purpose.

We understand that the restoration of the landfill site seeks to achieve objectives for nature conservation, including for Thames Terrace Invertebrates, and that the restoration plan has been designed with this in mind. Therefore, so long as this non-material amendment in the specific area indicated on the plans (figures 2 and 3) **does not compromise the outcomes of the restoration scheme**, then we support this application. Specifically, the target nature conservation outcomes for the specific area should be examined, and a view reached as to whether the remaining area can deliver its objectives or not (or to what extent they can be delivered).

We consider that the use of chalk imported to the landfill site (from the Thames Tideway project) as part of the ongoing restoration scheme (i.e. making use of a readily available supply, and not importing materials, with the range of additional associated impacts) is welcome. We also consider that the use of PFA is appropriate, as this substance is known to provide the necessary ecological conditions to support a range of target invertebrate and plant communities. Therefore this **beneficial re-use of both chalk and PFA towards biodiversity objectives** is one that we support and should be encouraged.

We also suggest that the Council ensure that supply of PFA from RWE npower (possibly from the Tilbury power station ashfields) **does not compromise the capacity of that site to deliver its own nature conservation objectives**, secured under planning application ref 13/00497/FUL.

Nonetheless the Council should ensure that the application demonstrates **delivery above and beyond what has already been agreed as part of the restoration scheme at the landfill site**. If such additionality cannot be delivered at this location, then it is our view that the application site cannot be regarded as delivering genuine off-site compensation for the aforementioned scheme.

It is unclear to us, within the current submission, whether the application achieves this, and we suggest that some additional commentary is provided for clarity and transparency. We would be happy to comment further on this application should additional information be provided on this point.

3. Other advice

We would expect the Local Planning Authority (LPA) to assess and consider the other possible impacts resulting from this proposal on the following when determining this application:

- local sites (biodiversity and geodiversity)
- local landscape character
- local or national biodiversity priority habitats and species.

Natural England does not hold locally specific information relating to the above. These remain material considerations in the determination of this planning application and we recommend that you seek further information from the appropriate bodies (which may include the local records centre, your local wildlife trust, local geoconservation group or other recording society and a local landscape characterisation document) in order to ensure the LPA has sufficient information to fully understand the impact of the proposal before it determines the application. A more comprehensive list of local groups can be found at [Wildlife and Countryside link](#).

If the LPA is aware of, or representations from other parties highlight the possible presence of a protected or priority species on the site, the authority should request survey information from the applicant before determining the application. The Government has provided advice¹ on priority and protected species and their consideration in the planning system.

[Natural England Standing Advice for Protected Species](#) is available on our website to help local planning authorities better understand the impact of development on protected or priority species should they be identified as an issue at particular developments. This also sets out when, following receipt of survey information, the authority should undertake further consultation with Natural England.

We would be happy to comment further should the need arise but if in the meantime you have any queries please do not hesitate to contact us.

For any queries relating to the specific advice in this letter only please contact me on 01206 382751. For any new consultations, or to provide further information on this consultation please send your correspondences to consultations@naturalengland.org.uk.

We really value your feedback to help us improve the service we offer. We have attached a feedback form to this letter and welcome any comments you might have about our service.

Yours sincerely

Jonathan Bustard
Land Use Operations

¹ Paragraph 98 and 99 of ODPM Circular 06/2005