

Title of Application

PA/2021/2257 – Planning permission to create a lorry park with associated car parking, external lighting columns and landscaping

Location of Plan or Project/Application

Land at junction of Victory Way/Falkland Way, Humber Bridge Industrial Estate, Barton-Upon-Humber

503882, 422683

International Nature Conservation Sites

Humber Estuary Special Protection Area (SPA)

Humber Estuary Special Area of Conservation (SAC) and

Ramsar Site

Description of Project

The proposal is for the construction of a lorry park with ancillary car parking, security fencing, lighting and landscaping.

The site is located to the north of Falkland Way, Barton upon Humber. The site sits to the east of Victory Way comprising an open area of cleared scrub land extending to approximately 2.55 hectares, set between existing industrial development to the south, east, and west.

Use – the site will be used to accommodate HGVS prior to loading and unloading.

Scale – The site is circa. 2.55ha of which 2.085ha will be hardstanding. The security fencing is proposed to be 2.4m high.

Layout – The site will be accessed off Victory Way operating a one-way system around the site for HGVs. The site consists of 156 HGV parking spaces, 50 car parking spaces and 1 motorcycle space

The Habitats Regulations Assessment Process

The process is described in detail in Circular 06/2005. The Council has followed the Circular as closely as possible. The main stages in the process are as follows. Note that if there are no harmful effects on the features of the International Nature Conservation Sites, or if these effects can be prevented, not all of the stages will be required.

- Determination of Likely Significant Effect
- Appropriate Assessment with regard to site Conservation Objectives.
 - o Determine whether there will be an Adverse Effect on the Integrity (AEOI) of the International Nature Conservation Sites with reference to all the relevant interest features.
 - o Consider possible restrictions and conditions.
 - o Consider alternative approaches.
 - o Consider any Imperative Reasons of Over-riding Public Interest (IROPI).

Put simply, the Local Planning Authority can only grant planning permission if, at a given stage above, it can be ascertained that the proposal would not adversely affect the integrity of the International Nature Conservation Sites. Even if, at a late stage in considerations, IROPI were found to apply, compensatory measures would need to be provided.

Circular 06/2005 describes the key decision to be made as follows:

“In the light of the conclusions of the assessment of the project’s effects on the site’s conservation objectives, the decision-taker must determine whether it can ascertain that the proposal will not adversely affect the integrity of the site(s). The integrity of a site is the coherence of its ecological structure and function, across its whole area, that enables it to sustain the habitat, complex of habitats and/or the levels of populations of the species for which it was classified. It is not for the decision-taker to show that the proposal would harm the site, in order to refuse the application or appeal. It is for the decision-taker to consider the likely and reasonably foreseeable effects and to ascertain that the proposal will not have an adverse effect on the integrity of the site before it may grant permission. If the proposal would adversely affect integrity, or the effects on integrity are uncertain but could be significant, the decision-taker should not grant permission, subject to the provisions of regulations 49 and 53 as described below.”

“..In the Waddenzee judgment, the European Court of Justice ruled that a plan or project may be authorised only if a competent authority has made certain that the plan or project will not adversely affect the integrity of the site. “That is the case where no reasonable scientific doubt remains as to the absence of such effects”. Competent national authorities must be “convinced” that there will not be an adverse effect and where doubt remains as to the absence of adverse effects, the plan or project must not be authorised, subject to the procedure outlined in Article 6(4) of the EC Habitats Directive regarding imperative reasons of overriding public interest.” – ODPM 2005.

It has been established that for a plan or project to fail the LSE test and thereby trigger the requirement for an AA, there must be a real, rather than hypothetical, risk of LSE based on objective evidence.¹

Determination of Likely Significant Effect under the Conservation of Habitats and Species Regulations 2017 (as amended)

The plan or project is not considered to be directly connected with, or necessary to, the management of the Humber Estuary Special Protection Area (SPA) and Ramsar site or Humber Estuary Special Conservation Area (SAC) for nature conservation.

It is considered that the plan or project is not likely to have a significant effect alone or in combination with other plans and projects on the Humber Estuary Special Protection Area (SPA) and Ramsar site or Humber Estuary Special Conservation Area (SAC).

Reasons for no Likely Significant Effect (LSE) determination

- Construction noise and visual disturbance

The construction period will be limited, approximately 6-7 months. Construction will be carefully managed by a construction management plan to minimise any disturbance.

¹ *Peter Charles Boggis, Easton Bavents Conservation v Natural England v Waveney District Council* [2009] EWCA Civ 1061 (para 37)

- Ongoing noise and visual disturbance

The project is in essence a storage yard for empty HGVs when not in use in association with the nearby factory. The Transport Assessment illustrates relatively low acceptable movements in and out of the site.

- Ongoing external lighting with associated effects

Lux level details demonstrate how artificial lighting is confined to the project and any overspill lighting tails off to suitable levels so as not to cause disturbance or impacts on any SPA qualifying species

- Surface water drainage and potential pollution of waterbodies and reedbeds

the surface water drainage network has been designed to match and mimic the existing site conditions. The project is therefore not proposing to change the current surface water discharge conditions which may affect the Humber Estuary SPA/Ramsar including Barton/Barrow Claypits

To protect the water quality of the receiving surface water bodies and groundwaters the run off discharged from the site will be treated using a by proprietary oil interceptors. Surface water run-off from the car parks will pass through a pond feature and bypass oil interceptors and concrete hardstanding for the lorry parking will pass through retention oil interceptors, these are designed to remove the hydrocarbons.