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Your ref: PA/2021/2151



Tanya Coggon
Case officer
North Lincolnshire Council

Customer Services
Hornbeam House
Crewe Business Park
Electra Way
Crewe
Cheshire
CW1 6GJ

T 0300 060 3900

Dear Ms Coggon,

Planning consultation: AMENDMENT - ALC and Bird survey. Proposed Development Outline planning permission for a residential development of up to 390 dwellings with associated infrastructure, and with appearance, landscaping layout and scale reserved for subsequent consideration

Location: land west of Brigg Road and south of Horkstow Road, Barton upon Humber

Thank you for your consultation on the above dated 29 April 2022.

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.

Summary - Further information required

Natural England advise the authority that there is insufficient information to confirm that the application will not have an adverse effect on the integrity of the Humber Estuary Special Protection Area (SPA):

- appropriate assessment alone and in combination effects on loss of functionally linked land.
- the application will lead to additional recreational pressure on the SPA arising from new dwellings;
- the proposed Suitable Alternative Natural Green Space (SANG) mitigation measure is of a suitable scale and location;
- the management and maintenance arrangements for the SANG mitigation measure are not shown to be secured in perpetuity;
- confirmation of Strategic Access Monitoring and Management (SAMM) that is appropriate to secure the necessary avoidance and mitigation measures and have been secured for a duration proportionate to the timescale of the developments effects (in perpetuity).

National Planning Policy Considerations

Section 40 of the Natural Environment and Rural Communities Act (2006) requires that, *'Every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity'*. Section 40(3) also adds that *'conserving biodiversity includes, in relation to a living organism or type of habitat, restoring or enhancing a population or habitat'*.

Your authority should also consider the proposals in light of the policies set out in Section 15 Conserving and enhancing the natural environment of the National Planning Policy Framework (NPPF 2019).

Key paragraphs include:

Paragraph 174 (d)

“minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures”.

Paragraph 180 (a)

“If significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or as a last resort compensated for, then the planning permission should be refused”.

Paragraph 180 (b)

“development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest”.

Ecological Significance of the Humber Estuary SPA/RAMSAR

The Humber Estuary is located on the east coast of England and separates the historic counties of Yorkshire and Lincolnshire. The Humber Estuary Special Protection Area (SPA) extends from the mouth of the Humber and adjacent open coast, along the estuary (including the shoreline non-tidal habitats) to the limit of saline intrusion on the tidal river Ouse and to a point about 2km south of Trent Falls on the tidal river Trent.

The Humber Estuary is a large macro-tidal coastal plain estuary with high suspended sediment loads, which feed a dynamic and rapidly changing system of accreting and eroding intertidal and subtidal mudflats, sandflats, saltmarsh and reedbeds. The range of habitats on the Estuary (detailed in the feature descriptions) support a variety of wintering, passage and breeding birds, including internationally important populations of a number of species. Birds are widely distributed throughout the site, the distribution of individual species reflecting habitat distribution and species ecology. At high tide essential roost sites are at a premium due to the combined effects of extensive historical land claim, coastal squeeze and the acute lack of grazing marsh and grassland. A number of developing managed realignment sites are contributing to the variety of habitats available to the birds.

Adjacent inland terrestrial sites areas are used extensively as high tide roosts and also provide important supporting habitats for the some SPA bird species.

FURTHER INFORMATION REQUIRED TO DETERMINE IMPACTS ON DESIGNATED SITES

As submitted, the application could have potential significant effects on the Humber Estuary SPA. The Humber Estuary is also a designated SSSI. Natural England requires further information in order to determine the significance of these impacts and the scope for mitigation so that we can advise the authority accordingly.

In the absence of this information, Natural England **objects** to the proposal, please re-consult Natural England once this information has been obtained.

The following information is required:

Additional Information required – shadow HRA Humber Estuary SPA

Natural England notes that a shadow Habitats Regulations Assessment (sHRA) has been produced by the applicant. As competent authority, it is your responsibility to produce an Appropriate Assessment (AA) and be accountable for its conclusions. Natural England advise that we cannot confirm that the development will **not** have a likely significant effect on the Humber Estuary SPA in the absence of avoidance or mitigation measures. The advice enclosed is based on the assumption

that your authority *may* intend adopting this sHRA to fulfil your duty as competent authority, I advise you that the authority should review the applicants sHRA and carry out its own AA.

This advice is supported by case law, the recent ECJ ruling (*People Over Wind & Sweetman v Coillte Teoranta* (Case C-323/17)) concluded that the avoidance/mitigation, e.g. SANG and additional warden support cannot be taken into consideration when considering the Likely Significant Effects of proposals on European/habitats sites (and Ramsar sites as a matter of Government policy). Natural England therefore advise your authority to undertake an Appropriate Assessment of the application under Reg 63.

Natural England notes that your authority, as competent authority, will be considering the applicants sHRA of the proposal in accordance with regulation 63 of the Conservation of Species and Habitats Regulations 2017 (as amended), our advice concerning the need for an AA is above. Natural England is a statutory consultee on the appropriate assessment stage of the Habitats Regulations Assessment process, and a competent authority should have regard to Natural England's advice.

The sHRA concludes that your authority may be able to ascertain that the proposal will not result in adverse effects on the integrity of any of the site in question.

Having considered the sHRA, and the measures proposed to avoid/mitigate for any adverse effects, Natural England's advice is that this assessment is **not** sufficiently rigorous or robust to allow your authority to reach this conclusion. Natural England advise that it is not possible to ascertain that the proposal will not result in adverse effects on the integrity of the site in question. I advise that your authority should **not** grant a planning permission at this stage.

I advise that the following additional work on the assessment is required to enable it to be sufficiently rigorous and robust for your consideration.

- Natural England do not concur with the assertion the project site does not meet the requirements of functionally linked land. It is unclear whether the applicant has used local record centre data as a basis to form judgement on levels of bird usage to determine the significance of the project site for SPA birds. We advise that the Lincolnshire Environmental Records Centre (LERC) data provided via email should be considered in the Appropriate Assessment.
- Please note that Natural England has re-evaluated its position on using 1% of the SPA population of a species as a 'threshold' to determine whether an area is functionally linked land. We now know that populations of SPA bird species that rely on functionally linked land are becoming more vulnerable, due to a number of pressures, including the loss of suitable areas of land outside the designated site boundary, which the birds use for roosting and feeding. We do not consider that it is appropriate to interpret the rule of thumb in a way that only loss of functionally linked land which has been recorded as being used by $\geq 1\%$ of the Humber estuary population of a species is likely to lead to a significant effect. Loss of land to development that is used by less than 1% of the estuary population of key species may also be damaging, therefore a likely significant effect cannot be ruled out and the competent authority should carry out an Appropriate Assessment (AA). If the competent authority cannot ascertain that there will not be an adverse effect on integrity of the site features, then mitigation measures may be required to avoid or reduce the effect. However, we acknowledge that not all functionally linked land will have the same level of importance for features of a designated site, the importance of this site should be assessed in the AA.
- Consideration should also be given to potential impacts in the context of the wider area; for example, SPA birds may be alternating between feeding on various fields in the vicinity and the loss of this field may undermine the ecological function of the wider area. Construction/operation impacts of the proposed development on adjacent functionally linked land should also be considered in more detail in the revised HRA. We note that the passage/wintering bird surveys did not extend to the entire field i.e. beyond the red line boundary. Therefore, Natural England advises that a precautionary approach is taken to assessing potential disturbance to this area.
- The provision of SANG within walking distance of a new development provides one important element of the required long term avoidance/mitigation approach. The SANGs

however are not intended to avoid all new residents accessing the protected sites, rather to enable a neutral level of visitor pressure with an equal proportion of existing users being diverted. It is therefore necessary for applicants to secure SAMM relative to the level of residential development. As for SANGs the mitigation needs to be secured in perpetuity.

- Natural England advise the authority that the information provided provides no certainty about the future management arrangements for the SANG in the long term. There are several options including management by the local authority, town council as well as a management company. The authority should ensure that appropriate management is carried out and consistent visitor management is secured in perpetuity. These options should be considered by the council and applicant and an agreed approach brought forward for scrutiny by the council.
- The council should require the applicant to submit a full detailed Management Plan for the SANG through a planning condition to be approved by the council in liaison with Natural England prior to commencement. The applicant should demonstrate to the council, through a costed budget, that the mitigation can be secured in perpetuity. In addition they will need to provide mechanisms whereby the authority has step in rights and funding to manage the site for at least 12 months in the case this is defaulted.
- Natural England has outstanding concerns regarding the assessment of recreational disturbance in the draft North Lincolnshire Local Plan Habitats Regulations Assessment at this stage. We advise that your authority considers the potential for in-combination effects from this proposal with draft Local Plan allocations and policies. It is not clear from the in-combination sections of the shadow Habitats Regulations Assessment, provided in support of this application, whether this has been taken into account.

Natural England should be re-consulted once this additional work has been undertaken and the SHRA has been revised or when the authorities own AA is prepared.

Please note that if your authority is minded to grant planning permission contrary to the advice in this letter, you are required under Section 281 (6) of the Wildlife and Countryside Act 1981 (as amended) to notify Natural England of the permission, the terms on which it is proposed to grant it and how, if at all, your authority has taken account of Natural England's advice. You must also allow a further period of 21 days before the operation can commence.

Further, in determining the application your authority should also consider the requirements for protecting *and enhancing* the natural environment as a means of achieving sustainable development (NPPF para 8(c). Along with the need for planning applications to secure a net gain for biodiversity (NPPF para 170). Biodiversity 2020: A strategy for England's wildlife and ecosystem services and Making Space for Nature (2010) also provide strong drivers for the inclusion of biodiversity enhancements through the planning process.

In addition, Natural England advise the council on the following issues.

Biodiversity Net Gain

Natural England notes the development proposal has potential to achieve significant biodiversity net gain as demonstrated in the Ecological Impact Assessment (EclA) para 5.13.2, which is in line with emerging policy as part of the environment bill, local policy in the adopted North Lincolnshire Core Strategy (CS17 para 5) and para 174 (d) of the NPPF as mentioned above.

BNG on SANGs is only attributable to habitat creation or enhancement that proves measurable additionality to the minimum requirements of the SANG. This needs to be demonstrated through use of the relevant Biodiversity metric (or as stipulated by the consenting body). For BNG to be delivered within a SANG, the SANG should achieve nature conservation outcomes that demonstrably exceed existing obligations under the SANG Guidance

Soils and Agricultural Land Quality

From the documents accompanying the consultation we consider this application falls outside the scope of the Development Management Procedure order (as amended) consultation arrangements, as the proposed development would not appear to lead to the loss of over 20 ha 'best and most

versatile' (BMV) agricultural land.

For this reason, we do not propose to make any detailed comments in relation to agricultural land quality and soils, although sustainable soil management should aim to minimise risks to the ecosystem services which soils provide, through appropriate site design / masterplan / Green Infrastructure. Natural England would advise that any grant of planning permission should be made subject to conditions to safeguard soil resources, including the provision of soil resource information in line with the Defra guidance [Construction Code of Practice for the Sustainable Use of Soils on Construction Sites](#).

Further guidance is available in The British Society of Soil Science [Guidance Note](#) Benefitting from Soil Management in Development and Construction which we recommend is followed in order to safeguard soil resources as part of the overall sustainability of the development.

If, however, you consider the proposal has significant implications for further loss of BMV agricultural land, we would be pleased to discuss the matter further.

Natural England have in the past experienced high consultation request in addition to resource restriction which has led to a reduced capacity to deliver paid for advice. We note that a request from the consultant through our [Discretionary Advice Service](#) was refused due to capacity at that time. Although still receiving high quantities of consultation Natural England are able to offer this service to the applicant should it be required. Please follow the link above for further details.

Further general advice on the protected species and other natural environment issues is provided at Annex A.

Please consult us again once the information requested above, has been provided.

Yours sincerely,

James Hughes
Conservation and Planning Lead Advisor
Yorkshire and North Lincolnshire Area Team
Natural England

Annex A – Additional Advice

Natural England offers the following additional advice:

Landscape

Paragraph 174 of the [National Planning Policy Framework](#) (NPPF) highlights the need to protect and enhance valued landscapes through the planning system. This application may present opportunities to protect and enhance locally valued landscapes, including any local landscape designations. You may want to consider whether any local landscape features or characteristics (such as ponds, woodland, or dry-stone walls) could be incorporated into the development to respond to and enhance local landscape character and distinctiveness, in line with any local landscape character assessments. Where the impacts of development are likely to be significant, a Landscape & Visual Impact Assessment should be provided with the proposal to inform decision making. We refer you to the [Landscape Institute](#) Guidelines for Landscape and Visual Impact Assessment for further guidance.

Local sites and priority habitats and species

You should consider the impacts of the proposed development on any local wildlife or geodiversity sites, in line with paragraphs 175 and 179 of the NPPF and any relevant development plan policy. There may also be opportunities to enhance local sites and improve their connectivity. Natural England does not hold locally specific information on local sites and recommends further information is obtained from appropriate bodies such as the local records centre, wildlife trust, geoconservation groups or recording societies.

Priority habitats and Species are of particular importance for nature conservation and included in the England Biodiversity List published under section 41 of the Natural Environment and Rural Communities Act 2006. Most priority habitats will be mapped either as Sites of Special Scientific Interest, on the Magic website or as Local Wildlife Sites. List of priority habitats and species can be found [here](#)¹. Natural England does not routinely hold species data, such data should be collected when impacts on priority habitats or species are considered likely. Consideration should also be given to the potential environmental value of brownfield sites, often found in urban areas and former industrial land, further information including links to the open mosaic habitats inventory can be found [here](#).

Environmental gains

Development should provide net gains for biodiversity in line with the NPPF paragraphs 174(d), 179 and 180. Development also provides opportunities to secure wider environmental gains, as outlined in the NPPF (paragraphs 8, 73, 104, 120, 174, 175 and 180). We advise you to follow the mitigation hierarchy as set out in paragraph 180 of the NPPF and firstly consider what existing environmental features on and around the site can be retained or enhanced or what new features could be incorporated into the development proposal. Where onsite measures are not possible, you should consider off site measures. Opportunities for enhancement might include:

- Providing a new footpath through the new development to link into existing rights of way.
- Restoring a neglected hedgerow.
- Creating a new pond as an attractive feature on the site.
- Planting trees characteristic to the local area to make a positive contribution to the local landscape.
- Using native plants in landscaping schemes for better nectar and seed sources for bees and birds.
- Incorporating swift boxes or bat boxes into the design of new buildings.
- Designing lighting to encourage wildlife.
- Adding a green roof to new buildings.

Natural England's [Biodiversity Metric 3.1](#) may be used to calculate biodiversity losses and gains for terrestrial and intertidal habitats and can be used to inform any development project. For small development sites the [Small Sites Metric](#) may be used. This is a simplified version of [Biodiversity Metric 3.1](#) and is designed for use where certain criteria are met. It is available as a beta test version.

¹<http://webarchive.nationalarchives.gov.uk/20140711133551/http://www.naturalengland.org.uk/ourwork/conservation/biodiversity/protectandmanage/habsandspeciesimportance.aspx>

You could also consider how the proposed development can contribute to the wider environment and help implement elements of any Landscape, Green Infrastructure or Biodiversity Strategy in place in your area. For example:

- Links to existing greenspace and/or opportunities to enhance and improve access.
- Identifying opportunities for new greenspace and managing existing (and new) public spaces to be more wildlife friendly (e.g. by sowing wild flower strips)
- Planting additional street trees.
- Identifying any improvements to the existing public right of way network or using the opportunity of new development to extend the network to create missing links.
- Restoring neglected environmental features (e.g. coppicing a prominent hedge that is in poor condition or clearing away an eyesore).

Natural England's [Environmental Benefits from Nature tool](#) may be used to identify opportunities to enhance wider benefits from nature and to avoid and minimise any negative impacts. It is designed to work alongside [Biodiversity Metric 3.1](#) and is available as a beta test version.

Access and Recreation

Natural England encourages any proposal to incorporate measures to help improve people's access to the natural environment. Measures such as reinstating existing footpaths together with the creation of new footpaths and bridleways should be considered. Links to other green networks and, where appropriate, urban fringe areas should also be explored to help promote the creation of wider green infrastructure. Relevant aspects of local authority green infrastructure strategies should be delivered where appropriate.

Rights of Way, Access land, Coastal access and National Trails

Paragraphs 100 and 174 of the NPPF highlight the importance of public rights of way and access. Development should consider potential impacts on access land, common land, rights of way and coastal access routes in the vicinity of the development. Consideration should also be given to the potential impacts on the any nearby National Trails. The National Trails website www.nationaltrail.co.uk provides information including contact details for the National Trail Officer. Appropriate mitigation measures should be incorporated for any adverse impacts.

Biodiversity duty

Your authority has a [duty](#) to have regard to conserving biodiversity as part of your decision making. Conserving biodiversity can also include restoration or enhancement to a population or habitat. Further information is available [here](#).