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North Lincolnshire Council

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To the Inspectors for examining the North Lincolnshire
Local Plan via Ian Kemp- Programme Officer

Via Email to:
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Dear Inspectors: Elaine Worthington MTP MUED MRTPI, Louise Crosby MA MRTPI and Rachael Bust BSc (Hons) MA MSc LLM PhD MInstLM MCMi MIEEnvSci MRTPI

RE: STATEMENT OF COMMON GROUND – NORTH LINCOLNSHIRE COUNCIL AND NATURAL ENGLAND (JUNE 2024)

Thank you for your letter dated 23 July 2024 in relation to the above. We agree there are clearly some important matters outstanding. Whilst these have been known about for at least 2 years, the Council has tried hard to resolve them through the presentation of evidence and analysis, in conjunction with our in-house ecologist as well as our Habitats Regulations Assessment (HRA) Consultant.

Whilst, Natural England (NE) has advised we can find our own solutions and evidence to address the issues, a more cost-effective approach has been rejected in most cases. Instead, we are consistently pointed toward the approach of East Riding of Yorkshire Council, who have already spent a very large amount of time and money (estimated by us to be over £100,000 and around 3 years so far) on consultancy and in-house work, with that plan still to be adopted. We have had neither the time nor the budget available to replicate this, and we do not think that it would be appropriate to do so given proposed alternative ways of resolving the issues at hand.

Your [note](#) of the Exploratory Meeting advised that discussions with NE should continue with the aim of producing an agreed and signed [Statement of Common Ground](#) (SoCG). We submitted this to the examination on 25 June 2024. We recognise the requirement for precautionary approach to decisions at all stages of HRA. With this in mind, we have written to NE suggesting some further changes to the signed SoCG to provide further assurance on this. A copy of our letter is appended. We have asked for the likely timeframe to get back to us on this and will advise once this is received. Given that in the main, the Council is conceding ground we do not envisage this taking a long time. However, we would initially suggest that it will take a minimum of a month based on previous correspondence.

We respond below to the other specific issues raised in your letter under the same headings:

Recreational Disturbance

In terms of having 'no strategic assessment of recreational pressure impacts'. Our ecologist's view is that it is not correct to say that there is no strategic assessment of recreational pressure impacts. The JBA Habitats Regulations Assessment has explicitly provided a strategic assessment of recreational pressure impacts at all stages. The Footprint Ecology report provides a further level of evidence, building on previous analysis carried out roughly ten years previously. We are not sure what any additional assessments would be looking for, or what they would hope to achieve.

The Council has the same level of evidence regarding this as the East Riding of Yorkshire Council. This principally relates to the [Humber Estuary Visitor Survey](#) with analysis to define a 'zone of

influence' within which it is assumed that new housing in North Lincolnshire will have a likely significant effect on the European sites due to the impacts from recreation. NE have consistently pointed us towards the East Riding approach and we are not aware of any outstanding objections from NE on account of the East Riding's evidence and so it is strange they have an objection to ours.

NE raise an issue that there is 'no proposed strategic mitigation that could be considered under an appropriate assessment'. Whilst proposed modifications to policies in the Plan allow for developers to contribute towards strategic mitigation measures, we are similar to the proposed East Riding approach in that this is a choice for developers at the planning application (project) stage. The difference is that within North Lincolnshire it is proposed that developers carry out their project level HRA which would inform a contribution towards strategic measures or provision of measure(s) to address the likely impact of their project in isolation. Within the East Riding, it is proposed that developers pay a standard charge and avoid having to carry out an extensive HRA for their project, or carry out the HRA then provide for the recommended specific mitigation.

We have prepared a draft SPD on Biodiversity Net Gain, which NE has previously commented on with amendments made as a result. The SPD now incorporates sections on recreational pressure mitigation, which NE has been sent to again comment on. A 'menu' of possible strategic recreational pressure mitigation measures (costed where possible) is included for developers to choose from, should they elect to mitigate the predicted impact of their development in this way. Measures include funding a staff resource to recruit volunteer rangers, deliver education events and coordinate monitoring surveys. More traditional measures of additional signage, footpath improvements and fencing are also included. The draft SPD is not submitted with this letter as we will only submit this for member approval to go public once NE has commented and any amendments made as a result.

Natural England also consider that it would be of great benefit to join up the approach to recreational disturbance across the Humber Estuary and recommend that consideration is given to the approaches being undertaken by the East Riding of Yorkshire Council (ERYC) and North East Lincolnshire Council (NELC). The Council has given due consideration to the approaches of these two authorities. We hold regular planning policy catch ups between the four Humber Councils. We are well aware of the proposed East Riding approach which is outlined above and below in terms of a Strategic Access Mitigation and Monitoring Strategy (SAMMS). NELC's approach is focussed on a range of measures focussed on mitigating the impact of tourism in Cleethorpes on the Humber Estuary. These measures are paid for by the Council in support of the economic benefits of the town's specific tourism function and not by development (unless as a result of site specific HRAs). Just like at ERYC, NELC's approach has not been finally signed off or adopted as part of the respective Local Plans as yet. The approaches are focused on different geographical areas and are funded via different methods and the two approaches are not joined up. Hence, there is no current 'pan-Humber' approach for the Council to link into, nor would it necessarily be appropriate to do so. The North Lincolnshire area does not contain a major tourist resort like Cleethorpes. Other than at Barton, it does not have areas of the Humber frontage which are populated to a significant degree. Development does not have the viability characteristics of East Riding that enable it to easily support standard contributions towards mitigation measures.

Our ecologist has commented that there are some obvious attractions to providing a coordinated response to recreational disturbance impacts across the Humber Estuary. Humber Estuary Recreational Disturbance Group organised by the Humber Nature Partnership does much to provide the necessary coordination of information gathering and mitigation measures to minimise impacts.

The attached recreational disturbance summary report for 2022 highlights those disturbance issues which are common across the estuary and those that are specific locations. Compared to North Lincolnshire, reports of recreational disturbance in East Riding appear to be concentrated around a small number of "hotspots" such as Beacon Lagoons SSSI (the Estuary's only breeding little tern colony), the nearby Spurn Point and Brough Airfield. Similarly, in North East Lincolnshire, reports of recreational disturbance are concentrated in a roughly 5 km stretch from Cleethorpes Foreshore to RSPB Tetney Marshes.

In contrast, reports of recreational disturbance in North Lincolnshire are scattered across around 80 km of shoreline, from Alkborough Flats to East Halton Skitter, with other sites including Whitton foreshore (no reports in 2022, but known issues at other times) Far Ings NNR, Waters' Edge LNR and

Goxhill Haven. It is difficult to see how a generic requirement to secure S106 monies towards wardening would be effective in reducing recreational disturbance impacts across this stretch.

You have noted that NE recommend a SAMMS, similar to that proposed by ERYC, is considered for North Lincolnshire, including a S106 contribution on new development. Most of the Council's reasons for not doing this are well rehearsed both within the [existing signed SoCG](#) and separate [Briefing Paper](#). A SAMMS was not required for development plan documents adopted in both East Riding and North Lincolnshire in 2016 and there have been no changes to legislation or guidance on HRA since 2016 to require one. The issue has arisen purely as a result of changes to the advice provided by NE. We acknowledge NE are an important statutory consultee, however there is nothing in legislation or guidance which states that we must do everything NE recommend. As noted above, existing draft policy with proposed modifications as well as a forthcoming SPD allows developers to still have the choice to contribute towards strategic schemes if they wish, much akin to a SAMMS approach, or to carry out their own comprehensive HRAs to formulate mitigation measures specific to their proposals. This is the same choice that developers will have in the East Riding, albeit a SAMMS will be delivered via a standard financial contribution here.

You refer to Planning Practice Guidance (PPG) in relation to the need to consider potential mitigation where it cannot be concluded that there will be no adverse effects on a site's integrity and for these measures to be sufficiently secured and likely to work in practice. The proposed choice for relevant developers in North Lincolnshire between delivering site specific HRA informed mitigation schemes or to contribute towards strategic schemes in line with proposed policy and prospective SPD is already noted. We are not aware of any issues NE have with this choice for developers in the East Riding. Our view is that NE's issue stems more from not proposing a standard 'tariff style' contribution mechanism to fund itemised and costed mitigation which matches the anticipated funds available over the Plan period as per the East Riding. Whilst NE have consistently directed us to the East Riding approach as one way of addressing the issues, it has also consistently advised that we are free to choose alternative methods. This is what we have done in the approach outlined. It is important also to note that whilst developers have the choice to carry out their own HRA and recommended mitigation rather than pay a standard tariff, the mitigation is no more secured in the East Riding than would be in North Lincs. This is due to uncertainty as to what proportion of developers would elect to pay a standard charge, as well as what overall amount of development liable for the charge would come forward within the Plan period.

We have been requested to confirm how these matters would be approached at project level if the work requested by Natural England is not undertaken and how this accords with the advice in the PPG and whether it is likely to conflict with The Conservation of Habitats and Species Regulations 2017. Whilst the Council is not proposing to set a standard 'tariff style' contribution towards recreational pressure mitigation measures. As discussed, the option is still there for development to pay a contribution towards such measures. Our proposed approach is therefore not wholly a project level one. However, where impacts are considered at the project stage, it is possible to be more specific about the likely location of any increases in recreational disturbance and therefore the location for any required mitigation interventions. For example, a large housing development at Barton upon Humber might reasonably be expected to lead to an increase in recreational disturbance at Far Ings NNR, Waters' Edge LNR and Barton foreshore with less impact on more distant sites, such as Alkborough Flats, East Halton Skitter, Cleethorpes or Spurn Point. Thus, any mitigation measures devised at the project stage can be more spatially targeted, increasing the confidence that the measures will be effective.

This approach reflects the status quo as it stands and there isn't any substantial evidence brought forward by NE or other sources to suggest this has not been in accordance with legislation or the PPG. Further, in relation to the need for any measures used to inform the decision about the effects on the integrity of the Estuary to be sufficiently secured and likely to work in practice. In our ecologist's view, we do not have evidence that securing a S106 contribution on new development would be effective in reducing recreational disturbance if the funds were to be used on a generic pan-Humber wardening scheme. Specific arrangements made at the project stage are more likely to be targeted and effective. Furthermore, if there is an incremental "trickle" of S106 funding into a recreational disturbance project pot, we need to be clear about how it will be used and at what point sufficient funding will be accumulated in order to fund sustainable and effective interventions. This is a point which is not even clarified by the East Riding work. Nor can it be, due to the unreliability of

consistent delivery of development and therefore contributions, as well as the proportion of development which elects to fund/deliver its own mitigation measures as opposed to contributing to a generic pot of money.

S106 monies are not collected until a house is occupied which means considering either employing someone (eg a warden) very part-time to begin with due to lack of funds, or to pump-prime the post with cash from elsewhere.

Additionally, there is doubt both across the Humber and the wider UK as to the effectiveness of schemes such as Bird Aware, Space for Shorebirds etc...mainly because they have not been around for that long. Bird Aware Solent published a report detailing what has and hasn't worked over the past 5 years, and what they need to alter in the future. It also raises the question, to which there is no clear answer, if recreational pressure mitigation schemes do not work then what can be done that would reduce disturbance from a growing population.

Functionally Linked Land

We agree the question arises as to whether the Council has taken a precautionary approach to HRA screening of functionally linked land as a result of disagreement with NE on the screening out of three proposed allocations as functionally linked land. We have proposed to address this by amending the functionally linked land assessment so that there are now no longer any differences of opinion between NE and the Council as to which proposed draft Local Plan allocations are screened in or out of potentially being functionally linked land to either the Humber Estuary or Thorne and Hatfield Moors International designations. Proposed allocations H1P-6 (PA/2019/1782)- Moorwell Road, Scunthorpe; H1P-13- Land off Barrow Road, Barton; and H1P-23- Land off Mill Road, Crowle; are now screened in as being potentially functionally linked land. This is now consistent with NE's previous consultation responses. The additional criterion outlined in paragraph 3.11 of the Council's previous December 2023 [Briefing Note](#) is now applicable to these allocations as a proposed modification to the Plan, except draft allocation H1P-23, where the criterion in paragraph 3.13 is applicable.

Additional Plan Appendix

It has been suggested the request from NE to not directly copy from their guidance document in the proposed additional Plan appendix should be adhered to. During meetings with NE the primary concern with this guidance on bird surveys was that it was written for the whole Humber Estuary area as well as the Lower Derwent Valley. It therefore contains material which is relevant to other areas and not just North Lincolnshire. The non-North Lincolnshire elements of this were removed prior to the document informing a proposed Plan appendix, thus addressing NE's concern as it was put to us at the time.

It is disappointing that despite being consistently being directed to follow ERYC/NELC's approach with regard to many elements of our HRA, it appears as though it is not acceptable for our HRA to be informed by NE's own document. It seems to us there is no better way of addressing an objectors concern than to follow an approach which is already agreed and published by the objector themselves, where appropriate. We cannot see any soundness or legal compliance issue with the approach we have taken with regard to this appendix to the Plan.

Air Quality

For the avoidance of doubt, it is requested we confirm that there is nothing outstanding regarding the matter of approach to air quality in relation to impacts on European Designated Sites and that NE are not seeking any further work. We can confirm that this is the case.

The Council has carried out a check of projected traffic growth according to TEMPro on the M180 adjacent to Hatfield Chase Ditches SSSI over the Plan period, which amounts to a growth of over 2,500 vehicles annual average daily traffic (AADT). This exceeds the screening thresholds of 1,000 AADT or 200 for HGV additional flows in combination with Neighbouring Authorities set out in NE's [advice](#). Thus the need for formal traffic and air quality assessment is triggered. NE suggested that it would be a fairly straightforward process to run the TEMPro growth figures through a formula to project the increase in pollutants in order to make a judgement on impact. We consulted our HRA

consultants on NE's suggestion, and they subsequently had a word with a specialist air quality consultant. The feedback was the modelling NE propose is not straightforward, and would probably be 2-3 weeks of solid work, and then need assessment of the results. The licence for the model itself is £5,000 per year and isn't currently something they have so would also need to be purchased if we went ahead. They flagged that requesting this level of analysis for a local plan, and in relation to a SSSI- not even an SAC and SPA, is highly unusual, particularly as the details of the developments are not yet known. This type of modelling is apparently typically used for major new roads and significant developments. Having said that, they have suggested we could undertake a desk-based baseline study to look at potential changes in traffic levels and predict the likely impacts of this. This would be a smaller, interim study that didn't involve modelling, but would need traffic data from the Council. A ballpark figure for this study would be £2,000 to £3,000. However, if it's not the modelling requested by NE, there would be no certainty if they'd accept it or not. Instead, our proposed approach as it stands is to revise our SA to acknowledge a potential minor impact on the SSSI as a result of increased traffic and air pollution levels.

In line with the NPPF, development on land within, or adjacent to, an SSSI should not have an adverse effect on it, either individually or cumulatively, as a result of other developments. Any development deemed likely to adversely affect an SSSI will need to demonstrate that the benefits of the proposal clearly outweigh these impacts. In the interests of the wider sustainability of the area in terms of provision of jobs and homes into the future, adoption of the Local Plan clearly outweighs the very minor impact on air quality in relation to this SSSI in our view.

In relation to traffic and air quality impact, we have also been at pains to point out the following as outlined in our [Briefing Note](#):

- Irrespective of issues associated with the Local Plan, pollutants from traffic are reducing as sales of electric vehicles are increasing rapidly.
- There is a whole raft of National to Local strategies aiming to make sure that the switch to electric vehicles continues.
- Bespoke forecasting/long term trends showing that the overall rate of nitrogen deposition in the estuary declines over the period to 2039.
- There is concern that a temporary increase in ammonia would result from a rise in hybrid vehicles and hence the use of catalytic converters. But 2021 and 2022 was also the first year of reduction of all forms of petrol powered car registrations (pure petrol, hybrid, plug-in hybrid) in England from 74 to 73% following a sustained increase.

Further comments from our ecologist highlight that Hatfield Chase Ditches SSSI is designated for "Standing Open Water and Canals" (see SSSI citation & Condition Assessment – <https://designatedsites.naturalengland.org.uk/SiteFeatureCondition.aspx?SiteCode=S2000213&SiteName=Hatfield%20Chase%20Ditches%20SSSI>)

For this habitat, the Air Pollution Information System (APIS) says:

"A critical load cannot be given for nitrogen, as quantitative relationships between biology and nitrogen concentrations are poorly understood. The nitrogen to phosphorus ratio can be important, with a molar ratio of around 16:1 (7:1 by weight) being the threshold between N- and P-limitation (Wetzel 2001). Impacts could be assessed by deviation from a 'natural' ratio for an individual site."

And:

"Deposition of ammonia, nitrate and other forms of nitrogen from the atmosphere is unlikely to be the largest source of this nutrient to eutrophic standing waters (Gibson et al. 1992, Gibson et al. 1995, Jordan 1997) and, therefore, in general, N deposition is unlikely to be very harmful to eutrophic standing waters, even when close to sources."

See: <https://www.apis.ac.uk/node/983>

The NE condition assessment for the site (Morwenna Christian 2017) highlights “freshwater pollution - water pollution - agriculture/run off” as the primary reason for the individual SSSI units being in unfavourable declining condition.

Setting waterborne pollution aside (as the major source of N and P for the SSSI), further investigation of likely aerial deposition modelled by APIS reveals that road transport only contributes between 9 and 11% of nitrogen deposition where the M180 motorway crosses Hatfield Chase Ditches SSSI:

Taking into account the fact that a) waterborne nitrogen pollution is likely to greatly exceed aerial deposition in this location and b) road transport is a minor component of aerial deposition, then in my view any increase in road traffic attributable to Local Plan policies is not likely to have a discernible effect on Hatfield Chase Ditches SSSI.

Finally, we would highlight that NE has acknowledged that it is highly unlikely that any mitigation would be required in this, or any other North Lincs location, as a result of air quality impacts. If mitigation were required, however, it should be borne in mind the limited options available, and that National Highways and not the Council is the Highways Authority for the M180. Potential mitigation measures in the form of diversion routes are not available as there aren't any suitable alternative east-west routes. We would also suggest that lower speed limits and pollution barriers would not be acceptable to National Highways.

Indeed, it could be argued that as a strategic national route, any issues created by the M180 are best addressed through better communication and joint working between National Highways and NE as the national agencies concerned and the remote nature of the potential impact concerned to the source development proposed as part of the Local Plan.

Proposed Main Modifications

We believe the proposed changes to the Plan outlined in the Briefing Paper have been/can be agreed with NE. We have written to NE to clarify.

Cross Boundary Issues

You note in particular that NE are requesting on occasion that the issues are dealt with in a manner that is comparative to the approach in ERYC and NELC areas. These two local planning authorities adjoin North Lincolnshire's administrative area and are affected by the same European sites and therefore it seems to you that a similar policy approach would be worth exploring to ensure consistency in approach to mitigation across the Humber Estuary SPA/SAC/SSSI/Ramsar.

We would agree with this view and have explored following the approach of ERYC and NELC. We have largely explained reasons for the differences in our proposed approach above under 'recreational disturbance'. We consider the other differences in approach relating to air quality and functionally linked land are fairly self-explanatory. The other point to note is that neither the approach of ERYC nor NELC has been engrained in an adopted Local Plan with associated HRA as yet.

Lastly, if NE want an 'estuary wide' approach to these issues, then it is they who are best placed to instigate this, not North Lincolnshire Council.

Yours sincerely,



James Durham MRTPI
Place Planning Specialist