

South Humber Bank Energy Centre DCO

The Examining Authority's written questions and requests for information (ExQ1) – North East Lincolnshire Council's Response

Planning inspectorate Reference: EN010107

<u>ExQ1 - Question</u>	<u>Response</u>
1 - General Questions	
<u>Q1.0.1</u>	<p>Planning application ref. DM/1070/18/FUL was determined under delegated powers by North East Lincolnshire Council and was not determined by the planning committee.</p> <p>The officers report and delegated decision can be viewed within the applicant's Planning Statement (examination library reference APP-024) and a copy of the s106 legal agreement in appendix 2 of the development consent obligation (APP-032). These are however appended to this response at appendix A and B respectively.</p> <p>NELC by the nature the area, particularly along the Humber bank determines a relatively large number of major industrial and commercial applications which is also mirrored within the allocations for employment land within the NELLP. The application accorded with the employment allocation of the Local Plan and did not receive any substantive objection to the scheme and as such did not warrant presentation to the planning committee.</p>
<u>Q1.0.2</u>	<p>The applicant has sought to undertake discharge several pre commencement conditions with respect to the NELC planning approval, but <u>no</u> commencement of the development has occurred on site.</p> <p>The conditions discharged are as follows:</p> <ul style="list-style-type: none">• <u>DM/0486/19/CND discharge of Part (1) of Condition 13: - a survey of the extent, scale and nature of contamination – Partial Discharge (Part 1 only) 12 June 2019. (Appendix C)</u>• <u>DM/0626/20/CND Details in discharge of Part 2 (i – iv) of condition 13: including a survey of the extent, scale and nature of contamination, assessment of potential risks, an appraisal of the need for remediation and if required detail of the remediation scheme. -</u>

	<p><u>Discharged (part 2 part i – iv) - 17th September 2020 (Appendix D).</u></p> <ul style="list-style-type: none"> • <u>DM/0713/19/CND - Details in discharge of condition 10: construction management plan – Condition partially discharged (phase 1 only – initial construction works) 19th September 2019 (Appendix E)</u> • <u>DM/1117/19/CND – Details in discharge of condition 18: (delivery and servicing) - Condition discharged 31st January 2019 (Appendix F)</u> <p>By the nature of wording of conditions: 12, 14 and 15 these also remain extant due to the potential for unexpected contamination to be found during construction and the need to deal with any found, but nonetheless, the details discharged within condition 13 indicate contamination is not anticipated and conditions are discharged to a suitable level and will not prohibit commencement of development. Should contamination be unexpectedly found they will again come into force.</p> <p>Whilst the development has not begun on site the timescales for commencement remain in accordance with condition 1 of the planning permission DM/1078/20/FUL which allows for work to commence until the 12th April 2024</p>
<p><u>Q1.0.5</u></p>	<p><u>DM/1070/18/FUL: Pre-commencement conditions and progress:</u></p> <ul style="list-style-type: none"> • <u>Outstanding pre commencement conditions</u> <p>Condition 4 - Details of the final position of any buildings, finished floor levels, elevations and floor plans – details still to be provided and relate to the main construction elements rather than preliminary works.</p> <p>Condition 5 - Details of all external materials to be used in construction of the buildings – details still to be provided and relate to the main construction elements rather than preliminary works.</p> <p>Condition 7 - Details and position of boundary treatments, circulation areas, hardstanding's and all other hard landscaping – details still to be provided rather than preliminary works</p> <p>Condition 9 – Scheme for disposal of surface and foul water drainage including a future maintenance plan – details still to be provided rather than preliminary works</p>

	<p>Condition 10 - Construction Management Plan – Phase 1 – initial works discharged DM/0713/19/CND (Appendix E) – Phase 2 (main build phase) – details still to be provided but this would not limit the commencement of preliminary works.</p> <p>Condition 11 - Specifications of the type of piling to be used to support the building/structures (Including mitigation of effects of the piling with regard to noise to ecological receptors and mitigate the effects of the piling with regard to groundwater resources – details still to be provided and would prevent preliminary works albeit see Q5.0.1 below.</p> <p>Condition 12 – Implementation of condition 13 – (Remediation of contamination) and actions if unexpected contamination is found – <u>details in relation to implementation of condition 13 has been discharged (DM/0486/19/CND – Appendix C & DM/0626/20/CND – Appendix D)</u> so this will not hamper commencement but nonetheless remains extant if triggered by the need to deal with unexpected contamination, but this is not pre commencement.</p> <p>Condition 14 – Remediation Scheme Implementation – Reports indicate within condition 13 that remediation is not required and therefore the condition would not prohibit commencement.</p> <p>Condition 21 – Details of new entrance to the site – details still to be provided but this would not limit the commencement of preliminary works.</p> <p>Condition 22 – Condition survey of the adopted section of the local access road South Marsh Road – details still to be provided but this would not limit the commencement of preliminary works.</p> <p>Condition 23 – Details to provided to UK DVOF & Powerlines at the Defence Geographic Centre – details still to be provided but this would not limit the commencement of preliminary works.</p>
5. Draft Development Consent Order	
<u>Q5.0.1</u>	<p>Are mitigation requirements are necessary to control impacts associated with the pre-commencement activities identified in the DCO?</p> <p>NELC notes this is a question for the applicant to respond to the Examiner but it has been asked for its views as to whether piling can be removed from the Permitted Preliminary Works</p>

	<p>(PPWs) within the DCO. This is due to the lack of need to undertake any piling within the PPW's removing the risks. NELC has discussed this with its Environmental Protection Team and no objection to this has been raised and as such subject to the wording of requirements 1 and 17 be acceptably amended NELC has no objection in principle to the proposed removal of piling from PPW's.</p>
<u>Q5.0.17</u>	<p>Notice served under Art 5(2)(a) on the planning register be sufficient to show that the planning permission and conditions have been superseded by the DCO.</p> <p>At most and dependent on the type of land charge search undertaken, it is considered that a search would reveal only the details of applications submitted, whether they were approved/refused, condition discharge applications including approval/or refusals. Legal searches would also outline any enforcement action undertaken. This would be the same for the DCO and the notice served under Art5(2)(a). It would be for the inquirer to then make further investigations as to relevance of a planning permission/ DCO and whether it was extant or not and the nature of any outstanding matters and the implications of such.</p> <p>Such a stance would not be unlike a section 73 (T&CP Act 1990) planning approval whereby an element(s) of an approved scheme was amended and approved and it would then be for the inquirer to undertake further investigations as to which scheme was being implemented and any conditions to which it referred.</p>
<u>Q5.0.18</u>	<p>dDCO Art 5(2)(b)(i) and (ii) - DCO Requirements v DM/1070/20/FUL Conditions</p> <p>NELC is content with the requirements outlined within the DCO and their relationship to those imposed upon the original planning permission. Details of slight drafting details or timing are being discussed with the applicant, but should not be considered as principal objections to the requirements.</p> <p>dDCO Art 5(5) - DCO Requirements v DM/1070/20/FUL Conditions</p> <p>The following are NELC's comments on the proposed requirements:</p> <ul style="list-style-type: none"> • Requirements 5 Detailed design and Floor levels – Condition 4

The additional elements of the DCO proposal would need to be provided and as such would be covered by this proposal. The main external change would be the air-cooled condensers. Should the condition be discharged before the DCO then dDCO Art 5(6) would be utilised and the applicant would have to apply for discharge of the requirement.

- Requirement 6 Detailed design (appearance) – Condition 5

The additional elements of the DCO proposal would need to be provided and as such would be covered by this proposal. Should the condition be discharged before the DCO then dDCO Art 5(6) would be utilised and the applicant would have to apply for discharge of the requirement.

- Requirement 7 Retained trees – Condition 6

The treed areas to be retained are outside of the main construction area and would be enhanced by the surrounding ecology works proposed. As such these areas are unlikely to be impacted upon negatively and so there would be no additional impact to deal with. Similarly, there includes a clause within the requirement to replace lost trees if required.

- Requirement 8 Means of enclosure and hard surfacing – Condition 7

The DCO development includes some additional plant and equipment but would not alter those aspects which would be approved under condition 7 and the applicant has confirmed that the areas of hard surfacing would stay the same. This includes the 2.5m high fencing which would be erected within preliminary stage of the construction to protect the overwintering birds to the adjoining field.

- Requirement 9 - Lighting - Condition 7

NELC is content in principle with condition but considers the imposition of 8(2) 'to accord with indicative lighting strategy' is to be to be overly constrained without full details provided – recommend therefore that based on indicative lighting strategy. It is understood the applicant is considering alternative wording on this matter.

However, the area to be lit by the DCO scheme is materially the same, particularly in terms of hard surfaced areas, entrances, roads, parking areas etc. The details are also required prior to operation making submission prior to the DCO switch less likely.

- Requirement 10 – Soft landscaping – Condition 7

The landscape scheme requirements are the same. Given the area of the Additional Works (i.e. air cooled condensers and transformers) this would not change in a material manner any proposed landscaping. The Council is therefore content that should condition 7 be discharged it would be sufficient to transfer this to the DCO requirement without concern.

- Requirement 11 – Biodiversity protection – Condition 8

Both the requirement and condition require development to accord with the biodiversity protection measures. The protection measures required by the DCO mirror that within condition but with specifics re timing to bring the proposal up to date. Again, the area of Additional Works that would not alter the areas of protection or methodology. Changes as a result of the DCO are therefore minimal.

Timing of verification reports, given anticipated construction timescales is more specific but not substantially different from condition requirements.

- Requirement 12 – Biodiversity mitigation and enhancement – Condition 8

The requirement and condition both require mitigation and enhancement, the Additional Works do not alter these areas of mitigation and enhancement. The DCO requirement goes beyond that of the condition, re mitigation and enhancement but given the timing of submission through both condition and requirement it would be unlikely that the condition would have been discharged before the change from planning permission to DCO. The requirement would nevertheless need to be discharged if the condition had already been discharged as it goes beyond that required by the condition.

- Requirement 13 – Surface water drainage – Condition 9

It is understood that the area, underneath the Additional Works (air-cooled condensers) would be typically permeable so that the impact on surface water drainage would be minimal. The condition discharge would not therefore be affected. The DCO outline drainage strategy accords with that submitted with the planning application. Timing wise implementation would be the same as the condition.

- Requirement 14 – Foul Drainage – Condition 9

The disaggregation of the surface and foul drainage is not an issue and the Additional Works as NELC understands would not impact upon foul drainage. Timing wise implementation would be the same as the condition.

- Requirement 15 - Construction environmental management plan – Condition 10

It is accepted that requirement mirrors that of the condition, apart from the disaggregation of the construction traffic and travel planning. It is also understood that construction methods and mitigation would not alter as a result of the Additional Works. Construction traffic is also not anticipated to rise as a result of the Additional Works within the DCO. As such the requirement appears acceptable and would not lead to concerns if the condition was discharged, prior to DCO.

- Requirement 16 - Construction traffic management and travel planning’ – Condition 10

Again, the requirement closely follows the condition. Routing and traffic levels which will not change as a result of the Additional Works. The reference to Network Rail assets is noted but this was also included within an informative 5 of the planning approval (**Appendix A**). The LPA is therefore content that the requirement adequately covers this issue even if the condition is discharged prior to the DCO.

- Requirement 17 Piling detail - Condition 11 Piling and 13 Contamination

The requirement for the piling specification mirrors that of the original condition and covers the areas of specific concern – ecology and contamination. The area of development would not materially alter but piling need to change subsection (3) of requirement 17 ensures these details will need to be agreed with the LPA first. As such approval under the condition would not raise concerns to the NELC.

- Requirement 18 Unexpected Contamination - Condition 12

The requirement for the actions/ works required mirrors that of the original condition and covers the areas of specific concern.

- Requirement 19 Contamination (investigations and remediation) – Condition 13

	<p>The requirement for the actions/ works required mirrors that of the original condition and covers the areas of specific concern. Given the Additional Works would be within the same area of the main construction site approved by the planning approval, these would not have any impact on the contamination and remediation of the area.</p> <ul style="list-style-type: none"> • Requirement 20 – Implementation of remediation scheme – condition 14 <p>The requirement for the actions/ works required mirrors that of the original condition and covers the areas of specific concern. Given the Additional Works would be within the same area of the main construction area approved by the planning approval, these would not have any impact on the contamination and remediation of the area.</p> <ul style="list-style-type: none"> • Requirement 21 – Unexpected Contamination Actions – Condition 15 <p>The requirement for the actions/ works required mirrors that of the original condition and covers the areas of specific concern. The imposition of the time scale is deemed acceptable and, in any case, works within the area of contamination agreed with the LPS would be halted limiting risks.</p> <ul style="list-style-type: none"> • Requirement 22 – Flood Mitigation – Condition 16 <p>The requirement for the actions/ works required mirrors that of the original condition and covers the areas of specific concern. The use of phrase 'commission' indicates that the design is fixed at that stage so would have the same effect as condition requirements. The slight alteration in position of critical assets is noted and will need to be factored into any condition submission but can be done without harm.</p> <ul style="list-style-type: none"> • Requirement 23 – Flood warning and evacuation plan – Condition 17 <p>The requirement for the actions/ works required mirrors that of the original condition and covers the areas of specific concern.</p> <ul style="list-style-type: none"> • Requirement 24 – Delivery and servicing – Condition 18 <p>Given the DCO operational HGV movements accord with those proposed within the planning approval and routing</p>
--	---

accords with the details agreed through condition discharge application DM/1117/19/CND, [Appendix D](#), it is considered that the required actions and implementation mirrors that of condition 18 and covers the areas of specific concern.

- Requirement 25 – Operational travel plan – Condition 19

Notwithstanding the slight changes proposed it is considered that the required actions and implementation mirrors that of condition 19 and covers the areas of specific concern. Similarly, the additional works would not require additional staff so that a scheme agreed through the planning approval conditions could be safely transferred to the requirement.

- Requirement 26 – Visibility splays – Condition 20

It is considered that the required actions and implementation mirrors that of condition 20 and covers the areas of specific concern. In any event, as works are required within the highway these details will be agreed with the highway authority through the conditions and a s278. These will be designed to accord with the DCO scheme. In addition, no changes are required to accommodate the Additional Works.

- Requirement 27 – New Highway Access – Condition 21

It is considered that the required actions and implementation mirrors that of condition 21 and covers the areas of specific concern. In any event, as works are required within the highway these details will be agreed with the highway authority through the conditions and a s278, which will take account of the DCO. No changes are required because of the Additional Works.

- Requirement 28 – Parking – Condition 21

Despite being disaggregated and the submission trigger being slightly altered the results are the same in terms of overall implementation particularly as parking will not alter because of the Additional Works.

- Requirement 29 – Road Condition Survey – Condition 22

The requirement is deemed a suitable replacement of condition 22 and clarification of HGV tonnages does not alter the approach required along with timings. Given HGV traffic within the operational phase are deemed to accord with those

	<p>proposed within the planning approval, the principle of the requirement is therefore acceptable although it is questioned whether (5) sufficiently requires implementation in accordance with the agreed scheme and timescales as had been captured through the s278 agreement within the condition.</p> <ul style="list-style-type: none"> • Requirement 30 – Air safety – Condition 23 <p>It is considered that the required actions and implementation mirrors that of condition 23 and covers the areas of specific concern.</p> <ul style="list-style-type: none"> • Requirement 31 – Refuse derived fuel – Condition 24 <p>It is considered that the agreed fuel types and limitations of gas and fuel oil for start-up mirror that of the condition.</p> <ul style="list-style-type: none"> • Requirement 32 – Fuel Storage – Condition 25 <p>It is considered that the agreed storage of fuel oil and fuel stock for the facility mirror that of the condition.</p> <ul style="list-style-type: none"> • Requirement 33 – Decommissioning – Condition 26 <p>It is considered that the requirement mirrors that of condition 26 and covers the areas of specific concern <u>but</u> the Requirement scheme should also require implementation.</p>
<u>Q5.0.19</u>	<p>dDCO Art 5(6) requires the undertaker to issue a requirements discharge schedule (defined in Art 2). The LPA must state within 3 weeks whether the details in this are agreed or, if not, what parts it considers are incorrect. What happens in the event that the LPA does not agree with the applicant's schedule?</p> <p>Once the notice has been submitted the LPA will be able to go back to the applicant, and if appropriate notify them that they do not consider conditions or requirements to be discharged and if development continued then the LPA would look to enforcement.</p>
<u>Q5.0.32</u>	<p>dDCO Art 27 – Art 27(2) Please advise which provisions in the DCO this applies to and whether the consenting authorities are happy with this provision.</p> <p>Additionally, bearing Art 27 in mind, the ExA would seek the views of NELC, acting as the relevant LPA and Highway</p>

	<p>Authority, and any other street authority as is relevant to this DCO application, on the acceptability of this provision and the timescales provided?</p> <p>10 (2), 11(2),16(5) apply but there is an argument perhaps to say it applies to 12(1) and (2) Art 27 mentions consent, agreement or approval, which are required or contemplated by any provisions of the Order.</p> <p>12(1), 12(2) says the work should be done to the reasonable satisfaction of the highway authority. It does not actually mention consent agreement or approval or an application being submitted, so Art 27 does not apply.</p> <p>It appears that Article 27(2) applies to 10(2), 11(2) and 16(5). 10 (2) and 11 (2) are catch all provisions in case more works are needed than those in 10(1) and 11(2). In the event that such works are needed it is thought that 8 weeks for the street/highway authority to respond is reasonable. In the same way 16(5) is in relation to trial holes in streets again it is thought that 8 weeks is sufficient.</p>
<u>6. Ecology</u>	
<u>Q6.0.14</u>	<p>Monitoring of the proposed area of species-rich grassland to be created to the west of the SHBPS will be monitored once every other year during the establishment period for five years. Is this sufficient?</p> <p>This is deemed acceptable by NELC ecologist who states: we are happy with this level of monitoring; monitoring will need to take place at the end of year one, end of year 3, and end of year 5, which is 'every other year', and management intervention applied if deemed necessary.</p> <p>Monitoring in year one is necessary to manage the establishment period when ruderals and more competitive species can become dominant and more management in the way of a cutting regime is needed. Year two, after appropriate management in year one, should see both annual and perennial species establishing and in year three is when any dominant species will be evident and appropriate management applied. After five years the establishment and correct balance of species should have been achieved. Any fine tuning can be carried out at this stage which will leave the sward in the desirable state. Ongoing management after this should maintain the required standard. Monitoring results and any proposed management should be submitted to the Ecology Manager via Planning.</p>

9. Geology and Land Contamination

Q9.0.3

Given risks to controlled waters are considered to be moderate to high are ES Chapter 12 and Appendix 12A satisfactorily deal with the potential risks to controlled waters and whether imposing Requirements within the DCO would be adequate to control/ deal with this concern?

These will be matters lead on by the Environment Agency and NELC would respond in accordance with their advice and specialisms.

Q9.0.7

Please confirm whether ES Chapter 12 and Appendix 12A satisfactorily deal with the potential risks to controlled waters re aggressive ground conditions and whether imposing Requirements within the DCO would be adequate to control/ deal with this concern?

These will be matters lead on by the Environment Agency and NELC would respond in accordance with their advice and specialisms.

10. Habitat Regulations Assessment

Q10.0.13

SHG strategic mitigation scheme – Background and justification

Summary: This is a long-term strategic strategy which has been agreed between North East Lincolnshire Council, North East Lincolnshire Council, Natural England, RSPB, Environment Agency, Lincolnshire Wildlife Trust and the RSPB. The background for the strategy is the need to balance the need for growth in economic activity and jobs on the South Humber Bank and the protection and enhancement of one of the country's most important sites for over wintering birds in the UK and one of the top ten in Europe. Over a number of years it had become increasingly difficult to mitigate the impact of new development on the overwintering birds on a case by case basis within this part of North and North East Lincolnshire.

The South Humber Gateway project therefore provided a strategic approach whereby the appropriate mitigation was effectively provided up front by the partnership (including mitigation land assembly, habitat creation and monitoring) with developers paying an appropriate contribution based on land area to recover the cost of this work pro rata. The

	<p>approach works on the basis of a balance, whereby an appropriate scale of mitigation land has been delivered to allow development to take place without delay. This innovative approach to meeting the requirements of the Habitat Regs and enabling economic development was recognised by the RTPI when it won the Excellence award for Planning and the Natural Environment</p> <p>Currently the 48ha Cress Marsh site has been established and attracts large numbers of birds. Within NE Lincolnshire there is presently more than sufficient mitigation land than is required through current consents/ submission to adequately mitigate the impact on over wintering birds. Nevertheless the partnership are now actively acquiring the additional sites to continue to provide an adequate level of up front mitigation going forward to allow growth to occur without constraint on this issue.</p> <p>Attached are the following documents for consideration:</p> <ul style="list-style-type: none"> • Memorandum of Understanding (Appendix G) • RTPI Excellence Award SHG Submission and Certificate (Appendix H)
<u>Q10.0.14</u>	<p>SHG strategic mitigation scheme – written justifications as to the need for this financial contribution including a copy of the Delivery Plan for this scheme.</p> <p>Linked to Q10.013 the strategic mitigation scheme has been adopted within the NELLP following public hearing through policy 9. The delivery plan was a key background document to the Local Plan examined within the Local Plan hearings. The process of financial contribution is worked out on a 1:1 basis as identified within the following documents.</p> <ul style="list-style-type: none"> • South Humber Gateway Ecological Mitigation North East Lincolnshire Delivery Plan (Appendix I) <p>In addition to this, policy 9 of the Local Plan and supporting paragraphs are included. These can be found at appendix (Appendix J).</p>
<u>15. Traffic, Transport and Waste Management</u>	
<u>Q15.0.5</u>	<p>Network Rail Responses to DM1078/18/FUL</p> <p>The following documents were submitted in relation to the above application. In addition, the response to the planning</p>

	<p>application condition discharge application: DM/1117/19/CND(delivery and servicing) are also included.</p> <ul style="list-style-type: none"> • Network Rail consultation response to DM/1070/18/FUL (Appendix K) • Network Rail consultation response to DM/1117/19/CND (Appendix L)
--	--

South Humber Bank Energy Centre DCO

The Examining Authority's written questions and requests for information (ExQ1) – North East Lincolnshire Council's Response

Planning inspectorate Reference: EN010107

Appendices

Appendix	Title
A	DM/1070/18/FUL – Delegated Report & Decision Notice
B	DM/1070/18/FUL – S106 Planning Legal Agreement
C	DM/0486/19/CND - Discharge of Part (1) of Condition 13 (contamination) – Delegated Report and Discharge Letter
D	DM/0626/20/CND Details in discharge of Part 2 (i – iv) of condition 13 (contamination) - Delegated Report and Discharge Letter
E	DM/0713/19/CND - Details in discharge of condition 10 (Construction Management Plan) – Delegated Report and Discharge Letter
F	<u>DM/1117/19/CND – Details in discharge of condition 18:</u> (delivery and servicing) - Delegated Report and Discharge Letter
G	South Humber Gateway (SHG) - Memorandum of Understanding
H	RTPI Excellence Award SHG Submission and Certificate
I	South Humber Gateway Ecological Mitigation North East Lincolnshire Delivery Plan
J	North East Lincolnshire Local Plan – Policy 9 and supporting text
K	Network Rail consultation response to DM/1070/18/FUL
L	Network Rail consultation response to DM/1117/19/CND