

## **FIVE ESTUARIES WIND FARM**

### **COBRA MIST LIMITED**

**5 December 2024**

**This submission is made to the Planning Inspectorate (ExA) by Cobra Mist Limited (CML), the freeholder of property and operator of a commercial business on Orford Ness. It regards the provision of a compensation nesting site on Orford Ness for Lesser Black Backed Gulls (LBBG) and the application for the grant of compulsory purchase powers to the Applicant.**

#### **General**

CML has been clear for some while that it has been happy for the Applicant to acquire the necessary area on Orford Ness to create a predator proof nesting site for LBBG.

Unfortunately, as it stands, the proposal is at risk of dispute, unnecessary expense and delay in the short and long term. While there has been some discussion in general terms on the appropriate size and location of the site, the Applicant has surprisingly yet to engage and consult meaningfully with CML and others (including the National Trust) on the details of what is required to make the proposal workable. Instead, after being repeatedly pressed by CML over many weeks, the Applicant sent some proposed Heads of Terms for a lease having entirely unacceptable covenants and restrictions, together with financial terms which were very materially worse than those applicable to the immediately adjacent wind farm nesting site of equal size. The Applicant's provisions appeared to have been lifted from standard terms, which may be relevant for the construction of large pylons to carry high voltage cables over farmland but which are totally inappropriate for the construction of a fence to surround a bird reserve within a commercial site.

The Applicant must have known that such terms could not be accepted by CML. Such manoeuvre now appears to be part of a tactical ploy to forego meaningful consultation in favour of seeking sweeping compulsory powers via the ExA contrary to how the Planning Act 2008 should be applied.

## **Lack of consultation**

Apart from being irritating and wasting an inordinate amount of time, and despite their legal obligation to consult appropriately, the Applicant has conspicuously failed to do so. Such lack of consultation is also contrary to the impression given in several submissions to the ExA. For instance, none of the plans submitted to the ExA and referred to by the Applicant in connection with the LBBG or CPO proposals were shown to or discussed with CML before formal submission.

An important consequence is that, instead of working with CML and the National Trust (the main landowners on Orford Ness) to find out what is necessary or appropriate in the circumstances, the Applicant appears to have taken the idle approach. Instead, it is asking the ExA to hand it a legal blunderbuss allowing the Applicant to impose unnecessary legal rights and restrictions that are wholly unjustified.

For example, there had been no prior hint that the Applicant required the right to impose very wide restrictive covenants and other rights over land and facilities that have little, if any, connection with the proposed nesting site. Significant difficulties are foreseen as a result. By needlessly impinging on CML's ability to use its property fully, efficiently and safely, including its obligations to other parties, the likelihood is that there will be a material adverse restriction on the long term operations of both CML and the National Trust and their management of Orford Ness as a whole. In addition, the lack of consultation about what is actually necessary, combined with the misguided nature of some of its proposals, means that a number are likely to backfire on the Applicant (including its main investors, such as RWE and Macquarie) including, most critically, the objective of achieving a successful LBBG nesting site. Instead, the tactic will foster legal and safeguarding issues, adverse publicity, operational difficulties and the creation of unnecessary continuing tensions between all the key parties.

CML and others can readily understand that the Applicant wishes to protect its position by ensuring that it has the necessary long term rights to construct, monitor and maintain the proposed nesting site. However, on

the access front, it has already been proven in the case of both (i) the existing wind farm nesting site and (ii) the significant National Trust area, that all that is required to achieve these objectives is to have a simple right of way over (a) the foot pontoon, (b) the slipway and (c) the roadway and track leading to the nesting site. No more.

Generally, it would also be entirely disproportionate and wrong for the Applicant to be granted a plethora of other wide-ranging powers to the long term detriment of the existing legal rights, business and other activities of CML and others – merely because, unlike the other wind farm nesting site owners, the Applicant has chosen not to be bothered to consult properly and explain to (let alone seek agreement with) those affected what is actually necessary in the particular circumstances. As a result, the granting of many of the powers sought by the Applicant would not be lawful.

Orford Ness is a complex semi-offshore site with an existing array of infrastructure facilities blended with a host of important SSSI protected natural features. It is wholly different to a bare strip of Essex farmland. Thoughtlessly running roughshod over such matters is not a wise move.

Several of the proposals submitted by the Applicant therefore need to be either materially amended or deleted.

In particular, a host of critical considerations affecting CML's operations need to be protected or enhanced - not overlooked or ignored. These include health and safety, flood defences, the provision of local internet, broadband and telephone services, commercial broadcasting, support to the National Trust and matters of national security. Such matters are important in their own right. In materiality terms one has to recognise:

- i. that the Applicant's proposed nesting site of 6 hectares must not be allowed seriously to impair or even destroy some of the activities and operations managed by CML and the National Trust over a total area of c.1600 acres. It would be wholly disproportionate; and
- ii. most critically, that CML is already providing, totally harmoniously and without the need for unnecessary impinging restrictive covenants and the like, a largely identical LBBG site on an adjacent area of Orford Ness for four other wind farms. The settlement of the

voluntary agreement with them was achieved within three months. In this case, as a consequence of the lack of consultation and the Applicant's ploy to achieve their objective by abuse of the CPO regime, no end is in sight after nine months.

In short, it is essential that the provision and use of any CPO powers by the Applicant be limited only to those which are required i.e. **necessary and sufficient to enable the construction, monitoring and maintenance of a LBBG nesting site** for the Five Estuaries (and maybe North Falls) wind farm. No more.

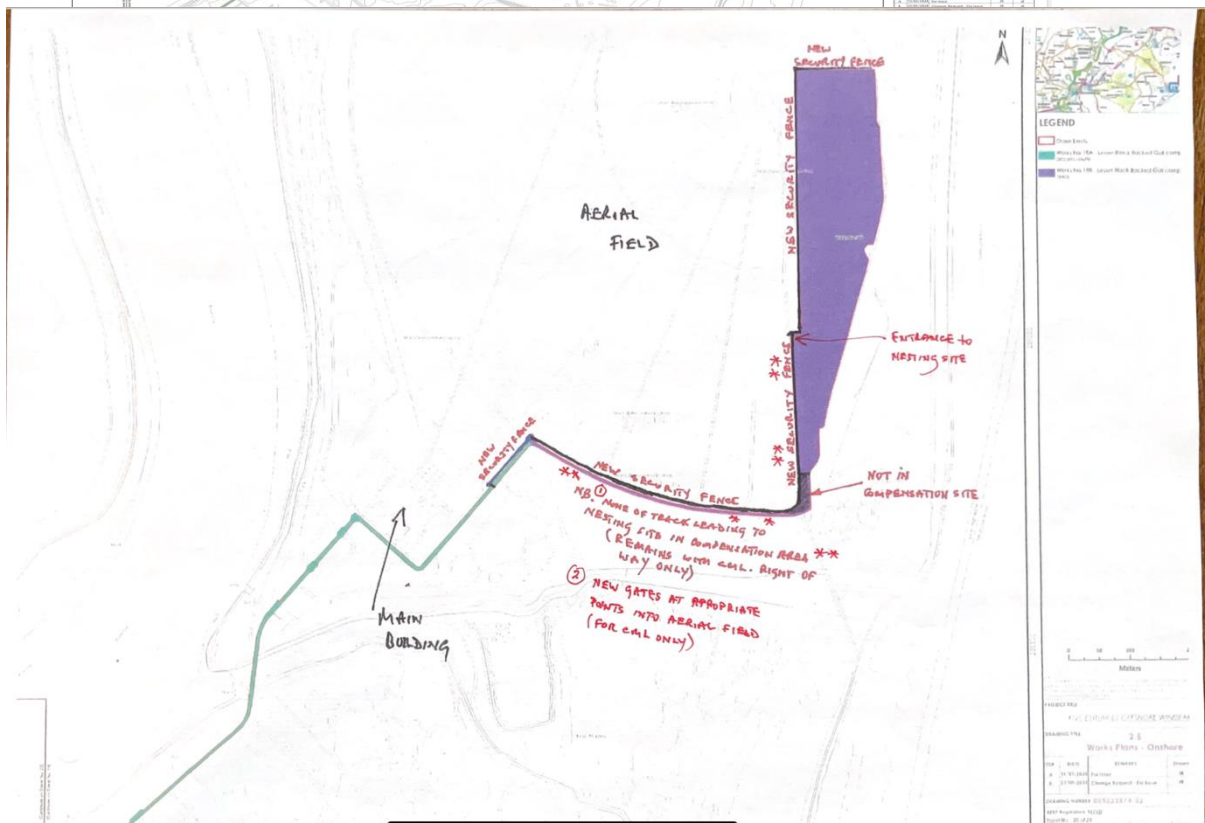
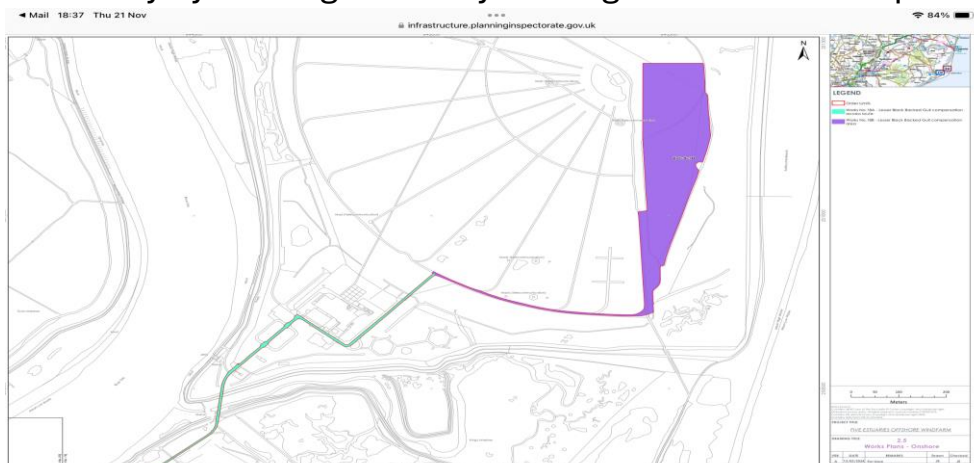
### **Some important detail requiring changes to the Applicant's proposals**

#### **❖ Health, Safety and General Security**

- The proposed nesting site is next to a significant facility which dates from the Cold War. It was originally an over-the-horizon radar station built by the U.S. at a cost in today's money of approx \$1billion. It included a large secure aerial field of c.200 acres with a complex web of sophisticated antennae which were subsequently replaced by the Foreign Office with a smaller number of telecommunication towers ranging in height from 210ft to 340ft. These have a variety of uses, including national security, broadcast radio and the internet. Next to the aerial field is a building approx 120ft high and 95,000 sq ft capacity ("the Main Building") with further telecoms and other facilities. The need for appropriate security of such assets is paramount. Not only are the towers and the main building physically dangerous structures, with accompanying statutory and civil liabilities, they are also important infrastructure assets in their own right. The need for their physical, commercial and operational security is essential. The ExA will hopefully readily appreciate that there can be no question of the Applicant having any right (i) to enter or conduct

any business on or within either the aerial field or within the immediate surroundings of the Main Building which are, for good reason, currently protected by high security fencing or (ii) to constrain any present or future activity by CML within such facilities.

- The solution is straightforward. To maintain the current and necessary level of security if access to the proposed nesting site is as shown on the plan shown below, the Applicant will have to ensure that any section of the aerial field that borders on to the new nesting site, and the track leading to it, is protected from entry by new high security fencing. See the second plan below.



- New entrance gates into the aerial field will be needed at a few points on the track leading to the nesting site at locations to be agreed with CML. Such fencing and gates will then form part of CML's aerial field. Further, the Applicant is only to have a right of way over the track leading to the nesting site. It is not to be part of the Compensation area as the Applicant has suggested.

The reasons being:

- i. Such track should only ever be used by the Applicant for the construction of and access to the main nesting site.
- ii. CML and others (including the Emergency Services and contractors involved with the maintenance or otherwise of the Main Building, the towers and all ancillary cabling and electronics within the aerial field) must continue to have access at all times along this route to and from the aerial field and the coastal track which leads up to Aldeburgh.
- iii. CML needs to have access via this route to monitor and utilise its freehold rights to the strip leading South from the Martello tower at Slaughden, including the Lantern Marshes and the adjacent shingle strip where the freehold ownership of the turf, clay and shingle is held by CML, not the National Trust.
- iv. Similarly, the National Trust needs to have the ability to access the track to Aldeburgh to monitor and manage its interests North of the aerial field if their usual track to such area is out of action, as it occasionally is due to storm damage elsewhere.

The ExA should also note that while they have been informed by the Applicant that the compensation site is not at risk of flooding, that is incorrect. The site was flooded for several years until c.2016 when CML closed a breach in the river wall to the North of the aerial field. See photo below.



In addition, for the reasons given above and despite being warned months previously not to do so, it is totally wrong for the Applicant now to include in their CPO case that they be granted an area in the main Compensation site (at the toe of the purple area on the first plan above) which blocks CML off from the essential track leading from the the Main Building and the aerial field to its land holding to the North and the track leading to Aldeburgh.

Quite apart from routine and emergency monitoring and maintenance by CML and the National Trust, if there is a significant injury, there may be no ready ability to treat and remove such person from the Ness, other than by this route or by air. The difficulty of treating and/or rescuing anyone on the Ness is a material factor in ensuring that the aerial field is always kept secure from intruders and others.

## ❖ **General Access**

After crossing the River Ore from Orford, access to the nesting site for the purpose of construction, monitoring and maintenance is achieved via a passenger pontoon, a slipway and a road/track leading to the nesting site.

## ❖ **The Pontoon**

Usage of the existing foot passenger pontoon is shared between the National Trust and CML and is in continuous use throughout the year. It is approximately 20m long and has capacity for two launches of approx 8m each in length. If the Applicant wishes to use the pontoon for a launch of its own, that should not be a problem, but it will need to add an extension. Subject to the necessary Council permissions etc, that is very feasible.

Where there is serious concern regards a suggestion by the Applicant in the CPO paperwork (see the Book of Reference version D) that it wishes to impose legal restraints on the foot pontoon as well as two areas adjacent to it: (i) the mooring barge and berthing area for CML's landing craft and (ii) CML's equipment and turning yard.

Apart from the acquisition of a pedestrian right of way and a possible pontoon extension, there should be no question of any other imposition being put upon these other facilities. They are essential to the efficient and safe running of CML's operations and those conducted by CML and the National Trust over the Orford Ness estate as a whole. The suggested restrictions are not necessary for the construction , monitoring or maintenance of the nesting site. Neither the National Trust nor the other wind farm operators have anything more than a pedestrian right of way over a defined safe raised pathway to and from the pontoon. Nor should the Applicant.

If the Applicant requires a vehicle of its own, a suitable space can be provided beside the roadway between the pontoon and the slipway.



### ❖ **The Slipway**

This is for construction materials and vehicles. It is unsafe for pedestrians. Again, the Applicant should have a right of way over it for a suitable craft and vehicles; but it must not be able to impose any restriction on its use by others.

### ❖ **The roadway to the Compensation site**

Detailed comments have been made above regarding the roadway immediately adjacent to the aerial field and the proposed nesting site.

In addition, the Applicant appears to be suggesting that it should have the right to impose further restrictive covenants and the like on the roadway and lay-bys leading to the main building and aerial field. Once again, there has been no attempt to consult with CML on this. The granting of a plethora of inappropriate rights would be entirely unnecessary for the construction, monitoring or maintenance of the nesting site. Like the wind farm operators on the adjacent nesting site, the Applicant should only have a simple right of way over such roadway. No more.

### **Some conclusions**

- The ExA (and RWE and others within the main investor group) should urge or provide for the Applicant
  - To consult, without further delay, the Orford Ness landowners in detail on what is necessary and sufficient for the construction, monitoring and maintenance of the required nesting site – and NO more.
  - To realise that the existing complex commercial and ecological interests on Orford Ness requires, in both the short and long term interest of not only Cobra Mist and the National Trust, but also the Applicant, proper consultation to achieve

- the Applicant's primary objective of creating the required nesting site in a timely and cost effective manner; and
  - long term harmony and cooperation between all the parties for the monitoring and maintenance of the site at the least cost.
- To avoid unnecessary delay, expense and hostility, by far the best way of achieving the Applicant's objectives is to negotiate a sensible and timely voluntary agreement between the Applicant and CML. This can be readily achieved by working from the recent precedent of the agreement for the adjacent nesting site which is of an equal size with a similar purpose.

**For Cobra Mist Limited**

5 December 2024