

Date: 23 April 2025
Our ref: 496296
Your ref: EN010152



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BY EMAIL ONLY

Dear Inspector,

NSIP Reference Name / Code: EN010152

Title: Natural England's Written Representations in respect of the Fenwick Solar Project Limited.

Examining authority's submission deadline 30 April 2025.

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.

For any further advice on this consultation please contact the case officer [REDACTED]
[REDACTED] @naturalengland.org.uk and copy to consultations@naturalengland.org.uk.

Yours faithfully,

[REDACTED]

Higher Officer – Sustainable Development
Yorkshire and Northern Lincolnshire Area Team

Natural England’s Relevant Representations

PART I: Summary and Conclusions of Natural England’s advice (starting on page 3).
PART II: Natural England’s detailed advice (starting on page 7)

Natural England's Written Representations

Natural England considers that the Applicant has provided sufficient evidence and is satisfied that the following issues have been addressed;

- **Internationally designated sites**
 - Potential loss of functionally linked land (FLL) for SPA / Ramsar birds.
 - Potential noise disturbance during construction to FLL for SPA / Ramsar birds.
 - Nightjar Foraging Distances
 - In-combination impacts
- **Biodiversity Net Gain**
 - Statutory Biodiversity Metric
 - Assessment Boundary
 - Watercourse Baseline Data
 - Trading Rules
- **Protected Species**
 - Badger exclusion zones

Part I: Summary and Conclusions of Natural England's advice

1.1 Natural England's advice in these Written Representations is based on information submitted by Fenwick Solar Project Limited (*'the Applicant'*) in support of its application for a Development Consent Order ('DCO') in relation to Fenwick Solar Farm (*'the project'*) and the agreed Statement of Common Ground signed by Natural England and Fenwick Solar Project Limited on 11 April 2025.

1.2 Part I of these Written Representations provides a summary (above) and overall conclusions of Natural England's advice. This advice identifies whether any progress in resolving issues has been made since submission of our Relevant Representations.

1.3 Our comments are set out against the following sub-headings which represent our key areas of remit:

- Internationally and nationally designated sites
- Biodiversity net gain
- Protected species

1.4 Our comments are flagged as red, amber, yellow, green or grey:

Red are those where there are fundamental concerns which it may not be possible to overcome in their current form.

Amber are those where further information is required to determine the impacts of the project and allow the Examining Authority to properly undertake its task and/or where further information is required on mitigation/compensation proposals in order to provide a sufficient degree of confidence as to their efficacy.

Yellow are those where Natural England does not agree with the Applicant's position or approach. We would ideally like this to be addressed but are satisfied that for this particular project it is unlikely to make a material difference to our advice or the outcome of the decision-making process. However, we reserve the right to revise our opinion should further evidence be presented. It should be noted by interested parties that whilst these issues/comments are not raised as significant concerns in this instance, it should not be understood or inferred that Natural England would be of the same view in other cases or circumstances.

Green are those which have been successfully resolved (subject always to the appropriate requirements being adequately secured).

Grey are notes for Examiners and/or competent authority.

2.0 Internationally designated sites

2.1 Our position regarding impacts on internationally designated sites has changed following discussion with the Applicant through our Discretionary Advice Service and the production of the Statement of Common Ground produced by the Applicant. Further detail on our reasoning for this is given against each impact pathway within Part II.

2.2 On the basis of the information submitted, Natural England is now satisfied that the previously 'amber' issues identified in the text below have been satisfactorily addressed:

- In-combination impacts on international designated sites (construction and operation) ('~~amber~~') **[NE4]**

2.3 Natural England is also satisfied that the 'yellow' issues in relation to the Humber Estuary designated sites have also been addressed. Please find a summary of each 'yellow' issue raised during Relevant Representations below, and refer to Table 1 for further details:

- Potential loss of functionally linked land (FLL) for the Humber Estuary SPA / Ramsar (construction and operation) ('~~yellow~~') **[NE1]**
- Noise and visual disturbance during construction to FLL for the Humber Estuary SPA / Ramsar (construction) ('~~yellow~~') **[NE2]**
- Nightjar foraging distances for the Thorne & Hatfield Moors SPA ('~~yellow~~') **[NE3]**

Nationally designated sites

2.4 We note that the Humber Estuary Site of Special Scientific Interest (SSSI) and Thorne, Crowle and Goole Moors SSSI nationally designated site features that are affected by this proposal are broadly the same as the internationally designated site features and therefore all amber and yellow issues raised at Relevant Representations have now been addressed.

Biodiversity Net Gain

2.5 Natural England's position regarding provision of Biodiversity Net Gain (BNG) is summarised below. Further detail on our reasoning for this is given in Part II:

- It is recommended that the original excel file(s) for the BNG metric is shared as part of the submitted documents ('grey') **(NE5A)**.
- Natural England advises that the biodiversity baseline included within the metric is based upon all land within the development's order limits (red line boundary). This includes all areas required for environmental mitigation ('grey') **(NE5B)**.
- As outlined in the Statutory Biodiversity Metric Guide, watercourses (other than ditches and culverts) should be surveyed by conducting a river condition assessment (RCA) and this person should be RCA trained and accredited. It is not clear in the Biodiversity Net Gain Assessment whether this has been followed ('grey') **(NE5C)**.
- It is noted that the trading rules are not met for 'Urban – Open Mosaic Habitat of Previously Developed Land' (OMH). Comments on the use of the BNG metric for this development are provided in Table 1 ('grey') **[NE5D]**.
- We recommend that the target increase in BNG is secured across all biodiversity unit types ('grey') **[NE5E]**

Protected species

2.6 Natural England's position regarding protected species is summarised below. Further detail on our reasoning for this is given in Part II:

- Natural England advised at Relevant Representations that exclusion zones for badger are set at 30m for all heavy plant, Horizontal Drilling and excavations. The Applicant has agreed within the Statement of Common Ground to update Table 3-3 of the Framework CEMP for Deadline 1 to include a commitment of a hard 30m exclusion zone around badger setts. ('~~amber~~'). **[NE6]**.

3. Natural England's overall conclusions

3.1 Natural England's advice is that there are a small number of matters which have not been resolved satisfactorily as part of the pre-application process that must be addressed by Fenwick Solar Project Ltd and the Examining Authority as part of the Examination and consenting process before development consent can be granted, as summarised in Section 2 above and outlined in further detail in Part II below.

3.2 There are several additional issues where Natural England does not agree with the applicant's approach which ideally should be addressed. However, these issues are unlikely to make a material difference to our advice or the outcome of the decision-making process.

3.3 There are also a number of notes for the Examiner and/or the competent authority included in the response.

3.4 The specific issues and comments in relation to each are detailed in Part II.

Natural England's Relevant Representations

4. Part II: Natural England's detailed advice

4.1 Part II, Table 1 of these representations expands upon the detail of all the significant issues ('amber' issues) which remain outstanding and includes our advice on pathways to their resolution where possible. Table 1 also shows, 'yellow' and 'grey' issues. Please refer to Part I for definitions of these.

4.2 The advice

Natural England's Relevant Representations, Part II, Table 1

NE key issue ref	Topic	Issue summary. (C) – construction phase (O) – operational phase	Natural England commentary and advice on the further information required to enable assessment.	Natural England comment on the mechanism for securing mitigation / compensation measures in the DCO.	Risk (Red/ Amber/ Green)
NE1.1	International designated sites <ul style="list-style-type: none"> Humber Estuary Special Protection Area (SPA) 	<p>Potential loss of functionally linked land (FLL) for the relevant qualifying bird features of the listed SPA / Ramsar sites.</p> <p>(C) and (O)</p>	<p><u>Natural England's position at Written Representations:</u></p> <p>The Applicant has updated the NSER [APP-201] to reduce the reliance on generic Impact Risk Zones and utilised their survey specific data. It was also confirmed that the results reported were the maximum counts recorded across the entirety of fields within the Order Limits and not just parcels of more the 2ha.</p> <p>The Applicant has also confirmed that survey results for bird species are presented as a percentage of the most recent WeBs 5-year average count.</p>	N/a	'Green'

NE key issue ref	Topic	Issue summary. (C) – construction phase (O) – operational phase	Natural England commentary and advice on the further information required to enable assessment.	Natural England comment on the mechanism for securing mitigation / compensation measures in the DCO.	Risk (Red/ Amber/ Green)
	<ul style="list-style-type: none"> Humber Estuary Ramsar 		<p>The changes did not result in any increase to impacts on bird species.</p> <p>Natural England agrees that the updated information provided by the Applicant addresses these previous concerns.</p>		
NE1.2	International designated sites <ul style="list-style-type: none"> Humber Estuary Special Protection Area (SPA) Humber Estuary Ramsar 	<p>Potential loss of functionally linked land (FLL) for the relevant qualifying bird features of the listed SPA / Ramsar sites.</p> <p>(C) and (O)</p>	<p><u>Natural England's position at Written Representations:</u></p> <p>It was confirmed that the results reported were the maximum counts recorded across the entirety of fields within the Order Limits and not just parcels of more the 2ha. Therefore the survey count numbers remained below the 1% level.</p> <p>Natural England agrees that the updated information provided by the Applicant addresses this previous concern.</p>	N/a	'Green'

NE key issue ref	Topic	Issue summary. (C) – construction phase (O) – operational phase	Natural England commentary and advice on the further information required to enable assessment.	Natural England comment on the mechanism for securing mitigation / compensation measures in the DCO.	Risk (Red/ Amber/ Green)
NE1.3	International designated sites <ul style="list-style-type: none"> Humber Estuary Special Protection Area (SPA) Humber Estuary Ramsar 	Disturbance displacement of functionally linked land (FLL) for the relevant qualifying bird features of the listed SPA / Ramsar sites. (O)	<p><u>Natural England's position at Written Representations:</u></p> <p>The Applicant has updated the NSER [APP-201] specifically to Paragraph 6.3.17 improving the justification for the conclusion of no significant effect to displacement due to loss of perceived openness.</p> <p>Natural England agrees that the updated information provided by the Applicant addresses this previous concern however it is still recommended that the information from the non-breeding report on lapwings and golden plover are incorporated to further support the conclusion..</p>	N/a	'Green'
NE2	International designated sites <ul style="list-style-type: none"> Humber Estuary Special Protection Area (SPA) 	Noise and visual disturbance during construction to potential FLL for the relevant qualifying bird features of the listed SPA / Ramsar sites.	<p><u>Natural England's position at Written Representations:</u></p> <p>The Applicant has included a more detailed description of the information regarding the length of the construction phase to Paragraph 6.2.4 of the NSER [APP-201]. Additionally the numbers of relevant SPA birds present within the Order Limits have also</p>	N/a	'Green'

NE key issue ref	Topic	Issue summary. (C) – construction phase (O) – operational phase	Natural England commentary and advice on the further information required to enable assessment.	Natural England comment on the mechanism for securing mitigation / compensation measures in the DCO.	Risk (Red/ Amber/ Green)
	<ul style="list-style-type: none"> Humber Estuary Ramsar 	(C)	<p>been included as part of the justification to conclude there will be no significant effect.</p> <p>Natural England agrees that the updated information provided by the Applicant addresses this previous concern.</p>		
NE3	International designated sites <ul style="list-style-type: none"> Thorne & Hatfield Moors Special Protection Area (SPA) 	<p>Nightjar Foraging Distances</p> <p>(C) (O)</p>	<p><u>Comments on the No Significant Effects Report – Nightjar Foraging Distances</u></p> <p>Table 7 of the NSER details IRZs for different functional groups of birds including nightjar which states that nightjar may forage up to 4km from their roosts but prefer foraging in habitats that lie closer. The Supplementary Advice on Conservation Objectives (SACO) for Thorne and Hatfield Moors details foraging distance up to 5km for nightjar with the majority of foraging visits up to 3km. Natural England acknowledges that this does not affect the outcome of the assessment in this case, however it is worth noting in the assessment.</p>	N/a	'Grey'

NE key issue ref	Topic	Issue summary. (C) – construction phase (O) – operational phase	Natural England commentary and advice on the further information required to enable assessment.	Natural England comment on the mechanism for securing mitigation / compensation measures in the DCO.	Risk (Red/ Amber/ Green)
NE4	International designated sites All relevant international designated sites	In-combination Assessment. (C) (O)	<p><u>Natural England's position at Written Representations:</u></p> <p>A more detailed assessment of the potential impacts of each individual cumulative scheme, as well as the potential residual effects resulting from the Scheme in-combination with these cumulative schemes has been provided. The Applicant has now considered smaller effects of the Scheme that may not have been considered significant alone.</p> <p>Natural England requested further information in a meeting on 28 January 2025 to include bird survey results and assessments of cumulative effects which were not considered as significant alone.</p> <p>These amendments were included in an updated NSER for Deadline 1 which was shared with Natural England.</p> <p>Natural England agrees that the updated information provided by the Applicant addresses this previous concern.</p>	N/a	'Green'

NE key issue ref	Topic	Issue summary. (C) – construction phase (O) – operational phase	Natural England commentary and advice on the further information required to enable assessment.	Natural England comment on the mechanism for securing mitigation / compensation measures in the DCO.	Risk (Red/ Amber/ Green)
NE5	Biodiversity Net Gain (BNG)	Comments on the Biodiversity Net Gain Strategy.	<p><u>Comments on 7.11 Biodiversity Net Gain Assessment</u></p> <p>Natural England welcome the commitment to delivering BNG on this project. By reviewing the project's BNG assessment at this early stage, it gives us an opportunity to help maximise outcomes and reduce risks. We would like to highlight some areas within the current BNG proposals that could be improved to further enhance the project's overall environmental outcomes.</p> <ul style="list-style-type: none"> <u>NE5a: Statutory Biodiversity Metric</u> <p>Natural England is encouraged to see the use of the Statutory Biodiversity Metric, for completeness it is recommended that the original excel file(s) is shared as part of the submitted documents.</p> <ul style="list-style-type: none"> <u>NE5B: Assessment Boundary</u> <p>We advise that the biodiversity baseline included within the metric is based upon all land within the development's order limits (red line boundary). This includes all areas required for environmental mitigation. This presents a 'worst case scenario' approach and is consistent with the approach taken for other types of development, including Town and Country Planning Act. The baseline area will likely be refined over time and subsequent iterations of the metric</p>	We welcome the inclusion of Schedule 2, Requirement 7 to secure the BNG Strategy, substantially in accordance with the Landscape and Ecological management Plan (LEMP).	'Grey'

NE key issue ref	Topic	Issue summary. (C) – construction phase (O) – operational phase	Natural England commentary and advice on the further information required to enable assessment.	Natural England comment on the mechanism for securing mitigation / compensation measures in the DCO.	Risk (Red/ Amber/ Green)
			<p>calculations can then be used. We encourage developments to continue to maximise their potential biodiversity outcomes throughout the detailed design process.</p> <ul style="list-style-type: none"> • <u>NE5C: Watercourse Baseline Data</u> <p>As outlined in the Statutory Biodiversity Metric Guide, watercourses (other than ditches and culverts) should be surveyed by conducting a river condition assessment (RCA) and this person should be RCA trained and accredited. It is not clear in the Biodiversity Net Gain Assessment whether this has been followed. We recommend that developers adhere to the rules and principles set out within the metric guidance.</p> <ul style="list-style-type: none"> • <u>NE5D: Trading Rules</u> <p>It is noted that the trading rules are not met for 'Urban – Open Mosaic Habitat of Previously Developed Land' (OMH). Trading rules are established to ensure losses are compensated for through creating or enhancing habitats on a 'like-for-like' basis, and of equal or higher value. Although we recommend that the trading rules should be met to align with guidance and industry best practice, Natural England notes the justification provided that the proposed works are temporary, and the habitats will be reinstated. It is</p>		

NE key issue ref	Topic	Issue summary. (C) – construction phase (O) – operational phase	Natural England commentary and advice on the further information required to enable assessment.	Natural England comment on the mechanism for securing mitigation / compensation measures in the DCO.	Risk (Red/ Amber/ Green)
			<p>encouraging that the Scheme has sought to minimise the area affected and that there is an opportunity for the works to be beneficial to the habitat.</p> <ul style="list-style-type: none"> Natural England also notes that OMH is a rare habitat and one which can be mis-identified. We are aware that it has not been possible for the developer to gain access to survey the specific area so is classifying the habitat as OMH on a precautionary basis. Natural England recommends that should the DCO be granted, the appropriate surveys are undertaken to determine whether the habitat is in fact OMH as this might alter the results of the adherence to the trading rules. <u>NE5E: Target increase in BNG across biodiversity unit types</u> <p>We note the LEMP states that “The Applicant will provide at least 10% BNG as part of the Scheme.” However, we recommend that the target increase in BNG is secured across all biodiversity unit types.</p>		

NE key issue ref	Topic	Issue summary. (C) – construction phase (O) – operational phase	Natural England commentary and advice on the further information required to enable assessment.	Natural England comment on the mechanism for securing mitigation / compensation measures in the DCO.	Risk (Red/ Amber/ Green)
NE6	Protected species	Protected species – Badger	<p><u>Natural England's position at Written Representations:</u></p> <p>The Applicant has confirmed they will update the Construction Environmental Management Plan for Deadline 1. This update includes a hard 30m exclusion zone around badger setts preventing heavy machinery, horizontal drilling and heavy plant vehicle operations.</p> <p>Natural England agrees that this point is resolved, subject to the agreed update to the CEMP being submitted at D1.</p>	We note the dDCO secures the Construction Environmental Plan within Schedule 2, Requirement 11, and states that this will be in line with the Framework CEMP submitted to examination.	'Green'

