

Newark and Sherwood District Council – Examining Authority’s Written Questions & Requests for Information (ExQ2) – Deadline 4 Response

The draft Development Consent Order			
Question no.	Question to:	Question:	NSDC Response
Q10.01	All local authorities	<p>Management Plans</p> <p>At the current time the management plans do not appear to be fully agreed. For example, LCC have raised issues in respect of the oCEMP with regard to breeding birds, and the oLEMP in respect of tree planting and replacement in the event of an unforeseen event or large-scale failure. The ExA are aware discussions on these topics are ongoing, however if the matters are not agreed, are the authorities content that the dDCO gives sufficient certainty through the requirements that these matters could be resolved in due course?</p>	<p>In response to the question, NSDC are broadly comfortable that the relevant requirements as presented within the draft DCO, that ultimately provide the mechanism to consider and approve the final version of management plans. Notwithstanding this, we continue to make specific representations to avoid disagreement between the initial versions presented during the examination and those presented for formal discharge at a later stage (in the event that permission is forthcoming).</p> <p>Taking account of the above we provide the following specific comments in respect of landscape and biodiversity.</p> <p><u>Landscape and Visual</u></p> <p>In regards to landscape matters, discussions have been ongoing with the applicant. We have reviewed the updated OLEMP [Rev 2 REP1-054] submitted at DL 1 and (Rev 3 REP2-056) submitted at DL 2 to review if our concerns identified previously had been appropriately addressed. In previous comments and reviews, we stated that the OLEMP must be explicit in regards to the landscape mitigation scheme and maintenance post any approval and include Provision of detailed planting proposals that must be approved by the relevant authority; Subsequently, a sentence has been added at 1.3.5 of the OLEMP (Rev 3) that <i>“The LEMP will detail the location and extent of proposed planting by inclusion of planting plans and species lists.”</i>.</p>

			<p>We wanted to ensure that maintenance of all planting and ecological features be for the life of the project; Subsequently, the updated OLEMP includes the addition of paragraph 5.4.3, which clarifies that all existing and proposed habitats will be managed and maintained for the operational duration of the scheme. This is a key clarification: we expect that the planting and associated habitat be appropriately managed for the full operational period of the scheme, as noted above.</p> <p>In regards to landscape matters, discussions have been ongoing with the applicant. We have reviewed the updated OLEMP [Rev 2 REP1-054] submitted at DL 1 and (Rev 3 REP2-056) submitted at DL 2 to review if our concerns identified previously had been appropriately addressed. In previous comments and reviews, we stated that the OLEMP must be explicit in regards to the landscape mitigation scheme and maintenance post any approval and include Provision of detailed planting proposals that must be approved by the relevant authority; Subsequently, a sentence has been added at 1.3.5 of the OLEMP (Rev 3) that <i>“The LEMP will detail the location and extent of proposed planting by inclusion of planting plans and species lists.”</i>.</p> <p>We wanted to ensure that maintenance of all planting and ecological features be for the life of the project; Subsequently, the updated OLEMP includes the addition of paragraph 5.4.3, which clarifies that all existing and proposed habitats will be managed and maintained for the operational duration of the scheme. This is a key clarification: we expect that the planting and associated habitat be appropriately managed for the full duration of the scheme.</p>
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			<p>clarified through the update to Environmental measure C15 at Deadline 1, which now confirms the specific responsibilities of the ECoW.</p> <p>We are satisfied that all previously raised issues concerning the outline CEMP in regard to Biodiversity have now been addressed by the Applicant.</p>
Hydrology Hydrogeology and the Water Environment			
Q12.0.4	The Councils, (1) The EA (2)	<p>Sequential Test</p> <p>In ISH2 the applicant stated if the Sequential Test is failed, then this would be weighted against the application, but CNP comes into play. Do the councils and the EA agree with this statement in policy terms, with reference to NPS EN-1 Paragraph 4.2.15?</p>	<p>NSDC note that paragraph 4.2.15 of NPS EN-1 states as follows:</p> <p><i>‘Where residual non-HRA or non-MCZ impacts remain after the mitigation hierarchy has been applied, these residual impacts are unlikely to outweigh the urgent need for this type of infrastructure. Therefore, in all but the most exceptional circumstances, it is unlikely that consent will be refused on the basis of these residual impacts. The exception to this presumption of consent are residual impacts onshore and offshore which present an unacceptable risk to, or unacceptable interference with, human health and public safety, defence, irreplaceable habitats or unacceptable risk to the achievement of net zero. Further, the same exception applies to this presumption for residual impacts which present an unacceptable risk to, or unacceptable interference offshore to navigation, or onshore to flood and coastal erosion risk.’</i></p> <p>Firstly, NSDC would comment that it is difficult to consider this paragraph of EN1 in isolation from other linked points. For instance, for CNP to ‘come into play’ NSDC note that as stated in paragraph 4.2.14 <i>‘The Secretary of State must be satisfied that the applicant’s assessment demonstrates that the</i></p>

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			<p><i>requirements set out above have been met. Where the Secretary of State is satisfied that they have been met, the CNP presumptions set out below apply.’ Accordingly, as detailed in paragraph 4.2.10 -4.2.13 Applicants need to demonstrate how their project meets the requirements of the NPS, apply the mitigation hierarchy and that all residual impacts are those that cannot be avoided, reduced or mitigated.</i></p> <p>As such, NSDC note that the application of paragraph 4.2.15 is contingent upon a satisfactory assessment being undertaken by the Applicant as detailed in paragraphs 4.2.10 -4.2.13, and the SoS must be satisfied in this regard as detailed in paragraph 4.2.14.</p> <p>NSDC consider the key issue to be whether the appropriate application of the Sequential approach has occurred and whether this was embedded at the early stage of optioneering. The Applicant’s representations at ISH2 indicated that it formed a consideration, but there was no specific sequential assessment undertaken at this point. As such, were there other areas (at a lesser risk of flooding) that could have been considered and were not, due to a failing in the consideration of flood risk in land use terms? If the SoS concluded there was a failing in the assessment approach, then the SoS could not reasonably conclude that the CNP presumptions apply.</p>
Q12.0.5	The Councils, (1) The EA (2)	<p>Sequential Test</p> <p>WLDC in their D3 submission following ISH2 maintain a lack of confidence that the current proposal has demonstrated that the sequential test has been followed in such a way that the exception test can also be shown to demonstrate an exception case.</p>	<p>NSDC have reviewed the Applicant’s D3 Submission on the application of the sequential test (Doc Ref: EN010159/APP/9.26) and would make the following comments under item 1) below.</p>

		<p>1) Are the councils satisfied, that with applicant’s Deadline 3 submissions relating to the approach taken for the Sequential Test?</p> <p>(2) Have all the issues raised on the Sequential Test/exception test been addressed satisfactorily?</p> <p>(3) If not, what additional work do you consider is required by the applicant?</p> <p>(4) Please explain should this be the case the policy basis for the council not being satisfied?</p>	<ul style="list-style-type: none"> • In relation to paragraph 2.1.3 It is not for the LPA’s or other parties to undertake the sequential test, this is the Applicant’s responsibility. It is, however, reasonable for the LPA’s or any third parties to question the approach, as part of the usual rigour for the examination of an NSIP project. • It is noted at paragraph 2.1.5 that the Applicant undertook a retrospective exercise for looking at alternate sites, which undermines the confidence of statutory consultees and all third parties that a robust approach has been taken to identifying the least environmentally harmful option at the early stage of the project (including in relation to flood risk). • In relation to the Site Selection Criterion on page 6 of the document, it is noted that a criterion was established to not locate development wholly within the higher risk Flood Zones 2&3. It is also noted at this point that the Applicant makes an incorrect reference to paragraph 5.8.3 of NPS EN1, it is assumed they are referring to 5.8.23. NSDC would also question why the Applicant did not start with a preference of locating all sites within Flood Zone 1, rather than those sites with higher areas of Flood Zone 1. <p>2) NSDC consider that doubts will continue to be raised by interested parties on this point and due to the Applicant’s admission of a retrospective approach. Notwithstanding this point, NSDC would ask that the ExA give this matter very careful consideration, as NSDC note that it is of</p>
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			<p>significant concern to the local community. Ultimately though, NSDC are not the decision maker in this case and we also consider of the relevant statutory consultees, the Environment Agency (EA) are in the best position to advise the decision maker (in the first instance the ExA) as the appropriate regulatory statutory consultee on matters of flood risk, including the application of the sequential and exception tests. In a scenario where NSDC are the decision maker (TCPA applications), we would expect robust advice from the EA in this regard to inform the consideration of this issue and our decisions.</p> <p>3) Given our response to point 2, we have nothing specific to add but would comment that it is very difficult to retrofit an approach to sequential analysis, at the point whereby the project parameters are fixed and the project is within the latter stages of examination. NSDC note that a number of points have been raised by the local community on this issue in recent submissions and would ask that the EA and the ExA give very careful consideration to these submissions.</p> <p>4) We have no specific comments to add, given our responses to points 2 and 3 above, but would direct the ExA to paragraph 5.8.36 of NPS – EN1 and in particular bullet points 2 and 3 which state:</p> <p><i>‘the Sequential Test has been applied and satisfied as part of site selection.</i></p> <ul style="list-style-type: none"> <i>• a sequential approach has been applied at the site level to minimise risk by directing the most vulnerable uses to areas of lowest flood risk.’</i>
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Q12.0.6		<p>PPG on flood risk was updated 17/09/25 including changes to the Sequential Test, see para 27a</p> <p>Paragraph 27a states. “For infrastructure proposals of regional or national importance the area of search may reasonably extend beyond the local planning authority boundary. It may also, in some cases, be relevant to consider whether large scale development could be split across a number of alternative sites at lower risk of flooding, but only where those alternative sites would be capable of accommodating the development in a way which would still serve its intended market(s) as effectively.” (1) Does this new guidance have any effect on the application for the proposed development or what the applicant has undertaken in the assessments provided? (2) Does the new guidance mean that any further work is required in respect of the Sequential Test? (3) If so what additional work do you consider would be required as a result of the changes? (4) Has the position of any party changed due to the amendments made to the PPG?</p>	<ol style="list-style-type: none"> 1) NSDC consider that the revised PPG guidance is a relevant material consideration and the Applicant should be asked to respond in this regard and in particular a check made against their D3 submissions on the approach to sequential assessment. 2) See point 1 above. 3) See point 1 above, but as a minimum, the Applicant should be asked to provide a response. 4) The revised guidance does not significantly alter the position of NSDC as explained in responses to the other questions above.
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