

Sea Link Nationally Significant Infrastructure Project (NSIP) Application

Planning Inspectorate Reference: EN020026

Deadline 4 - ISH2 Post Hearing Submission– response by CPRE Kent Unique Reference Number:



While CPRE Kent attended each of the Issue Specific Hearings, we accept that the sheer breadth of topic areas that these sessions sought to cover combined with the time limitations meant that the ExA necessarily needed kept the discussions high level. Accordingly, and as directed by the ExA, we therefore wish to now make the following observations/comments in writing:

ISH2 Item	CPRE Kent comments
<p>3.1(b) Kent landfall – impacts on the intertidal are</p>	<p>As has been made clear by many commentators, the scars and the physical damage to Pegwell Bay and the Saltmarsh caused by the NEMO link are all too clear to be seen for those who visit the area and rightly continue to cause real dismay to the local community and those who care for these unique habitats. In this respect, we note with concern the comments of KWT that restoration matters arising from the NEMO Link landfall remain unresolved with conditions outstanding and that mitigation relied upon at the time has not delivered full ecological recovery. It is therefore hardly surprising that there is such resistance from the local community to the Sea Link project, given the very real fear of such destruction being repeated.</p> <p>To CPRE Kent and against this context, it is frankly outrageous that the applicant is showing no willingness to positively engage with the suggestions of KWT with respect to necessary mitigation and ongoing monitoring measures with respect to the Saltmarsh and Pegwell Bay generally. In particular, we agree there should a Saltmarsh recovery working group set up to support the development of a suitable restoration and ongoing monitoring strategy for the Saltmarsh. We would suggest that this should be seen as a no-brainer for the applicant and that it is entirely within the gift of this process to secure.</p> <p>As suggested by the ExA, it is clearly conceivable that this could be secured in part within the wider Biodiversity Net Gain (BNG) offer. One consequential advantage of such an arrangement would be that this provides a robust legal mechanism to secure it. However, we absolutely share the concerns previously raised by KWT that any habitat restoration or remediation associated with the Nemo Link landfall must not be counted as BNG for the Sea Link project.</p> <p>An alternative, therefore, is that this be set up and funded as part of the wider community benefits that this project should be offering the local community. As set out within our response to ExQ 1GEN4, there is now a clear expectation of Government that applicants should absolutely be providing community funding and tangible benefits on applications such as this, as a matter of course.</p>

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<p>3.1(c) Kent landfall – access via the hoverport</p>	<p>At the hearing, Dr James Riley for the applicant asserted that no reptile survey is required. He stated that, in part, this was because the route to be taken by vehicles was not vegetated (meaning that reptiles would not be present). This is notwithstanding KWT’s clear evidence that the Hoverport is a potential reptile habitat (including use of cracks and margins) and that reptiles cannot be ruled out without survey. He also stated that, should it be the case that reptiles were in fact present, should any vehicle approach <i>“they will move quickly out of the way, probably before anybody’s ever seen or noticed that they’re there”</i>.</p> <p>Our primary concern, however, is how can the applicant be so certain that the route that it is going to take would not be vegetated while simultaneously seeking an expanded Order Limits to provide greater flexibility on the basis it cannot be certain of the access route in practice? In CPRE Kent’s view, it is irreconcilable that the applicant can be both certain there will be no reptiles present while is so uncertain as to final access routes to need to amend the order limits. In this respect, this uncertainty alone demands robust baseline surveys are undertaken now as the minimum starting point.</p>
<p>3.1(c) Kent landfall – access via the hoverport</p>	<p>CPRE Kent absolutely support Natural England’s response to REAC b65 that tree height reduction works must be restricted for the entirety of the breeding bird season (March-September inclusive). We were therefore very surprised to learn at the hearings that the applicant had not yet accepted this.</p>
<p>3.6 Ecology and biodiversity - Securing biodiversity net gain (BNG)</p>	<p>We note that the applicant’s preferred method of securing its BNG commitment is by way of a Unilateral Undertaking, a draft of which is shortly to be shared within the relevant LPAs. It is, however, not clear to CPRE Kent as to why this cannot be secured by way of a full Section 106 agreement between all parties/landowners to ensure it is as robustly enforceable going forward. More significantly, we would consider that this draft should become an examination document as soon as possible to allow for scrutiny during the examination process.</p> <p>Without such scrutiny, we do not believe positive planning weight should be ascribed to the applicant’s BNG offer. In that respect, and more generally, we would now question whether positive planning weight could continue to be ascribed to BNG NSIP offers given the Government has now set out the clear timeline to this becoming mandatory for NSIPs, at which point it becomes neutral in the balance.</p>
<p>4. Ornithology - Impacts and mitigation for functionally linked land</p>	<p>CPRE Kent remain concerned that the FLL assessment and proposed farmland bird mitigation is being driven by unduly narrow assumptions, including that there is only one breeding pair of Skylarks at the Minster site. While the applicant suggests its mitigation could accommodate up to two pairs, there is little “wiggle room” should additional pairs be identified. In this respect, we note the evidence of Save Minister Marshes that suggests the local Skylark population is being significantly under-recorded by the applicant.</p>

	<p>Further, CPRE Kent also strongly reiterate our previous concerns as to the adequacy and likely effectiveness of the proposed mitigation site. We are, however, concerned that these concerns are seemingly not being engaged with by the applicant. Correct application of the precautionary principle demands that we have certainty that the proposed mitigation will be effective.</p>
<p>8.1 - Marine physical environment - Pegwell Bay morphological change and depth of cable burial</p>	<p>We note the comments of the Environment Agency and in particular the comments of Mr Charman setting out the clear reasons that necessitate the burial of the cables to a minimum of 3 metres within Pegwell Bay. While it seems clear to CPRE Kent that the advice of the Environment Agency should be heeded by the applicant, our real concern is that this detail has not already been agreed and designed into the project. Significantly, this would include a full understanding of the environmental impacts of this, including the necessary remediation measures.</p> <p>More generally, and as set out in our previous representations, CPRE Kent remains seriously concerned that the application does not properly grapple with the implications of HDD failure, and that the potentially disastrous fall-back scenarios are currently not being given appropriate due consideration.</p>
<p>11.5 - Ebbsfleet Peninsular Multi-Period Complex archaeology impacts</p>	<p>CPRE Kent agree that a map that clearly identifies the Ebbsfleet Peninsular Multi-Period Complex needs to be produced as a matter of urgency as, without such, clearly the potential archaeology impact of the project at this location cannot be assessed.</p>
<p>11.6 - Cultural Heritage - Richborough Roman Fort impacts</p>	<p>CPRE Kent strongly agree with Historic England that the level of harm (including to the setting of nationally important assets such as Richborough Roman Fort) will be dictated by the final design of the Minster converter station and substation. For that reason, this cannot be left to a loose, post-consent exercise. Instead, we strongly feel that the final design should be secured via this consenting process.</p> <p>In this respect, we note and agree with the comments of Mr Bridges (of SEAS) regarding design generally in that it would take a lot of the fear out of the process if the applicant was able to agree to a design at the consent stage. We therefore agree that an unfortunate consequence of application of the Rochdale envelope is that this allows the applicant to go for the worse design that it can get away with rather than encouraging and facilitating the best design possible for the location.</p>

<p>16. - Health and wellbeing Core working hours, in relation to effects on traffic, health and wellbeing, and noise</p>	<p>While CPRE Kent will not repeat the comments that we have already made regarding working outside of the core-working hours, it is abundantly clear from the applicant’s responses given at the ISHs that it will be its intention to maximise working on Sundays and Bank Holidays. The applicant’s working programme appears to be predicated on this assumption, which seems to be why it is resistant to the very reasonable suggestion that working outside of core hours may be allowed, though must be subject to LPA approval on a case-by-case basis first. Were the applicant genuine in its argument that it really would only be for exceptional circumstances such as allowing work near Network Rail assets on Bank Holidays, then clearly it would not have issue with such being agreed on a case-by case basis.</p> <p>Given this little bit of respite will be essential for the local community, we again absolutely urge the ExA to not allow any further flexibility to the core-working hours.</p>
<p>20. Cumulative effects 20.1 Intra and inter-project cumulative effects 20.2 Mitigation of cumulative effects</p>	<p>CPRE Kent agree with KWT that the purported Aberdeenshire-Richborough HVDC link is capable of constituting a “<i>reasonably foreseeable</i>” project for cumulative assessment purposes and should therefore be explicitly addressed as such within the applicant’s Cumulative Effects Assessment. In this respect, we note that that the applicant’s position is effectively that the scheme is not sufficiently advanced so as to warrant inclusion within the assessment. CPRE Kent do not, however, agree that this can simply be asserted. Rather, it is for the applicant to evidence and justify that position.</p> <p>In any event, the very fact that Richborough/Pegwell Bay is now repeatedly being advanced as a landing point for major infrastructure only heightens CPRE Kent’s call (set out elsewhere) for the applicant to go above and beyond by securing, through the DCO, a properly funded Saltmarsh recovery and long-term monitoring working group as a legacy measure.</p>