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By Lisa Walton at 11:32 am, May 09, 2023



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BY EMAIL ONLY

Dear Lisa,

Planning consultation: P/22/077/FUL Coastal Defensive Works
Location: St Agnes

Thank you for your consultation on the above dated 14 April 2023 which was received by Natural England on the same day.

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.

SUMMARY OF NATURAL ENGLAND'S ADVICE:

OBJECTION MAINTAINED

Natural England maintains its objection to these proposals. As submitted we consider they could:

- have an adverse effect on the integrity of the Isles of Scilly SPA
- have an adverse effect on the integrity of the Isles of Scilly Complex SAC

Please read this advice in full as Natural England's further advice on the HRA, designated sites, mitigation, other issues, and considerations for your authority are set out below.

The Conservation of Habitats and Species Regulations 2017 (as amended) and The Conservation of Offshore Marine Habitats and Species Regulations 2017 (as amended)

Natural England notes that the Habitats Regulations Assessment (HRA) has not been produced by your authority, but by the applicant. As competent authority, it is your responsibility to produce the HRA and be accountable for its conclusions. We provide the advice enclosed on the assumption that your authority intends to adopt this HRA to fulfil your duty as competent authority.

Your appropriate assessment concludes that your authority is able to ascertain that the proposal will not result in adverse effects on the integrity of any of the sites in question. Having considered the assessment, and the measures proposed to mitigate for any adverse effects, it is the advice of Natural England that **it is not possible** to ascertain that the proposal will not result in adverse effects on the integrity of the sites in question.

Natural England advises that the assessment does not currently provide enough information and/or certainty to justify the assessment conclusion and that your authority should not grant planning permission at this stage.

Natural England has recently issued assent and understands that there are current operations being carried out along the crest of the constructed bank landwards of Periglis beach to excavate trenches through the bank to ascertain the proportion of various sediments and waste present. The information gathered will be used later for the purposes of deconstructing and reconstructing the bank as part of the coastal defence works, which are the subject of this current planning permission consultation.

We note there is no mention of this within the revised HRAs.

These current exploratory works bring into question project certainty and how the project will be implemented due to the lack of sufficient information on the current state of site (proportion of various sediments and type and quantity of waste) to allow a full assessment of the potential impacts.

A high level of certainty is required when assessing whether a plan or project is likely to adversely affect the integrity of a European site. In 2002, the European Court of Justice ruled that a plan or project may be authorised only if a competent authority has made certain that the plan or project will not adversely affect the integrity of a European site (the Waddenzee Judgement¹). A very high level of certainty is required "*where no reasonable scientific doubt remained as to the absence of such effects*".

We welcome the addition of the biosecurity measures included in the HRAs. We advise that the approach is acceptable however, an appropriate level of detail will be required before the start of any works if planning permission is given.

The level of detail will need to include how the mitigation measures will be carried out (e.g. visual inspection, wax blocks deployed on vessels involved, rat detector dogs) and what are the required actions should they find anything indicating the presence of rats (e.g. not land, return to port, find the rodent etc). Information on best practise can be found here <https://biosecurityforlife.org.uk/> (follow the resources tab).

The detailed biosecurity measures to ensure that the works do not result in the introduction of brown rats should be documented in a biosecurity risk assessment and mitigation strategy, approved by your authority and conditioned as part of the planning permission if issued before any works commence.

We also understand that impacts to birds through noise and visual impacts will no longer be managed through sequential working, where works are completed at one site before moving to the next, and due to project delivery schedules this mitigation has been eroded and revised so that works do not take place on adjacent beaches.

Ideally these works would take place entirely outside of the breeding season however, we do regard the mitigation proposed as adequate (as a minimum if adhered to strictly) and understand that the working areas will be in no way proximate to active nests.

Coastal Squeeze

Periglis

The setback of the defence has reduced the risk of coastal squeeze on the SAC, and has also reduced the risk of beach lowering from wave reflection. The high tide beach (within the SPA &

¹ ECJ Case C-127/02, 7th September 2004

SSSI) will be reduced in extent and volume in future due to coastal squeeze (and wave reflection if the geobags are exposed). However, as the structural core is 25m from the MHWS level, the impacts on the high tide beach should be reduced (but still likely to increase over time).

We agree with the conclusion of the coastal squeeze assessment, and setting back the geobags provides a bigger buffer to minimise the possibility of geobag exposure during high magnitude/sequential storm events. It also means that there is a bulk of sediment available to be eroded/re-distributed rather than a hard vertical face cutting off the sediment supply.

We would however advise your authority to include a condition in any planning permission issued regarding geobag removal upon its future exposure. Once the geobag is exposed, the vertical surface will reflect wave energy and cause beach lowering within the SSSI, plus there would be no ramp for windblown sand to transfer to the back dune, and there would be the potential to impact features of the designated sites, with for example, removal of potential habitat from 'dune' scarping or by its increased risk of catastrophic failure. There may be a situation where the geobag is exposed, then buried again, on repeat; therefore, the condition may need to be based on a slightly longer term exposure, e.g. the geobag must be removed following 2 years of continuous geobag exposure (even if partial).

Porth Coose

For the features in the vicinity of the defence, the simple coastal squeeze assessment is adequate, although the assessment should not be reliant on contemporary rates of sea level rise, it is beach response to future predictions that we need to be cautious about. The proposed distance of the structure from the existing MHWS should avoid significant loss of the high tide beach. Nonetheless, we would expect some losses to occur, and beach steepening will certainly occur, in addition to scour at the foot of defence due to wave reflection. We don't believe that there is the confidence that coarse material won't be lost seawards from the beach during storm events, this may in future necessitate further unsustainable measures such as an future application for placing rock armour on the concrete mattress, similar to the works at Porth Killier.

For the features of the designated sites the level of detail provided is adequate.

Porth Killer

The coastal squeeze assessment is adequate regarding impacts to the designated sites. The assessment is enough to show that works will cause some reduction in the extent of the high tide beach, especially in the vicinity of the eastern rock armour (immediately following construction and in future with rising sea levels). The assessment indicates that as there is already a sea wall present, it is only the direct footprint of the defence that increases the impact.

Further to the above, regarding the SSSI, if there are no vascular plant assemblages present in the vicinity of the defence, we advise that the coastal squeeze assessment is adequate for the SSSI features.

Marine and Coastal Access Act 2009

The submitted MCZ assessment has not been produced by your authority, but by the applicant and we provide the advice enclosed on the assumption that your authority intends to adopt this assessment.

Natural England notes that your authority, as competent authority, has undertaken a Marine Conservation Zone (MCZ) Screening Opinion. Your assessment concludes that the activity is not deemed capable of affecting either (i) the protected features of the MCZ; or (ii) any ecological or geomorphological process on which the conservation of any protected feature of the MCZ is (wholly or in part) dependant.

Having reviewed the evidence relating to the site and on the basis of the information provided, Natural England concurs with this view and believes that the works will not hinder the conservation objectives of the Marine Conservation Zone (MCZ), so long as they are undertaken in strict accordance with the mitigation measures and these are included within an approved Construction Environmental Management Plan (CEMP) and appropriately secured by condition in any planning permission issued.

Wildlife and Countryside Act 1981 (as amended)

Natural England have reviewed the further information and mitigation proposed, we note that at para 5.7.34 of the Environmental Statement (ES) Addendum Vol I, without mitigation temporary adverse impact and permanent adverse impacts have been identified and would like to stress the importance of the proposed mitigation at para 5.8.7.

Site limits have been developed with the help of The Isles of Scilly Wildlife Trust to best avoid important features of the SSSIs, however, to avoid impacts upon rare plant assemblages a survey of all haul routes, lay down areas and site compounds will be carried out immediately prior to the works taking place. Site limits will be marked out at this point to avoid impacts upon any plants identified.

If the works are carried out in accordance with the application, and as long as they are undertaken in strict accordance with the above and all mitigation measures detailed in the ES and these are included within an approved Construction Environmental Management Plan (CEMP) and appropriately secured by condition in any planning permission issued, in Natural England's view they are not likely to damage any of the flora, fauna or geological or physiographical features for which the site is designated.

Shoreline Management Plan (SMP) Policy

In our previous response we questioned if all the proposed defences conform to SMP policy.

We note that Porth Coose and Periglis SMP policy is Hold the Line (HTL) however, Porth Killier within policy unit 46.14 currently has a policy of No Active Intervention (NAI) and up to 2105 as NAI (with localised HTL) as it appears to be little justification to continue with HTL policy along this frontage.

We note the response from the applicant that references the current SMP Refresh process and as part of this process the updates to the SMP Action Plan, and disagree with this as reasoning for non-compliance with SMP policy.

Natural England are part of the SMP refresh process, and the refresh process does not provide the justification to carry out works that are non-compliant with SMP policy. There is a prescribed SMP change process where the policy undergoes the appropriate review and is then amended if required. We understand that if an applicant believes an SMP policy to be incorrect the SMP change process should be followed before any works are planned.

We advised your authority in our previous response to seek the view of the Environment Agency on the matter of SMP policy and the implications, and we would defer to their advice as the authority on SMP policy.

Environmental Gains

Natural England notes the addition of *Appendix 5.4: Biodiversity Net Gain Addendum* and are still disappointed to see no quantified Biodiversity Net Gain as part of this proposed development as advised in our previous advice letter.

We advised that the Biodiversity Metric (now version 4.0) may be used for the purposes of

calculating biodiversity net gain however we note that this has not been used and there is no quantification to demonstrate if the proposed works will result in a net loss or gain in biodiversity.

Natural England would remind your authority that within The Isles of Scilly Local Plan 2015 – 2030 Policy OE1 Protecting and enhancing the landscape and seascape its states:

170. Biodiversity net gains will be required in addition to any mitigation and compensation measures across the islands to enhance the environment in line with the objectives of the DEFRA's 25 year plan: A Green Future (2018), A Natural Choice for Securing the Value of Nature (2011) and the NPPF. Net gains will be measured against the metrics published by DEFRA. As part of this commitment to net-gains, regard will be given to the implications of a changing climate, to ensure that habitats are protected and enhanced to support their resilience to such changes.

Priority habitats and species

Please refer to our previous response in conjunction with the updated information below.

The Environmental Statement details loss of PH however, there is no quantification of this loss. We would like remind your authority of the following statement in The Isles of Scilly Local Plan:

180. Development should seek to avoid any adverse impacts and maximise the opportunity to enhance and secure measurable net gains in biodiversity and geodiversity, in accordance with Policy SS2. All impacts on the natural environment should be addressed sequentially, in accordance with the principle of the 'mitigation hierarchy':

- *Avoid*
- *Mitigate*
- *Compensate*

We would also draw your attention to Section 40 of the NERC Act (2006) which states that 'Every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity'. Section 40(3) of the same Act also states that 'conserving biodiversity includes, in relation to a living organism or type of habitat, restoring or enhancing a population or habitat'.

We would advise that your authority to satisfy itself as to **how any loss of priority habitat will be avoided, mitigated or compensated**. If net loss cannot be avoided or mitigated by use of alternative methods, we suggest that appropriate compensation is secured. This should consider biodiversity enhancement and net gain where possible. We advise that an appropriate planning condition or obligation is attached to any planning permission to secure these measures.

For any questions relating to this advice letter please contact me using the details below.

For further consultations please contact us at consultations@naturalengland.org.uk.

Yours sincerely,

Gareth Townsend

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