

Secretary of State
Department of Environment Food and Rural Affairs
Nobel House
Smith Square
London
SW1P 3JR

25th July 2017
Our Ref: 17/028/IHL

Dear Sir

Appeal Against Screening Decision Notice under EIA (Agriculture) (England) (NO. 2) Regulations 2006 (as amended)

Natural England Ref: EIA TO 2017 05 'Hartville Meadow', Hartlepool Dated 28th June 2017.

Grounds of Appeal

This appeal is lodged in connection with the attached Screening Notice dated 28th June 2017 in connection with our client's land east of Easington Road, Hartlepool. The Screening Notice seeks to disapply the normal thresholds in relation to both any future 'uncultivated land project' or any future 'restructuring project' on the land outlined in red on the plan attached to the Notice. The Notice states that Natural England reasonably believes that such a project is likely to be carried out and if carried ***out "there would likely be significant effects on the environment in destroying species priority grassland which is significant and relatively rare in the region and rare and declining nationally..."***

Background

This site has been owned by my client Mr H Tones since 1980. It has always been used as a paddock for horse grazing over that time. At no time over the past 37 years there has been no contact from Hartlepool Council or Natural England, suggesting that the site is of particular ecological value requiring protection, until the publication of the Draft Local Plan earlier this year. The site has also not be the subject of any form of management agreement over this period. The total extent of his ownership extends to approx. 2.2ha. It is also noted that the Screening Notice refers to the site as 'Hartville Meadow'. However the site has never had this name and it appears to be a name given to the site by the Borough Council without reference to the owners with the intention of ascribing a 'value' to the site that it does not exist.

In late 2016/early 2017 the owner ploughed out the majority of the site north of the unnamed beck.



Gateway House, 55 Coniscliffe Road, Darlington, Co. Durham, DL3 7EH



In February 2017 the owner lodged representations to Hartlepool Borough Council in connection with Submission Draft Hartlepool Local Plan seeking the site's allocation for housing development and objecting to the proposed allocation of the site as a candidate Local Wildlife Site.

In a subsequent letter from the Hartlepool Borough Council ecologist dated 05/05/2017 (copy attached) the Council's ecologist recommends the de-designation of the candidate LWS status of the site.

In June 2017 a planning application was submitted to Hartlepool Borough Council (Application No H/2017/0344) for outline planning permission of housing development. The planning application was accompanied by a variety of supporting documents including:

- Illustrative Masterplan
- Preliminary Ecological Appraisal (PEA)
- HRA Screening Report

Copies of these documents are submitted with this appeal .

The Illustrative Masterplan shows that only a proportion of the site (approx. 1.3ha) is proposed for the development with a significant buffer of green space being retained around the western, southern and eastern boundaries of the site. A significant proportion of the area proposed for development lies outside the area identified on the plan accompanying the Screening Notice.

The PEA confirms that the site, including the ploughed area, is of very limited biodiversity value and would not warrant LWS status. The report does however suggest a number of mitigation measures as part of the proposed development. The owner / applicant has confirmed he is happy to provide this mitigation and is open to alternative suggestions if required. Details to be agreed by way of reserved matters and/ or conditions attached to any approval.

Uncultivated Land Projects

The Regulations state that 'Uncultivated Land Projects' are covered by the Regulations if the uncultivated land or a semi-natural area directly affected by the project is two hectares or more in area. It is presumed that this threshold has been identified as lowest limit for screening for very practical reasons because below 2ha it is difficult, if not impossible to conclude that any further 'cultivation works' will or will not have a 'significant' environmental impact. In order to disapply this threshold and require a screening direction/ consent on site below this threshold, such as the land east of Easington Road, Hartlepool, special or exceptional circumstances and justification must exist. If not the threshold has no meaning.

The area identified in the Screening Notice is 1.359ha. It therefore falls substantially below the 2ha threshold. However the only justification the natural England can provide to disapply the 2ha threshold is stated in Para 4.3 of the Notice as:

"Natural England considers that if the work were to be carried out there would likely be significant effects on the environment in destroying species priority grassland which is significant and relatively rare in the region and rare and declining nationally i.e. priority Lowland meadows habitat (MG5 Grassland) possibly in a matrix

with still species-rich but somewhat semi-improved grassland(species-rich MG6). The evidence for MG5 presence stems from the presence of species which one would not expect to occur in MG6 semi-improved grassland such as Lotus corniculatus, Carex flacca, Linum catharticum and Stachys (Betonica) officinalis. Despite some work having been carried out, the area remains valuable resource and capable of regeneration by virtue of plant re-establishment from surviving fragments of roots, rhizomes and from the soil seed bank."

Evidence provided by HBC in response to a Freedom of Information Request suggests that the last ecological survey took place in 2011 (see attached letter dated 10/02/12 from Tees Valley Biodiversity Partnership) at which point they concluded that "***much of the site was semi improved***" with only the eastern side of the site being "***closest to MG5***". This suggests that at that time the site did not qualify as MG5 Lowland Meadow and NE's stated justification is supposition.

It is understood that it is normal practice from such surveys to have a 'shelf like' of no more than 18 months/ 2 years. Basing the Screening Notice on information collected 6 years ago is unreasonable. The 2011 survey can no longer be considered to be robust and up to date as it cannot have taken into account any changes in the site and its usage since over the last 6 years. The impacts that they allege simply cannot now be proven and must be discounted. Particularly in the light of the findings of the recent PEA report that concludes the site is of very limited ecological value.

Irrespective of the above it is of course highly questionable whether any loss of this scale of alleged MG5/ MG6 habitats on this site can be considered 'significant' in EIA terms. Certainly such a small site and minor level of impact under Town & Country Planning EIA Regulations would not at any point be considered significant. The site is not identified as being of any international, national or regional importance and nor is it in an otherwise environmentally sensitive location being bounded by housing, a main road, caravan park, a railway line and agricultural land. The site is identified as a candidate Local Wildlife Site by Hartlepool Borough Council but this is a non-statutory designation and one that, as shown by the recent PEA and the letter from the Council ecologist, does not now warrant such a designation.

It is further noted that Natural England do not seek to claim that their assessment of the significance of the site derives from other surrounding/ adjacent habitats merely the supposed presence of unexpected species on the site itself.

Natural England claim that such MG5 grassland is "relatively rare in the region and rare and declining nationally". They provide no evidence to support this assertion or to quantify the impact. Indeed it is not even clear how much MG5 grassland they think might have been present in this location given their comment about it lying within a matrix of semi-improved grassland (MG6) which is likely to be the dominant habitat given the close grazing of the site by horses for many years. The site had the characteristic of a paddock rather than as a 'hay meadow' but even this is now largely lost as a result of ploughing.

Natural England furthermore fail to provide evidence to support their assertion that the site remains a valuable resource and might recover its alleged MG5/MG6 status because of potential future regeneration

from surviving root fragments, seeds etc. In the light of the recent surveys it is our ecologist view that this is highly unlikely.

Overall no evidence is presented that the site is of any sufficiently exceptional or significant value to warrant the issuing of Screening Notice, nor to demonstrate that further cultivation works would have a 'significant environmental impact' within in any proportionate and reasonable meaning of the phrase.

Restructuring Projects

It is noted that the Screening Notice, if confirmed, would require the landowner to seek a Screening Decision / Consent from NE in respect of any restructuring operation on the land over the next five years . The Notice seeks to disapply the standard thresholds for restructuring projects that normally only require such a decision where the proposed works involve changes to: ***"four kilometres or more of field boundaries, movements of 10,000m³ or more of earth or other material; or otherwise restructure an area of 100 hectares or more"***.

Taking each threshold I turn:

Changes to >4km of Hedgerows

As already highlighted there is a currently a planning application before Hartlepool Borough Council for use of part of the site for housing development. The remainder of the site will be used as open space. It is not proposed as part of this application to remove any length of hedgerow . The existing field boundaries will be reinforced through new planting etc. should the current planning application be approved, thereby preserving and enhancing the boundaries and the biodiversity of the site.

Movement of > 10,000m³ of Earth

As part of the current planning application it is anticipated that that some earth movement will take place . However as shown on the Illustrative Masterplan built development will largely avoid the sloping ground to the south which will be retained for open space. With the exception of the need to provide a SUDs facility on site (as shown) earth movement will be kept to a minimum and will certainly fall well below the 10,000m³ threshold - equivalent of course to of moving a 1m depth of earth from across 1 ha - virtually the entire site.. Again therefore the proposed works fall well below the Regulation threshold.

Otherwise restructure >100ha

The site is just 1.359 ha well below this threshold

In the light of the above the potential restructuring project falls so far below the Regulations thresholds that it would require wholly exceptional circumstances to warrant the requirement for a screening decision from NE. As with the proposed restriction on future cultivation no such exceptional circumstances or justification are provided In the Screening Notice .

Conclusions

Schedule 2 of the Regulations lists the selection criteria for issuing a Screening Notice. Under the following three headings:

- Characteristics of the Project;
- Location of the Project; and
- Potential Impact

This letter has addressed all three. It is clear that because of the small scale of the site that it falls substantially below all identified thresholds. Furthermore the site does not form part of an otherwise sensitive environmental area and does not form part of any wider cumulative proposal. Any future cultivation or restructuring projects on the site will have a very limited and localised environmental impact which individually or cumulatively could not be regarded as being 'significant' in terms of any reasonable metric. Indeed future development for housing, as currently proposed, could enhance biodiversity on site through restoration of hedgerows, planting and the management of open spaces and the water environment on site.

Any MG5/MG6 lowland meadow characteristics that the site may in the past have exhibited has already been lost as a result of the ploughing and previous usage that has taken place and it is unreasonable for Natural England to require the landowner to seek consent under the EIA Agriculture Regs for any future cultivation or restructuring works on the basis of an unfounded and unrealistic hope that the former plant matrix on site might at some undefined point in the future regenerate and lead in time to the recreation of an MG5/MG6 grassland.

On this basis it is considered that the issuing of this Screening Notice is wholly unreasonable and we would respectfully request that this appeal is allowed and the Notice quashed / withdrawn.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Ian Lyle', written in a cursive style.

Ian Lyle
Director