

This matter is being dealt with by:

Reference: PN/3655

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By E-Mail Only

31 May 2017

Prior notification of intention to carry out seismic surveys on UK Petroleum Exploration Licences PEDL 200, 304, 307, 308 and 309 under the Town and Country Planning (General Permitted Development) England Order 2015, Part 17, Class K

Location: West Nottinghamshire

Applicant: INEOS Upstream Limited

I write in response to your letter, and associated documents, dated 3rd May 2017 seeking confirmation that a seismic survey in the Nottinghamshire area is considered permitted development under Part 17 Class K of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (the GDPO). Class K of Part 17 allows:

*K. Development on any land consisting of— (a)
the drilling of boreholes;
(b) the carrying out of seismic surveys; or
(c) the making of other excavations,*

for the purposes of mineral exploration, and the provision or assembly on that land or on adjoining land of any structure required in connection with any of those operations.

Class K of Part 17 also sets out the situations in which development is not permitted by Class K; Conditions which must be adhered to for development that is permitted under Class K; and interpretations for Class K.

Based on the information submitted, the Minerals Planning Authority (MPA) is satisfied that the proposed development is permitted development falling within Class K(b) of Part 17, Schedule 2 of the GDPO. The MPA is further satisfied that none of the criteria set out in K.1, which mean that development is not permitted by Class K, apply to the development as set out in the letter and associated documents.

Article 5 of the GDPO allows an MPA to remove permitted development rights, under certain circumstance, if they are satisfied that it is expedient that the development, or any part of it, should not be carried out unless permission for it is granted on an application (an Article 5 Direction). The MPA is satisfied that the development carried out in line with the submitted documents would not meet the criteria to justify an Article 5 Direction to be issued.

Under Article 5 of the GDPO, the MPA has 21 days within which to issue an Article 5 Direction, if it chooses to do so. It is recognised that this letter is being issued after the expiry of the 21 day

Nottinghamshire County Council, County Hall, West Bridgford, Nottingham NG2 7QP
period (26th May 2017). Please note that the MPA elected not to confirm the non-issue of an Article 5 Direction in writing early as this would preclude the MPA's ability to attach conditions (see K.2(a)) to the manner in which the development is carried out by ending the 'relevant period' early (as set out in K.3(a)). In addition, discussions with consultees were ongoing.

Your attention is drawn to K.2(a) of Class K, which states:

K.2 Development is permitted by Class K subject to the following conditions –

(a) the development is carried out in accordance with the details in the notification referred to in paragraph K.1(b), unless the mineral planning authority have otherwise agreed in writing;

In light of the above, the MPA reminds INEOS that the development must be undertaken in line with the details set out in the prior notification documents (dated 3rd May 2017 and received by the MPA on 5th May 2017). Notwithstanding this, the MPA has consulted with a number of parties and the following working methods / conditions set out below should also be applied in carrying out the development. These measures are set out in accordance with the MPA's capacity to agree in writing the manner in which development is carried out, as set out in K.2(a) of the GDPO.

1. The stand-off distances at Cresswell Crags should be maintained in line with the detailed diagram submitted by Katharine Blythe to Historic England by email on 8th May 2017.
2. No shot holes should be drilled on any land which is, or has been, used for landfill or spoil disposal.
3. The additional text relating to the disposal of spoil from shot holes suggested in the email from INEOS to NCC (dated 24th May 2017) should be included in the Environmental Method Statement (EMS), namely: *"Any spoil arising from drilling of shotholes that is not required to backfill the shothole would either be removed from the site or, if dispersed in the field, would be scattered thinly in such a way as to prevent smothering of adjacent vegetation"*
4. With reference to the 'Additional Safeguards to Protect Breeding Birds, including in the identified "Might-Be SPA"' and the subsequent email providing clarification (dated 24th May 2017), the definition of 'suitable habitat' for nightjar and woodlark shall include *"heathland and acid grassland, clearfell conifer plantation and restocked conifer plantation up to 12 years old"*. This definition should be added to the EMS.
5. The additional text relating to designated sites suggested in an email from INEOS to NCC (dated 29th May 2017) should be included in the EMS, namely – *"When the survey is in the vicinity of any designated site, PPV monitoring will take place as close as possible to the boundary and PPV at the boundary will be kept below 5 mm/s. This is likely to entail sources being placed approximately 50 m from the boundary of the site"*.
6. With reference to the definition of veteran trees, the following wording should be included in the EMS, as set out in the email to NCC (dated 25th May 2017):

"In the field a veteran tree would be determined by the EnCOW in relation to its condition and size. Rules of thumb would be used for different species, as outlined in Natural England's Veteran Trees: A Guide to Good Management and DEFINING AND SURVEYING VETERAN AND ANCIENT TREES Neville Fay, March 2007. This indicates that a veteran tree or a "near-veteran" tree would be of the approximate size below, and would have at least three "veteran features" including rot sites, holes and water pockets, dead wood, hollowing and fungal fruit bodies.

- *Field maple, rowan, yew, birch, holly and smaller tree species - >2.5m girth (approx. 80cm diameter)*
- *Oaks, ash, Scot's pine, alder - >4m girth (approx. 1.3m diameter)*
- *Sycamore, lime, horse chestnut, sweet chestnut, elm species, poplar species, beech, willows, other pines and exotics - >4.5m (approx. 1.45m diameter)*

The EnCOW would be familiar with these features and would make a judgement in the field as to whether a tree is veteran based on these characteristics. In addition, non-veteran trees may still have ecological interest (nest holes etc) which would merit protection.”

Consideration has been given to whether the proposed development would have any significant adverse impacts on designated sites, in consultation with Natural England. It is concluded that the proposed development would not have significant adverse impacts on designated sites. Particular note is had to the Birklands and Bilhaugh Special Area of Conservation (SAC) and that, in line with Regulation 75 of the Conservation of Habitats and Species Regulations 2010 (as amended) a likely significant effect can be excluded on the basis that development is carried out in accordance with the prior notification, specifically noting that:

- The proposal states that it will not carry out any work on any land classified for its European or international interest;
- In addition, there are proposals for standoff distances from sensitive receptors to avoid indirect effects. It is Natural England’s advice that these standoff distances should be used in order to avoid indirect effects on the protected interest features of Birklands and Bilhaugh SAC.
- That all work near to Birklands and Bilhaugh SAC should be overseen by an environmental clerk of works to ensure indirect impacts are indeed avoided.

It is noted that the notification of seismic surveys document states that utility service providers will be made aware of the survey. It is recommended that this includes CLH, the company which took over management of the Government Pipeline Management System in April 2015.

Please note, the Environment Agency has confirmed that the drilling of small and shallow boreholes for seismic surveys is of low risk to groundwater and, as such, do not consider it necessary to use the Section 199 notification process of the Water Resources Act 1991. This is on the basis that no shot holes would be drilled on any brownfield/former industrial sites. If any shot holes are proposed on any brownfield/former industrial sites, discussions should first take place with the Environment Agency as to whether a Section 199 notification is required.

With reference to Welbeck Abbey Park and Garden, it should be noted that the associated tunnels are at a shallow depth (shallow enough to have skylights). It is recommended that consultation takes place with the proprietor to ensure the location of the tunnels are known and that suitable stand-offs are maintained.

Through the consultation process, NCC Archaeology have reported that the Magnesian Limestone around the Cresswell Crag area is relatively uncharted. As such, if the seismic survey provides insight into the potential for as yet unidentified fissures and/or cave systems it is requested that information is shared with the NCC Archaeology team.

Should you wish to discuss any of the above, please do not hesitate to contact me.

Yours sincerely

Nottinghamshire County Council