

Agenda item	Correction of transcript record	Further comments or comments in lieu of matter being addressed orally at ISH
a. Duties under ss.28G and 28I of the Wildlife and Countryside Act 1981 and the effects of s.28P	N/a	None
b. The Sizewell Marshes SSSI i. the SSSI crossing,	<p>Does the applicant accept, because it's not clear on the face of the comments that they've made so far, but do they accept that all other things being equal, a triple span bridge will be less impacting on connectivity and fragmentation than a Causeway and culvert arrangement? Because it doesn't seem clear that they actually accept that point.</p> <p>And the other point to make is in regard to lighting. It may be, this may have been covered and I may have simply missed it, but has the impacts of the lighting scheme on invertebrates and specifically the cited invertebrate species that underpin the SSSI designation - has that been thoroughly assessed species by species?</p>	None – will await applicant’s response.
b. The Sizewell Marshes SSSI ii. fen meadow replacement, mitigation, monitoring and fallback	<p>Essentially an extension of points that I think you've picked up on Sir. And I think Mr. Dyer has as well. There's M22 and there's M22. There's 'Homepride' and then there's home baked sourdough bread.</p> <p>And the concern I have from what I'm hearing from the applicant is that they will measure success on the basis of achieving a community that is merely referable to M22, by NVC standard methodology. So if they find sufficient number of the plants associated with M22, they will pronounce that as a success. And what we're hearing from everybody is that the particular M22 represented on this site is extremely special. That's why it's a SSSI. The corollary to this point really is it brings in some real concern about what their objectives are for the compensation site, are they going to simply measure success in delivery of this habitat and compensation sites by popping along and, and seeing</p>	<p>None – will await applicant’s response on both matters – i.e.:</p> <p>a) how they will ensure that the success of compensatory provision is measured in terms of actual biodiversity value lost/displaced, not just surrogate thresholds such as fit to an NVC community or ticking off the restricted list of species named on the citation.</p> <p>b) the applicant’s response to the fact that when tested using Metric 2.0 or indeed Metric 3.0, the compensation provision proposed for the losses of Sizewell Marshes SSSI is found to be short by a factor of between 2 and 5. It was noted that Mr Philpott QC, for the applicant,</p>

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	<p>an odd few plants of <i>Juncus subnodulosus</i> coming up and saying, okay, we've successfully created it? There's an important nuance here between creating high quality SSSI standard habitat, and creating something that is very much a degraded version of it. And I'm not being reassured from what I'm hearing from the applicant, that they have the right bar in mind in terms of their objectives.</p> <p>Yes, sir. Hi, I just thought I'd make a point which may be of use. You asked a question earlier on about standard approaches to calculating multipliers for compensation. Although it's not a standard approach for SSSI, as you would have picked up in my deadline 2 representation, I applied the key biodiversity net gain metric, as calibration test to the adequacy of the off-site compensation, the applicant has put forward. And that test, even though it's not designed for statutory sites or irreplaceable habitats, that test indicates that there is a huge shortfall somewhere in between a factor of two and five in terms of the compensation provision using that measure. Now, I think the applicant's approach has been that the metric cannot be used in that situation. But in the time since that representation - since I submitted that - metric three has come out: you may or may not be aware of that. And in the guidance around metric three, it specifically says that you can use it as a calibration test for the adequacy of compensation proposals for irreplaceable habitats or statutory sites. It says you can't use it as a <u>justification</u> for the loss of those sites, because that requires a whole separate policy compliance test basis. But it can be used as a measure of the adequacy of the provision. And if metric three is applied to the compensation provision, the same issue arises that was identified using metric two, which is that it's short by a factor of somewhere between two and five.</p>	<p>suggested that this matter would be looked into and that the applicant may continue to seek to rely on now outdated advice that the metric cannot be applied as a calibration tool to test the loss of irreplaceable habitats. The applicant is presumably now aware that Defra/NE guidance on the use of Metric 3.0 no longer supports that position.</p>

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<p>b. The Sizewell Marshes SSSI iii. wet woodland and other flora and fauna by reason of which it is of special interest</p>	<p>M22 is a fairly scarce habitat. But I think there are representations that are not subject to SSSI designation. The particular suite of interests on this site are not just the presence of the M22 community, but also the particular suite of scarce plants associated with it. And in particular, the scarce invertebrate communities associated with it. So, this this isn't your average M22. And that's my concern: if you were to aim your compensation targets or your mitigation targets, on average M22. Even if you're successful, and you overcome all the issues that Dr. Low and others have spoken about, you may end up with something significantly less valuable, and making much less of a contribution to critical natural capital than what you've got at the moment.</p>	<p>Mr Lewis for the applicant indicated that there could be an attempt to translocate the plant species he picked out of the SSSI citation over a short break in the ISH.</p> <p>The sum total of the biodiversity interest of the SSSI does not begin and end with what is written on the SSSI citation. This is an alarmingly simplistic approach to the matters in hand. There may be interests of national importance associated with the site that are not documented in the citation – equally some of the cited interests may no longer be there. The crucial thing is to document the site's <u>extant</u> interest and, once satisfied that this supports maintenance of the SSSI designation (which does not appear to be in dispute here), use the results of that exercise both for impact assessment and, where loss is justifiable, as a yardstick to design mitigation and compensation and measure its success.</p>
<p>b. The Sizewell Marshes SSSI iv. Water level monitoring</p>	<p>N/a</p>	<p>This matter was adequately covered by Dr Low and others.</p>
<p>c. Minsmere – the marsh harrier, including the proposed HRA Compensatory Measures for the marsh harrier qualifying feature of the Minsmere-Walberswick SPA/Ramsar, and discussion of the proposed</p>	<p>N/a (requested opportunity to speak in response to Dr Grant's comments (for the applicant) but hearing moved on).</p>	<p>Dr Grant's characterisation of marsh harrier foraging preferences was pure unevidenced assertion and an attempt to re-write the known autecology of the species.</p> <p>Yes, marsh harrier will nest in and forage over ostensibly 'dry' arable land, but in all cases that I know of in around 40 years of ornithological experience, this is arable land bordered by drainage ditches – which provide the main prey items in such habitats.</p>

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<p>CM at Upper Abbey Farm (including proposed wetland habitat as detailed in REP2-119 and proposed management and monitoring measures), together with the Westleton compensatory habitat.</p>		<p>To suggest that ‘dry sandlings grassland’, which is being cited as part of the compensation offer, will provide good quality foraging habitat for marsh harrier sufficient to serve a compensatory function is an absolute nonsense. It is also unevidenced. The applicant is asked to provide a credible real-world example where marsh harrier territories are sustained on dry acid grassland or heathland habitats.</p>
<p>d. HRA i. To understand the differences between Interested Parties (IPs) and the Applicant on the Applicant’s conclusion of no adverse effects on integrity (as presented in the Shadow HRA Report and addendums) for the following matters: Disturbance/displacement effects on breeding and non-breeding waterbirds using functionally-linked land to Minsmere-Walberswick SPA/Ramsar due to noise and visual disturbance</p>	<p>As a Habitats Regulations Assessment practitioner of about 25-26 years standing. I find it quite extraordinary to come across a situation where impacts on a population of birds that is contiguous with a population that's the basis of a European Site designation - and on a contiguous area of land - impacts that are in excess of 1%, can be disregarded so easily. So, I would definitely support the cautions that Natural England have expressed and the RSPB have supported. That sounds to me every bit like a potential adverse effect on integrity and given the uncertainty of only one year's worth of data, it seems an extraordinary leap of faith to come to a conclusion along those lines. At the end of the day, these are populations of water birds - breeding waterbirds - on a contiguous site. They are essential for the recruitment of the population into the main site. So, if for whatever reason - predation or whatever - birds are lost on the main site, if there are significant impacts on the surrounding area, and the other parts of the continuous population, then clearly that has the potential to impact on the SPA. So there's a clear impact vector there, which seems to have been disregarded.</p>	<p>None – will await applicant’s response.</p>

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<p>d. HRA ii. To understand the differences between IPs and the Applicant on the effects of recreational pressure on European sites and to discuss the monitoring, mitigation and management proposed to conclude no adverse effects on integrity</p>	<p>N/a</p>	<p>I share the concerns expressed by others as to the compatibility of delivering SANG-type provision with compensatory habitats (e.g. at Aldhurst Farm).</p>
<p>d. HRA iii. Progress on written agreement to maintain access for the RSPB to the southern side of Minsmere Reserve.</p>	<p>N/a</p>	<p>No further comment to add.</p>
<p>d. HRA iv. - 'collision risk' - concerns raised by NE re lack of collision risk assessment for new pylons</p>	<p>N/a</p>	<p>No further comment to add.</p>
<p>d. HRA v. Position update on air quality effects due to NOx</p>	<p>N/a</p>	<p>No further comment to add.</p>

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and acid deposition'		
e. Protected species	This matter was deferred to written submissions by Mr Brock.	No further comment to add at this stage. I believe this matter is being dealt with by FOE SC and Mr Langton, amongst others.
f. Other designated sites	This matter was deferred to written submissions by Mr Brock.	No further comment to add at this stage. I believe this matter is being dealt with by FOE SC and Mr Langton, amongst others.
g. Ancient woodland, veteran trees and the route of the Two-Village Bypass	I believe that FERN raised an issue about a record for dormice quite close to the Two Villages Bypass and relating to connected habitats that will be affected by the bypass. There doesn't seem to have been a response on that point from the applicant. And I wonder whether they are now looking into this issue and putting some surveys in hand.	I understand from FERN that the applicant is now proposing a dormouse survey, but that this will be limited to four weeks' worth of monitoring of nest tubes/boxes. This does not accord with industry standards, which require surveys spread across the active dormouse season and is very likely to yield a false negative. An industry standard survey should be done. It is noted that the applicant was alerted to this record by submissions from FERN in good time to have done an industry standard survey. If they are now unable to complete the required level of survey prior to winter, this is a problem of their own making. Mr Lewis' oral submission implied that the rarity of the species in Suffolk was a reason to dismiss its significance. In fact the species' rarity in Suffolk means that the conservation significance of a positive record would be much more pronounced than in parts of the country where the species is more common.
h. The Sizewell Link Road – mitigation for loss of watercourses, mammal	This matter was largely deferred to written submissions by Mr Brock.	No further comment to add. I believe this matter is being dealt with by FOE SC and Mr Langton, amongst others.

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and invertebrate surveys		
i. Duties under ss. 40 and 41 Natural Environment and Rural Communities Act 2006	This matter was largely deferred to written submissions by Mr Brock, though I believe it was spoken to by Messrs Langton and Collins on the Friday session.	<p>The matter of the applicant’s net gain assessment and their widely publicised claims arising from it, logically sit within this agenda item.</p> <p>Use of biodiversity metrics provides a logical means for decision makers on whom the S40 duty rests can measure compliance with the principles of that duty, in particular in respect of the habitats listed pursuant to S41 of the Act. It is therefore imperative that the metric is used accurately, transparently and in a way that can be independently verified.</p> <p>The concerns and issues with the metric that I raise in my Deadline 2 submissions REP-226 and REP-227 have not been answered by the applicant and were not explored at ISH 7. These are important matters related to the discharge of the S40 duty by the Examining Authority and SOS and I ask the Examining Authority to urge the applicant to respond positively to this matter.</p> <p>The emergence of the long awaited version 3.0 of the Defra/NE Biodiversity Metric (published on 7 July 2021) provides a clear opportunity for the applicant to re-run and re-issue its metric calculations, and to comply with industry good practice standards in presenting their outputs in a way that can be readily understood, checked and verified by both the Examining Authority and</p>

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		interested stakeholders. I hope and expect that this opportunity will now be taken.
j. The position in relation to Letters of no impediment and any Environment Agency comfort letters	N/a	No further comment to add.