



The Planning Act 2008

Sizewell C (SZC)

Planning Inspectorate Reference: *EN010012*

Deadline 7 – 3 September 2021

East Suffolk Council's (20026200) Response to Examining Authority's Second Round
of Written Questions

Part 2

Contents

Examining Authority Second Written Questions	2
Bio.2 Biodiversity and ecology, terrestrial and marine	2
Part 1 – Matters to be dealt with in writing following ISH7 – wet woodland	2
Part 2 – Matters to be dealt with in writing following ISH7 – protected species	4
Part 3 - Matters to be dealt with in writing following ISH7 – Designated sites - No Questions for ESC	9
Part 4 - Matters to be dealt with in writing following ISH7 – Sabellaria Spinulosa	9
Part 5 – matters arising from the Applicant’s replies to ExQs1 [REP2-100]	9
HRA.2 Habitats Regulations Assessment	10

Examining Authority’s Second Written Questions			
Bio.2 Biodiversity and ecology, terrestrial and marine			
Part 1 – Matters to be dealt with in writing following ISH7 – wet woodland			
Bio.2.1	Natural England, ESC, SCC	Please will Natural England, ESC and SCC set out their views on (a) the need and reasons for wet woodland compensation and (b) any concerns they have over establishing wet woodland	(a) ESC considers that wet woodland compensation is required as, although this habitat is not specifically referred to in the citation for the Sizewell Marshes SSSI, it is one of the habitats which supports the wide range of invertebrate taxa which is part of the reason for the designation of the site.

			<p>Wet woodland is also a UK Priority habitat, under Section 41 of the Natural Environment and Rural Communities (NERC) Act (2006), and therefore its loss should be compensated.</p> <p>(b) ESC does not have any specific concerns over the actual process of establishing wet woodland. However, as set out in our responses at Deadline 2 [REP2-173] and Deadline 5 [REP5-145], we are concerned about both the time between the loss of wet woodland from the SSSI and the creation of replacement wet woodland, and the geographical separation of the proposed compensation sites (except for the one on the Sizewell Estate) and the area to be lost.</p> <p>With regard to the point on timings, we are particularly concerned that proposed compensation on the Sizewell Estate cannot begin until after the construction of the power station has finished, as the area is needed for marsh harrier compensation. This will mean that a period of at least several decades will elapse between the habitat being lost and replacement wet woodland being established at the closest compensation site. This will mean that there is no opportunity for species from the SSSI reliant on wet woodland to colonise the new habitat before the existing is lost. ESC considers that compensation should be provided through the Natural Environment Fund, the quantum of which is anticipated to be agreed following sight of the draft Deed of Obligation which is to be submitted at this Deadline 7.</p>
--	--	--	---

			<p>With regard to geographical location, with the exception of the proposed site in the northern part of the Sizewell Estate, the other proposed compensation sites are located a considerable distance from the SSSI area to be lost. This will mean that there is no opportunity for the natural colonisation of the new habitats by species (particularly invertebrates) from the Sizewell Marshes SSSI.</p>
Part 2 – Matters to be dealt with in writing following ISH7 – protected species			
Bio.2.5	ESC	<p>Please will ESC explain its concern about roost loss and comparison with the total roost resource on the wider Sizewell Estate – see para 8.5.2 of the LIR [REP1-045]</p>	<p>ESC’s concern about roost loss and comparison with the total roost resource on the wider Sizewell Estate is that the overall roost resource on the wider Sizewell Estate has never been fully surveyed. Due to this, ESC do not consider that it is possible for the Applicant to assert that the loss of the roost resource proposed is Not Significant based on the wider retained resource.</p> <p>Whilst the Applicant’s statement in [REP3-044] that conifer plantations such as Goose Hill “offer limited roosting resource” is not disputed, as there is much similar habitat on the Sizewell Estate (for example at Kenton Hills) and also much semi-mature woodland which offers very limited bat roosting opportunities (such as on the Northern Mound), a simple comparison of woodland type lost vs woodland type retained does not provide a subtle enough assessment of the degree of significance of lost roosting resource.</p> <p>However, notwithstanding the above, the Council acknowledge that as part of the Natural England licensing process a quantity of replacement bat roosting opportunities</p>

			will be set (including both the erection of bat boxes and also other features suitable for roosting bats along with the potential early-veteranisation of existing trees on the Estate). Subject to quantity (understood to currently be between 1:1 and 3:1 dependent on the roost features to be lost), type and installation locations proposed, ESC considers that level of impact assessed in the Environmental Statement may be achievable.
Bio.2.6	Applicant, Natural England, ESC	The attention of the Applicant, Natural England and ESC is drawn to the ExA's comments in the commentary on the DCO (issued on the same day as ExQs2) to its observations on the drafting of the Bat Mitigation Strategy [APP-252]	<p>ESC notes the ExA's observations on the drafting of the Bat Mitigation Strategy [APP-252] in Appendix A of the commentary on the draft Development Consent Order (dDCO). To assist the Examination, ESC would welcome a detailed analysis of the full suite of control documents as presented in Appendix A of the Applicant's Written Submissions arising from ISH1 document [REP5-113].</p> <p>It is considered that this analysis for each level 1 document should set out:</p> <ul style="list-style-type: none"> a. Whether it has been issued (and examination library reference, link and current revision) b. Whether it is a certified document c. Whether it is correctly defined in the DCO d. Whether the DCO requires it to be produced e. Whether the DCO requires it to be complied with f. Whether the document itself actually contains mitigation

			<p>g. Whether the document (or mitigation) can differ from the certified version</p> <p>For each level 2 document it should set out:</p> <p>a. Whether an outline version has been issued (with reference, link and revision)</p> <p>b. Whether the level 1 document requires it to be produced</p> <p>c. Whether the final version must be in accordance with the outline (or other wording)</p> <p>d. Whether the level 1 document requires it to be complied with</p> <p>e. Whether the document itself actually contains mitigation</p> <p>f. Whether the document (or mitigation) can differ from the outline version</p> <p>In terms of specific questions raised by the ExA in relation to the Bat Mitigation Strategy, ESC offers the following comments on the questions posed in the Appendix:</p> <p>Q1 – No ESC comment, question to the Applicant</p> <p>Q2 – ESC agrees with the ExA comment that consent requirements should not cause unnecessary or undue delays to the construction process, as the Applicant claims. It is a common practice for major projects, and other developments more generally, to build into their program appropriate</p>
--	--	--	--

			<p>timescales allowing sufficient time to seek consent in advance of the relevant works to avoid unnecessary construction delays.</p> <p>Q3 – No ESC comment, question to the Applicant.</p> <p>Q4 – No ESC comment, question to the Applicant.</p> <p>Q5 – Question to the Applicant, however ESC believes that this should refer to Figure 14C1A.1 rather than Figure 14C1.1.</p> <p>Q6 – Question to the Applicant, however ESC’s understanding is that these titles refer to the same document.</p> <p>Q7 – Whilst it is acknowledged that the final ratios are for Natural England to agree, ESC agree with the ExA that they should be defined now.</p> <p>Q8 – Question to the Applicant. ESC would welcome clarification on this. It appears that at least some of the ratios quoted have now been superseded by later information provided by the Applicant. For example, [REP3-044] states that “Appropriate replacement ratios for mitigation potential roost features will be agreed with a minimum of 1:1 replacement, with up to 3:1 replacement for high potential roost features.”</p>
--	--	--	--

			<p>Q9 – The observation by the ExA is a concern shared by ESC and is something that must be resolved, as it essential that implementation of all necessary mitigation measures is adequately secured. In relation to bats, as set out in our Deadline 5 submission [REP5-138] we are particularly concerned that the proposed ‘dark corridors’ for bat connectivity across the Temporary Construction Area (TCA) whilst referenced at multiple points in examination documentation, are not secured in the draft DCO.</p> <p>Q10 – No ESC comment, question to the Applicant.</p>
Bio.2.7	Applicant, ESC	In relation to bat roosts at Goose Hill, there is a dispute between the Applicant and ESC; ESC maintains that the ES and the Updated Bat Impact Assessment [AS-208] contradict each other (see LIR para 8.53). There is considerable detail about tree counts. What progress is there on resolving this?	<p>At Deadline 3 the Applicant provided their 2021 survey results for trees with bat roost potential on the Main Development Site [REP3-035]. ESC provided comments on this report in our Deadline 5 submission [REP5-138]. Since these submissions the Applicant and ESC have continued to engage on this matter.</p> <p>Whilst ESC maintains that contradiction does exist between the ES and the Updated Bat Impact Assessment (possibly due to the evolution of information between the preparation of the two documents), we also note that the 2021 survey report provides additional information in relation to the numbers of bat roost features in Goose Hill and that additional mitigation measures are to be proposed as part of the Natural England licence (please see our answer to question Bio.2.5 above in relation to this). Notwithstanding our comments on</p>

			the 2021 survey report submitted in [REP5-138] (which are primarily related to concerns about surveying of trees in other parts of the MDS), it appears likely that the 2021 survey report provides a reasonably accurate assessment of the trees with bat roost potential in Goose Hill.
Part 3 - Matters to be dealt with in writing following ISH7 – Designated sites - No Questions for ESC			
Part 4 - Matters to be dealt with in writing following ISH7 – Sabellaria Spinulosa			
Part 5 – matters arising from the Applicant’s replies to ExQs1 [REP2-100]			
Bio.2.19	Applicant, ESC	<p>Bio.1.78. (a) The Applicant states that the mitigation or enhancements for associated development on sites on third party land are to be secured in the Deed of Obligation. Why are they not in the DCO?</p> <p>(b) For measures on the main development site the measures “would remain within EDF Energy ownership and control”. “EDF Energy”, an undefined entity in the response, is neither the proposed undertaker nor the Applicant. However, if all the measures are secured pursuant to requirements, which the ExA understands from the preceding parts of the Applicant’s response is the case, it will be for the undertaker to ensure that it has the necessary rights to carry out the mitigation on the land of “EDF Energy”, or any other landowner. Please will the Applicant and ESC confirm that this is also their understanding and</p>	<p>ESC notes the limited land that is currently owned by the Applicant (although we understand the group of companies of which the Applicant is part owns the main site). The Applicant is yet to provide ESC with any title to the order land or any details for the proposed structure of land acquisition for the order land.</p> <p>ESC’s general position in relation to the mitigation for associated development on sites on third party land is that, where possible, this should be secured in the DCO and it is the undertaker’s responsibility to ensure that it has the necessary rights to carry out the mitigation on the land, regardless of who owns it.</p> <p>ESC is open to consideration of binding the undertaker rather than the landowner/prospective landowner in respect of the commitments proposed to be included in the Deed of Obligation, so long as such a vehicle is no less effective and has no fewer remedies than the conventional vehicle provided under section 106. We have set out at [REP3-061]</p>

		<p>will ESC please state whether or not it considers the arrangements to be acceptable and enforceable.</p> <p>(c) There are many references in the ES to the use of the EDF Energy Estate to deliver mitigation. Given that the Applicant (and would-be undertaker) has clarified that it owns very little land for the development, how does it propose to deliver the mitigation on the EDF Energy Estate?</p>	<p>and [REP5-139] what ESC would require (as a minimum) for the dDCO and/or Deed of Obligation (as appropriate) to provide, for such arrangement to be acceptable and enforceable.</p>
Bio.2.25	Applicant, ESC, SCC	<p>Bio.1.145 - The draft non-licensable method statement is referred to. Attention is drawn to the ExA's comments on this in commentary on the DCO issued with these ExQs2.</p>	<p>ESC notes the ExA's comments on the confusion over the naming and referencing of the documents referred to in the Bat Mitigation Strategy at [APP-252] which, according to the Applicant, should be read alongside the strategy. ESC agrees that the references need to be clarified by the Applicant and that consistent document naming is required to ensure that all parties understand which documents are being referred to.</p>
HRA.2 Habitats Regulations Assessment			
HRA.2.5	Natural England and RSPB and Suffolk Wildlife Trust East Suffolk Council	<p>Mitigation for recreational pressure - Minsmere Monitoring and Mitigation Plan (MMP) [REP5-105] and Monitoring and Mitigation Plan for Sandlings (Central) and Alde, Ore and Butley Estuaries European Sites [REP5-122]</p> <p>Could you comment on the latest mitigation package in respect to Minsmere and recreational pressure, as provided by the</p>	<p>ESC has provided comments in our submission at Deadline 6 (REP6-032, p.91) where we state in respect of [REP5-105]: As set out in our Deadline 3 submission [REP3-062], as this plan is for mitigating impacts on European designated sites, ESC primarily defers detailed comment to Natural England (as the statutory nature conservation organisation) and those organisations with responsibility for managing the sites (particularly the RSPB, National Trust and Forestry England). However, ESC welcomes</p>

		<p>Applicant at Deadline 2 and updated at Deadline 5 [REP5-105]. Does this satisfy your concerns with regards to the stated need for additional strategic off-site measures to mitigate for recreational pressure? Could you also comment on the MMP for Sandlings (Central) and Alde, Ore and Butley Estuaries, which has also been submitted at Deadline 5 [REP5-122].</p>	<p>the amendments to the plan made following our comments at Deadline 3.</p> <p>[REP5-122]: As this plan is for mitigating impacts on European designated sites, ESC defers detailed comment to Natural England (as the statutory nature conservation organisation) and those organisations with responsibility for managing the sites (particularly the RSPB, National Trust, Suffolk Wildlife Trust and Forestry England).</p>
--	--	--	--