

Application by NNB Generation Company (SZC)
Limited for an Order Granting Development
Consent for The Sizewell C Project

Planning Inspectorate Ref: EN010012

Summary of Oral Representation at Issue
Specific Hearing 10 on Biodiversity and Ecology

Submitted for Deadline 7 (03 September 2021)

Dr Roger Buisson CEnv MCIWEM

Representing:

Nat Bacon, SIZE-AFP154

India Bacon, SIZE-AFP155

Ward Farming Ltd., SIZE-AFP242

AW Bacon Will Trust, SIZE-AFP101

Introduction

1. This document is a summary of the oral evidence given by Dr Roger Buisson CEnv MCIWEM, Associate Director at BSG Ecology, at Issue Specific Hearing 10 Biodiversity and Ecology on the afternoon of Friday 27 August 2021.
2. Dr Buisson is the professional ecology representative for:
 - Nat Bacon, of Theberton Hall Farm, who is an Affected Party through an interest in land potentially subject to compulsory purchase (Affected Party reference SIZE-AFP154).
 - India Bacon, of Theberton Hall Farm, who is an Affected Party through an interest in land potentially subject to compulsory purchase (Affected Party reference SIZE-AFP155).
 - Ward Farming Ltd., of registered address Theberton Hall Farm, that is an Affected Party through an interest in land potentially subject to compulsory purchase (Affected Party reference SIZE-AFP242).
 - AW Bacon Will Trust, of registered address Theberton Hall Farm, that is an Affected Party through an interest in land potentially subject to compulsory purchase (Affected Party reference SIZE-AFP101).
3. Dr Buisson gave evidence on a single agenda item under the heading:

5. HRA Issues
f). marsh harrier compensation measures.
4. Under that agenda item the following topics were spoken to:
 - An alternative to the marsh harrier compensation land that has been proposed by the Applicant at Westleton.
 - Timeframes and the potential for delays.
 - The fallback of the final decision on compensatory actions to come after the Examination – the precedent for such an approach.
5. Since Dr Buisson spoke at ISH7 (submitted document REP5-208), the Applicant has specifically with regard to marsh harrier ecology:
 - Submitted document REP6-002 containing an Appendix B on marsh harrier
 - Submitted document AS-408 'Note on Marsh Harrier Habitat'
 - At the Compulsory Acquisition Hearing (CAH) their lead ecology witness spoke about the criteria for selecting the additional marsh harrier compensation land (those criteria have been confirmed in writing in REP6-002 Appendix B).

An alternative to the marsh harrier compensation land proposed by the Applicant at Westleton

6. It is recognised that Mr Horton, also representing the above parties, spoke at the Compulsory Acquisition Hearings on the 17 and 18 August where he included the subject of the land that was proposed to be obtained by compulsory acquisition to provide marsh harrier compensatory habitat – the land at Westleton referred to in Section 4 of REP6-002. Mr Horton summarised a comparison of the ecological features of the Westleton site and an alternative site at Theberton that is under the control of my clients and which has been brought to the attention of the Applicant in a series of meetings. Mr Horton will be submitting a note of what he said to the relevant Deadline 7 and that note will include a map of the parcel of land at Theberton.

7. Since the above input was made at the Compulsory Acquisition Hearing (CAH), Mr Horton did not go into detail on the ecological matters.
8. I seek to bring to your attention a comparison of the parcel of land at Westleton (the Applicant's compensatory land proposal) and the parcel of land at Theberton (my client's compensatory land proposal). I will make that comparison using the criteria as listed in REP6-002 Appendix B, Section 4.2 '*Selection of the proposed Westleton site*', noting that this information was not available to my client's representative (Mr Horton) at the CAH.

Criterion	Option			
	Theberton		Westleton	
	Description	Relative score	Description	Relative score
The six criteria set out by the Applicant in REP6-002				
Not designated for existing ecological value or part of RSPB reserve	Yes	=	Yes	=
Proximity to Minsmere reedbeds (within 4 km).	2.0 km	+	3.5 km	-
Arable or (low ecological value) sown pasture areas	Yes	=	Yes	=
Single contiguous site	Yes	=	Yes	=
Avoiding popular footpath and other rights of way	No	=	No	=
Hedges, ditches and varied topography	Yes	=	Yes	=
Total of relative scores		+1		-1

9. I have additionally considered in more detail the ecological needs of marsh harrier, including as set out in the Applicant's earlier submissions - document APP-259 '*Marsh Harrier Mitigation Area Feasibility Report*' and document REP2-119 '*Marsh Harrier Habitat Report*' - to make a more detailed comparison of the two sites:

Criterion	Option			
	Theberton		Westleton	
	Description	Relative score	Description	Relative score
Additional criteria identified and relevant to marsh harrier ecology				
Area	50+ ha	=	54 ha	=
Proximity to wetland habitat within SSSI	0.0 km	+	1.4 km	-
Potential for grass / gamecover mix	Yes	=	Yes	=
Potential for wetland creation	Yes	+	No	-
Adjacent to settlement / village	No	+	Yes	-
Public right of way within the parcel	Yes	=	Yes	=
Stewardship agreement on land parcel	Yes	-	No	+
Total of relative scores		+2		-2

10. From the above it can be concluded that the Theberton land is superior to the Westleton land when tested against:
- The criteria that the Applicant has published, and
 - the additional ecological criteria that have been developed based on the Applicant's submissions on marsh harrier ecology.
11. In making this comparison and coming to the conclusion that the Theberton alternative is superior to the Westleton land in terms of delivering for the needs of marsh harrier, I seek to draw your attention to the matter of an agri-environment agreement on the Theberton land made under the Environmental Stewardship Scheme.
12. The Applicant's submission document AS-408 '*Note on Marsh Harrier Habitat*' identified that whilst the Theberton land had been included within the long list of sites being considered as potential marsh harrier compensatory land, it was screened out specifically because it was under an agri-environment agreement. I would suggest that was a mistake, an error of judgement, by the Applicant. To screen out the Theberton land was in error for several reasons:
- An agri-environment agreement is not a 'designation' and so should never have been included in that criterion relating to designations when the Applicant carried out the screening process.
 - The agri-environment agreement was for prescriptions for delivering narrow margins around the relatively large fields identified at Theberton and for somewhere on the agreement land (which is much larger than the Theberton parcel) that there would be some rotational provision of habitat for farmland birds, such as cereal stubbles. This means that the agreement creates little additional foraging habitat for marsh harrier and does not diminish any future actions to 'uplift' the foraging quality of the parcel of land at Theberton for marsh harrier.
 - Finally, and most critically, the agreement ends on 30 November 2023 which means that the agreement would not be in place at the time that the Applicant would be seeking to take control of the land to provide marsh harrier compensatory habitat.
13. My view is clear, the Applicant erred in ruling out the parcel of land at Theberton and that decision should be reconsidered. My clients are keen that the land at Theberton under their control is reconsidered and have met with the Applicant's representatives several times, including making a site visit.

Timeframes and the potential for delays

14. My view is that the old saying "*where there is a will, there is a way*" applies in this case.
15. At the CAH we heard from the Applicant's team that they foresee only delays and being unable to include the alternative land at Theberton in the DCO. That opinion of the Applicant's team has been repeated at a recent private meeting with my client. My client is more than willing to progress at a swift pace an agreement over the parcel of land at Theberton.
16. The principle of including additional compensatory land for marsh harrier has already been included in the DCO and switching to an alternative parcel of land in the same general location, of the same area and of the same land use creates no new matters of principle and does not generate any new forms or scale of environmental impact. Putting the documentation together for, and carrying out, any necessary public consultation would be straightforward because there are no new matters of principle and no new environmental impact.

The fallback: The final decision on compensatory actions can come after the Examination

17. I ask you to note the precedent of a decision about selecting and securing land for HRA compensatory actions coming after a DCO Examination has closed.
18. That precedent was set by the Hornsea Project Three DCO consent (<https://infrastructure.planninginspectorate.gov.uk/projects/eastern/hornsea-project-three-offshore-wind-farm/>). The decision was made by the Secretary of State on 30 December 2020, some 9 months after the Examination closed. On that date the compensatory land on which to construct artificial nesting sites for kittiwake had not been secured by the wind farm developer. That decision has not been struck down by any process of judicial review and hence it can only be concluded that it was perfectly legal.
19. Nobody may like the uncertainty of not having secured the compensatory land by the end of the Examination but the precedent is that it is legally possible. This surely must mean that the Applicant's concerns about any delays brought about by consideration of the Theberton alternative are not fatal to the process of the Secretary of State coming to a decision on the DCO.