

## **ISH 10, Biodiversity and Ecology Hearing**

from S.A.G.E. – Regan Scott, Convener

### **ISH 10 Summary and Commentary**

We made several contributions in an unavoidably overlapping narrative.

Our observations developed from contributing a framework and a thematic approach presented at OFH 10, duly submitted as a written representation.

Our contribution for ISH 10 covered the following issues, pursuing an understanding of the mitigation pathway being pursued by the developer.

Issues engaged with were:

- pressing for a draft RIES in time to allow for late, final contributions by the developer, bearing in mind that the RIES consultation period had already been extended, a welcome change for IIPs.
- signalling updated case law authorities and developments in national policy, statute and regulatory instruments and research sources. An example is the 2009/10 Entech Reports on marsh harriers (already referenced). Six BEIS documents (23.4.21) supporting the NPS EN1-6 Review process include an Appraisal of Sustainability Report and associated Scoping and Baselines Regulation Reports with implications for the developer's reliance on NPS EN1 and EN6 of 2011. (See similar HRA item below).
- we wanted to introduce consideration of the UK Environmental Damage (Prevention and Remedies) Regulations, based on the European Directive 2004/35/EC for assessing and deterring damage not otherwise secured against in a DCO.
- concern about protected site integrity and complexity of species, and combined and cumulative impacts of project development on contingent nature sites, a matter apparently being codified for new HRA Regulations (BEIS HRA Methodology Report 23.4.2021). BEIS report they have relied

on three 2018 European Court of Justice environment cases, namely Sweetman/People over the Wind, Holohan and Dutch Hydrogen, for which a case reference has been sent to the Exa. We are studying the latter two, the first being widely understood.

- interest in the scope and methodology (Metrics 1,2 and 3) of BNG and the likely enactment of M3 with a target approach in the Environment Bill, binding the hands of the SoS under IROPI and changing the Natural England multiplier approach for lost wetland ?
- the status and meaning i.e. the impact “mode” of “disturbance” in respect of nature mitigation pathways, the SZC example being the proposal for marsh harrier foraging which is proposed as “improvement”, evidently not acknowledging this as a resulting from disturbance of any mitigatable kind. Had such an admission and possibly credible mitigation resulted from assessment, the developer would not have been able to claim “no harm”. It would have opened the door to argument about Minsmere, as we have pointed out previously and has been amply recorded by the Entech Reports, the MH receptors breed ?
- the adequacy of the loss of a portion of SSSI as a trigger – reason - for IROPI when similar terrain is available for mitigations ?

and, arising from the above two considerations,

- the function and condition of Aldhurst Farm as a mitigation receptor has become clouded by subsequent developer proposals. This cloud has thickened with a current EDF Community Newsletter report that otters and water voles have already transmigrated from the SSSI. If that is the case, might not Aldhurst Farm offer itself as IROPI compensation for the SSSI, especially if it is (1) already a MH foraging area and (2) to be a “not disturbed” terrain during construction and (3) on the way to SSSI equivalence, a category recognised in the documentation surrounding the new Environment Bill. If, on the other hand Aldhurst Farm, after assessment, was concluded as likely to be disturbed, would not a similar assessment result be likely for Minsmere itself ? We can only surmise: is there a selective (partial?) case for IROPI being advanced because it can feasibly be compensated for by fen meadow and wet woodland creation

and nurturing at a BNG-suitable scale ? Should disturbance at likely substantial level have been assessed at Minsmere, that might have been sufficient to halt the project because of the difficulty of appropriately compensating for its lengthy disturbance and likely permanent damage. The recent Stonehenge case can be seen as supporting this view of a national asset's integrity. We therefore hope to see the clouds lifted by the forthcoming RIES and its incorporation of the data requested by the ExA.

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