

Date: 01 February 2021
Our ref: 337393
Your ref: Procedural Deadline D: DCO Further Information



The Planning Inspectorate

BY EMAIL ONLY

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To whom it may concern

Thurrock Flexible Generation Plant: Procedural Deadline D: Submission of Additional Information

Thank you for consulting Natural England on the further information provided for the Thurrock Flexible Generation Plant NSIP. This advice is provided in respect to Procedural Deadline D, however with apologies we have unavoidably not been able to meet this deadline, including for reasons linked to the Covid-19 pandemic and reduced overall available resource. Please [see here](#) for further details. Nevertheless we have submitted selective comments on the additional documents provided to us, and hope that these will still be helpful to the examination.

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

We have in particular offered selective comments on the updated Habitats Regulations Assessment (December 2020); Restrictions on Public Access to the Causeway (November 2020); and note the contents of the Foreshore Wintering Bird Surveys report (ES vol. 6 appendix 9.4). To aid the Inspector in understanding the context of our comments within this letter, we have enclosed our earlier Discretionary Advice Letter (dated 21st October 2020) to the applicant to this letter. The Inspector should note that the developer has provided a response to this letter which they may wish to share with the Inspector.

Updated Habitats Regulations Assessment (Dec. 2020)

Natural England has undertaken a high level review of the HRA report within the time available, and has identified a number of concerns that we would like to convey to the developer and Inspector, at this stage. Please note that further comments may follow at the Written Representation stage.

We note that the HRA assessment is undertaken based upon:

- 1.4ha inter-tidal mudflat for dredging of the berth pocket (as a temporary loss with full recovery expected within two years);
- 610m² long-term loss of saltmarsh habitat and 0.35ha of intertidal mudflat habitat lost to the causeway itself. In this context 'long-term' is stated to be the 35 year design life of the TFGP facility.

Our overall observation and concern is that the HRA has assessed the effects of the project against a baseline of the whole of the Thames Estuary & Marshes SPA bird population (for each relevant species) and the whole of the available habitat (within SPA and functionally linked land). The relatively small area of habitat affected by the project when compared to the overall resource therefore easily demonstrates that the number of birds and available habitat affected is very small

(1.5% of the available functionally linked land and 0.05% of the total mudflat resource), however Natural England has advised in our DAS advice letter dated 21st October 2020 that in our view it is more appropriate for the HRA assessment to consider (alongside whole SPA numbers) a more local context (i.e. bird numbers within the Mucking Flats & Marshes SSSI component of the SPA). The report also seems to assume that the presence of the causeway (and associated fencing etc.) will have no other effect on the ability of the remnant to function as it once did – in our view the displacement effect caused by the presence of the causeway should not be discounted.

Whilst technically the approach taken in the HRA may be correct, our advice is that there has to be an assessment of effects at a more local level (such as component SSSIs) alongside this. Without this, there could be many areas within large SPAs (such as the Thames Estuary & Marshes SPA) with additional functionally linked habitat, which if assessed in isolation are dismissed as marginal contributors to the SPA population, and thereby allowing multiple local projects resulting in permanent impacts successively eroding the capacity for the SPA to achieve and maintain favourable conservation status (i.e. 'death by a thousand cuts'), which is clearly undesirable. We suggest that the HRA is revised accordingly, in particular the calculation of 'bird days' and the baseline available resource against which losses are compared. The HRA also needs to recognise the contribution of specific areas of the SPA under certain environmental conditions, i.e. that the inner estuary areas are more important during periods of severe weather where more sheltered areas are sought. The HRA appears to have assessed all areas as having equal value to SPA birds.

Specific comments on individual HRA matters are set out below:

Construction of the Causeway

We note that the causeway will take ~6 months to construct, and that this cannot entirely avoid months where SPA birds can be expected to be present in significant numbers. Whilst we appreciate that there may be uncertainties regarding the availability of barges and precise timings of delivery of plant to site, in our view the bird numbers in the areas affected are significant enough to require specific mitigation such as that set out in paragraph 6.4.66. We suggest that a REAC commitment could be worded to commit the developer to preferentially avoid the most sensitive months, alongside the other measures described.

Construction Phase use of the Causeway

We note the sequencing of events proposed and the flexibility sought around the phasing of batch deliveries. Again, in our opinion REAC commitments could be worded to commit the developer to preferentially avoid the most sensitive months.

Operation Phase Retention of the Causeway

The causeway is proposed to be retained for the life of the project (design life 35 years). As described above, our preference is that the losses described are set within a more local context (i.e. component SSSI), and that as a result the direct medium-term loss of available habitat should not be screened out from Appropriate Assessment (ref. paragraph 5.1.20).

Consideration of the Longevity of Mudflat Loss

Notwithstanding the above comments about the presentation of the HRA and its AA, Natural England has given further consideration to the loss of the available resource as functionally linked land to the SPA / Ramsar site. In advising on the significance of this issue, we have been mindful of the Natural England research report [NECR206: 'Temporary effects: How the longevity of effects has been considered in respect of plans and projects affecting European sites – a review of authoritative decisions'](#). We have also had in mind [NECR205 'Small-scale effects: How the scale of effects has been considered in respect of plans and projects affecting European sites - a review of authoritative decisions'](#) and, although that report relates to direct losses of European sites, which does not apply in this case, the principles are nevertheless helpful.

The NECR206 report identifies several factors which should be considered when assessing these

effects, including in particular:

- whether the effect can be fully undone / made good;
- the spatial scale of the effect in the short term; and
- measures to return the area to a comparable level of ecological functionality.

In this context, we note that:

- The effect can be fully undone, by complete removal of the causeway structure (and this is proposed by the project);
- The spatial scale (noting earlier comments) has not yet been demonstrated to be insignificant at an appropriate scale; and
- Mudflat habitats generally are more resilient and better able to recover effectively from disruption. The natural redistribution of sediments can for example be evidenced from the creation of new areas of inter-tidal habitats.
- Finally, the minimum life span of the project is stated as 35 years, which is arguably beyond the limit of what could be considered 'temporary' (noting the case studies in the above report), and the Inspector will need to reach a view on this point.

The report assessed temporary effects on European sites directly, rather than as in this case to functionally linked land, and this also has had a bearing on our advice. We note for example, that the [Supplementary Advice Package](#) to the SPA Conservation Objectives includes an 'extent objective' for notified features: 'maintain the extent, distribution and availability of suitable habitat (either within or outside the site boundary) which supports the feature for all necessary stages of the non-breeding / wintering period.' As far as we can see, the Supplementary Advice has not been consistently referred to within the HRA, and it is not clear to Natural England at the time of writing how the habitat figures for example at paragraphs 5.1.14 (and following) compare with those specified in the Objectives, and how the discrepancy can be accounted for. Further, no mitigation which provides alternative habitat is offered by the project which would maintain a 'no net loss' position – the HRA relies upon the case that the reduction in habitat is too small to be significant.

Furthermore, of the five species assessed in detail in the HRA (avocet, black-tailed godwit, dunlin, redshank and ringed plover), redshank, dunlin and ringed plover all have 'restore' population objectives, which further leans against the loss of forage resource in this area of functionally linked land. We cannot see that the project has been assessed against this objective¹.

To date when providing our advice to the developer, we have advised that the causeway should be retained for a shorter period of time to allow for construction and then removed (preferably in the order of 5 years), however we understand that this is not possible, due to the potential for delivery of replacement engines throughout the life of the project.

Linked to this, is whether there are alternative transport options for the delivery of abnormal indivisible loads (AILs), and in this respect we note the proposed REAC commitment to review these at intervals. The Inspector will need to reach a view on whether or not the terms of the review are reasonable, which may bring forward the removal of the causeway and shorten the reduction in available habitat for SPA interest features.

In summary, we do have concerns regarding the updated HRA report, notably the sole use of 'whole SPA' figures which overlooks the local contribution and importance of the area affected, and the screening out of direct habitat loss of functionally linked land (paragraph 5.1.20), which in our view should be taken to Appropriate Assessment. In our view therefore, the conclusions of the HRA have yet to be fully justified, however overall we consider that a case for 'no adverse effect on site integrity' could be made, so long as the causeway structure is not regarded by the competent

¹ The Supplementary Advice Package is referenced on page 32 as a footnote for Avocet, but not for other species, that we can see, and so the 'restore' objective has not been assessed against.

authority as being a permanent structure. If it is concluded that the causeway is a 'permanent' structure, then the project would appear to undermine the conservation objective to maintain the extent of habitat needed to support the interest features (some with population 'restore' objectives) and therefore Appropriate Assessment would be required for this effect, and mitigated accordingly.

ES Addendum: Assessment of Causeway Decommissioning (Nov. 2020)

In light of the emphasis placed upon the temporary nature of the causeway and the need for confidence in the recoverability of the habitats affected, we have also reviewed the Causeway Decommissioning report (November 2020). We note and support the REAC commitment for the production of a 'Causeway Decommissioning Plan'. In view of the likely effects arising to functionally linked land, Natural England should be added to the list of consultation bodies under paragraph 18(1). Whilst there will be a generally reliance upon natural accretion as the means to restore the mudflat habitat, we welcome the need to detail the mudflat restoration works at paragraph 3(d). We also support the need for updating the bird surveys to inform the decommissioning works programme, at paragraph 2.3.1.

Restrictions on Public Access to the Causeway (Nov. 2020)

It is also critical that the causeway is secured from unauthorised use, and we note the submission of the additional report 'Restrictions on Public Access to the Causeway.' In our view, it is a key aspect of the project to prevent, monitor and enforce where necessary the use of the causeway for purposes other than that which would be permitted. We therefore welcome the attempts made by the developer to address these concerns, and note the proposed fencing / gate arrangements.

It is not clear to Natural England however how (with reference to paragraph 1.2.3) significant unauthorised use would become apparent to Thurrock Power Ltd., as no monitoring is proposed and we understand the facility will be largely unmanned. To improve the effectiveness of this document, in our view further information should be provided which outlines what efforts will be made to find out whether any unauthorised access or use is being made. This might include periodic proactive contact with the relevant river authorities to discuss and test whether the measures proposed are being effective in their purpose.

Other Comments

We note that the developer disagrees with our advice with respect to noise impact thresholds (ref. page 6 of the response to our DAS advice letter). As may be appropriate, we may provide further comments on this point in due course if helpful, however for the sake of expediting this delayed response letter, we have not covered this specific issue further at this time.

In addition, our initial views on the in-combination section of the HRA report indicate that further assessment may be required. The prolonged displacement of birds due to Thurrock Flexible Power Generation acting in-combination with the Lower Thames Crossing jetty usage is concluded by the applicant (paragraph 7.2.9) as not likely to affect the integrity of the European site. As is described above, this again relies upon there being large areas of alternative habitat available elsewhere for displaced birds, however we would again note the 'maintain' habitat extent objective (including for functionally linked land) and the 'restore' objective for some of the species affected. In our view the conclusions reached need further justification, including with reference to appropriate local context (i.e. the Mucking Flats & Marshes SSSI component of the SPA).

Yours sincerely

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