



**Comments on Interested Parties Relevant Representations
for the
Royal Society for the Protection of Birds**

**Submitted for Deadline 1
19 October 2021**

Planning Act 2008 (as amended)

In the matter of:

**Application by Alternative Use Boston Projects Limited for an
Order Granting Development Consent for the
Boston Alternative Energy Facility**

**Planning Inspectorate Ref: EN010095
Registration Identification Ref: 20028367**

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1. Introduction

- 1.1 The RSPB has reviewed the Relevant Representations submitted by Interested Parties. Below we provide comments on those submissions which relate directly to the concerns we set out in our Relevant Representation (RR-024).
- 1.2 Our comments are made in relation to the implications of Representations to inform whether the proposed Facility could adversely affect the integrity of The Wash Special Protection Area, The Wash Ramsar site, The Wash Site of Special Scientific Interest (SSSI) and The Wash & North Norfolk Coast Special Area of Conservation (SAC).

2. Marine Management Organisation ([RR-008](#))

- 2.1 The RSPB supports the MMO's submission. The MMO consider the scale of issues that are outstanding "*...regarding the evidence provided within the ES...*" warrants a delay to the examination. We support this position. We also note that the MMO has requested additional assessments be provided by the Applicant. The implications for the provision of such new information and the ability to review and comment on it by Interested Parties must be reviewed with respect to the Examination deadlines.
- 2.2 The RSPB is still reviewing the draft Deemed Marine Licences and Development Consent Order. We will provide comments once capacity is available from our technical specialists. It is clear, however, that the MMO consider there are considerable deficiencies with the documents as they stand, and sufficient time will be needed to address these through the Examination.
- 2.3 We note that the MMO in paragraph 4.3 (p.11) make it clear that the proposed 'Habitat Mitigation Area' should be considered "compensation". The RSPB supports this view, as mitigation refers to measures that can be included within the Application site to address impacts, or measures that could be implemented to adapt the operation (including the vessel movements through The Haven and its approaches). The provision of measures outwith the site are compensating for impacts that cannot be addressed on site or through changes to operations. We therefore support the MMO's position.

3. Roythornes Solicitors on behalf of The Boston and Fosdyke Fishing Society Limited ([RR-010](#))

- 3.1 We are concerned by Point 2 raised by The Boston and Fosdyke Fishing Society Limited:

"All the ships journeying to the new facility will have to turn in the river at the dock turning circle, which will block the river to all other vessels during this process. The promoting authority allege that this process takes up to 15 mins per ship, but our experienced clients who work in these waters constantly, advise that it takes much longer and with up to 3 ships turning on a tide cycle, this will block the river preventing our clients' vessels leaving or returning to port."

- 3.2 We have previously expressed concerns about vessels stacking up in The Haven with the Applicant. Our concern that during turning of vessels this could result in vessels becoming paused and 'stacked up' along The Haven would seem to be supported by the information provided in this representation. This could have serious consequences for birds using The Haven. The unspecified increase in disturbance to roosting and feeding birds could constitute an adverse effect under The Habitats

Regulations, especially in combination with other projects and activities that cause disturbance at the same time as the vessels are present, and needs to be fully assessed. No such consideration has been made in the Applicant's HRA and further information on this issue must be early in the Examination.

- 3.2 Point 2 of this Representation also suggests uncertainty over the Applicant's evidence regarding vessel movements and operation within The Haven. Given that this activity has a direct impact on bird it is imperative that an accurate understanding of vessel activity along The Haven is provided. This is necessary to ensure the Habitats Regulations Assessment draws accurate conclusions on the impact of the Application on The Wash SPA/Ramsar/SSSI and The Wash & North Norfolk Coast SAC.
- 3.3 We are also seriously concerned by the view that the proposed measures to mitigate impacts are considered unworkable and that relocation of "*...the affected fishermen's quay down river of the new proposed energy plant.*" The Applicant's evidence has demonstrated that The Haven is functionally linked to The Wash SPA/Ramsar/SSSI by supporting qualifying bird features. Whilst no data on bird numbers and distribution along the entire length of The Haven have been collected and presented by the Applicant, the limited survey work that has been carried out has found non-breeding redshank in significant numbers (see Section X of our Written Representation). The construction of a new quay further along The Haven would add to the adverse impact currently predicted by the construction and operation of the proposed Facility. This proposal would have serious implications for the Applications Habitats Regulations Assessment, notably the in-combination assessment. The location of any new quay could have implications for the viability of the currently proposed 'Habitat Mitigation Area' and other areas developed to compensate for disturbance to roosting birds and foraging birds, and to replace lost saltmarsh and mudflat.
- 3.4 For clarity, if such a proposal were to be brought forward as a consequence, we do not consider there to be any available data to enable an understanding of the impact of such a proposal on the bird interest of The Wash SPA/Ramsar/SSSI as there are:
- No Wetland Bird Surveys conducted along the whole length of The Haven to inform the number and distribution of qualifying features.
 - No survey work in support of the Application has been undertaken to understand the number and distribution of qualifying features.
 - No survey work has been undertaken to inform the wider pressures acting on the full length of The Haven, such as recreational pressures.
- 3.5 This is not intended as a complete list of the data gaps that would need to be addressed, and further advice would need to be sought from Natural England and the Environment Agency.
- 3.6 We consider the issues raised by this representation have significant implications for the process by which the Application must be assessed (see Section 8 regarding our expectations relating to the Policy and Legislative process in our Written Representation). We request this issue be dealt with as a matter of urgency, as it will have a direct bearing on conclusions being made by ourselves and other parties on the scale of compensation measures that will be needed to address the full range of impacts arising from the Application.

4. Lincolnshire Wildlife Trust ([RR-011](#))

- 4.1 We fully support the position of Lincolnshire Wildlife Trust. They have identified the same concerns that we have expressed in our Relevant Representation.

4.2 This representation highlights that there are substantial data gaps within the Application. Sufficient time must be provided to ensure all parties are able to review newly submitted evidence.

5. Port of Boston Ltd ([RR-017](#)) (also, Neil Harris Consulting on behalf of Port of Boston ([RR-016](#)))

- 5.1 This representation highlights that “...*dredging, both capital and maintenance, the construction and operation of the Wharf, the lighting of the facility, the increase in vessel numbers all have the potential to impact on the safety of navigation to current and future river users.*” We agree with this position and provided detailed comments in Sections X and X of our Written Representation.
- 5.2 Of note is that there appears to be some uncertainty over who will be responsible for capital and maintenance dredging within The Haven associated with the Facility. This could impact on birds roosting and feeding within The Haven through disturbance and the loss of feeding habitat. As many of the bird species using The Haven will be qualifying features of The Wash SPA/Ramsar/SSSI, we request clarity on how dredging operations will be managed. This has implications for the Habitats Regulations process, as it is likely that compensation measures will be required as a result of dredging and it will be important to determine who would be responsible for ensuring the integrity of The Wash SPA/Ramsar/SSSI is maintained.

6. Environment Agency ([RR-013](#))

- 6.1 We note the paucity of information that has been presented to the Environment Agency to enable it determine the potential impact of the development in relation to flood risk and their concerns about the process adopted by the client to address issues arising from the proposed Facility.
- 6.2 We support the Environment Agency position that there is not sufficient evidence to demonstrate that there would not be adverse effects on marine and transitional waterbodies as a result of the Application.
- 6.3 We agree that the Application, specifically the Outline Landscape and Ecological Mitigation Strategy does not identify how loss of saltmarsh or intertidal mudflat will be addressed.
- 6.4 We agree that the Applicants consideration of Biodiversity Net Gain measures need to be improved. Saltmarsh and intertidal mudflat will have to be provided as compensation due to their Priority Habitat status, therefore, need to be provided simply to maintain the integrity of these habitats within The Wash and the UK. The Applicant will need to demonstrate that their provisions for biodiversity in general will, as stated by CIEEM, “...*provide an increase in appropriate natural habitat and ecological features over and above that being affected in such a way it is hoped that the current loss of biodiversity through development will be halted and ecological networks can be restored.*”¹ We set out more detail on our position with respect to Biodiversity Net Gain in Section 13 of our Written Representation.

¹ Biodiversity Net Gain – Principles and Guidance for UK Construction and Developments: <https://cieem.net/i-am/current-projects/biodiversity-net-gain/>

- 6.5 We note the comments made by the Environment Agency on noise. We also consider noise, especially impulsive, infrequent loud noise would impact on birds using The Haven adjacent to the application. We consider the evidence on noise needs to be improved in order to understand the full scale of impact on The Wash SPA/Ramsar/SSSI. We set out our detailed concerns in Section 7 of our Written Representation.
- 6.6 We support the Environment Agency's position that the evidence gaps within the Application are significant and that a pause in the Examination would be appropriate to progress detailed discussions within the Applicant.

7. Lincolnshire County Council ([RR-014](#))

- 7.1 We support the comments made regarding habitat loss, impact on wildlife and the need to incorporate Biodiversity Net Gain. We provide more detail on the impact of noise and lighting in Section 7 of our Written Representation, and detail on Biodiversity Net Gain in Section 13 of our Written Representation.

8. Boston Borough Council ([RR-019](#))

- 8.1 We support fully the submission that Biodiversity Net Gain is intended to provide an "overall net gain" for biodiversity as a result of the development and the measures that the Borough Council have identified the Applicant consider as part of their application. Saltmarsh and intertidal mudflat will have to be provided as compensation due to their Priority Habitat status, therefore, need to be provided simply to maintain the integrity of these habitats within The Wash and the UK. The Applicant will need to demonstrate that their provisions for biodiversity in general will, as stated by CIEEM, *"...provide an increase in appropriate natural habitat and ecological features over and above that being affected in such a way it is hoped that the current loss of biodiversity through development will be halted and ecological networks can be restored."*² We set out more detail on our position with respect to Biodiversity Net Gain in Section 13 of our Written Representation.
- 8.2 Given our concerns and those of Natural England, we consider that the Council is not in a position to have no concerns with respect to impacts on The Wash SPA/Ramsar/SSSI and The Wash & North Norfolk Coast SAC are ambiguous. They state that (emphasis added):

"We have no specific concerns regarding impact on marine and coastal ecology provided Natural England and RSPB are satisfied that the proposed mitigation to address the moderate adverse impacts identified in Construction Impact 3 is suitable." (p.5)

- 8.3 The RSPB's and Natural England's positions are clear: there are significant data gaps existing within the Application and we cannot conclude that there would not be an adverse effect on integrity beyond reasonable scientific doubt on The Wash SPA/Ramsar/SSSI and The Wash & North Norfolk Coast SAC. The Habitats Regulations process sets strict tests that need to be met to ensure that new development within a given location is appropriate from an environmental perspective. These tests are set out in detail in Section 8 of our Written Representation, which also sets out our expectations

² Biodiversity Net Gain – Principles and Guidance for UK Construction and Developments: <https://cieem.net/i-am/current-projects/biodiversity-net-gain/>

of how the Habitats Regulations process must be applied. We have not seen any alternative options presented by the Applicant to demonstrate that there are no less environmentally damaging locations where this development could be located. Whilst an options appraisal has been requested by the Borough Council for Public Rights of Way diversions, it is not clear why a more detailed options appraisal has not been sought for the specific location of the proposed Facility. In addition, no detail has been provided on the scale and type of compensation that will be required (on a worst-case basis) for the proposed development or potential sites where compensation could be created (the RSPB has confirmed it could not accommodate compensation measures). Given these uncertainties and the RSPB and Natural England's positions, it is therefore unclear why the Borough Council has "...no specific concerns regarding impact on marine and coastal ecology."

- 8.4 We note the comments made with respect to Public Rights of Way. Any such changes that could result in recreational disturbance to birds using The Haven will need to be robustly considered in the Applicant's Habitats Regulations Assessment. Any conclusions will need to be based on appropriate numerical evidence of the current baseline situation to enable impacts arising from any proposed to be considered.

9. Inland Waterways Association ([RR-020](#))

- 9.1 We note that the IWA states that: "*The Port of Boston are also projecting increased shipping into Boston following improvements to their wet dock.*" We have not seen any evidence of these plans within the Application. Any increase in vessel movement associated with the Ports plans will need to be considered in the Applicant's Habitats Regulations Assessment in-combination with the increased vessel movements they predict during construction and operation of the proposed Facility. This will be important to assess the disturbance levels to roosting and feeding birds within The Haven and its approaches, as well as the anchorage area. This is necessary to demonstrate that there will not be an adverse effect on integrity of The Wash SPA/Ramsar either alone or in-combination with other plans or projects. We provide more detail on the Habitats Regulations process in Section 8 of our Written Representation.
- 9.2 If there are indeed plans to increase the number of vessels using the Port of Boston this could have serious consequences for the Applicant's HRA conclusions. We request the Applicant provides clarity on:
- The Port of Boston's plans following the improvements to the wet dock.
 - The anticipated increase in shipping to the Port of Boston.
 - The means by which increased numbers of vessels will be able to use The Haven given the Application suggests all navigable tides would be used from the vessel increases predicted to support the Facility,
 - If an increase in vessel movements is planned, then the implications of this increased activity on maintenance dredging will be required.
 - If an increase in vessel movements is planned, the implications for disturbance to birds using the entirety of The Haven (although this will be difficult given the lack of evidence available for the whole of The Haven as discussed in Sections 6 and 7 of our Written Representation).
- 9.3 We request clarity on this issue be provided at the start of the Examination.

10. Natural England (RR-021)

10.1 The RSPB supports Natural England's overall conclusion set out in Section 4 (p.5) of their Relevant Representations that:

"On the basis of the information submitted, Natural England is not satisfied that it can be excluded beyond reasonable scientific doubt that the project would have an adverse effect alone or in combination on the integrity of the:

- *The Wash Special Protection Area (SPA); the Wash & North Norfolk Coast Special Area of Conservation (SAC); and the Wash Ramsar.*
- *The Wash SPAs is underpinned by The Wash Site of Special Scientific Interest (SSSI) and therefore has overlapping interest features and supporting habitats.*
- *Natural England is also concerned in relation to impacts to priority habitats protected under Section 40 and 41 of the NERC Act 2006."*

10.2 The RSPB agrees with the Issues identified by Natural England in Table 5.2 of their Relevant Representations. We are particularly concerned by the lack of bird data, as this will rely on additional surveys being undertaken to fill the gaps. We do not consider, at this time, that such data exist.

10.3 With respect to Natural England's Generic issues submission, the RSPB supports the statements on:

- Their overarching position (Section 1).
- The adequacy of the Environmental Statement, especially with respect to presenting worst-case scenarios and the cumulative and in-combination assessments (Section 2).
- The failure to supply supporting plans (Section 3).
- The failure to consider the conservation objectives and current condition of the site features (Section 4).
- The range of missing documents to inform the assessments (Section 5).

10.4 With respect to Natural England's offshore ornithology submission, the RSPB supports:

- The assessment of the key impacts at the wharf and mouth of The Haven (Section 1).
- The statement about the lack of data to support assumptions about alternative roost locations (section 2).
- The recognition that over 1% of the SPA population of redshank have been observed using the wharf area, although we are concerned that late summer and autumn data have not been collected to inform use of the wharf area across all seasons (Section 3).
- The comments on displacement of redshank at the wharf location (Section 4).
- The inability to conclude that disturbance to birds at the mouth of The Haven would not be significant due to the alternative roosting and feeding areas being available (Section 5).
- The need to secure appropriate monitoring post-construction (Section 6).
- The comments made on the need to provide compensatory measures for predicted impacts at the wharf site and mouth of The Haven (section 7).
- The areas identified within the Application where assessment is not complete (Section 8).
- The comments on the HRA (Section 9).

10.5 We fully agree with the comments set out in summary Table B (offshore ornithology) and consider this fully reflect the concerns and comments we have expressed within our Relevant Representation ([RR-024](#)) and in more detail in our Written Representation.

- 10.6 With respect to Natural England's Intertidal and Marine submission, the RSPB supports the main issues identified and the following:
- The conclusions about the loss of 1ha of priority saltmarsh (Section 1).
 - The comments on Site B with respect to Biodiversity Net Gain (Section 2).
 - The potential impacts on harbour seals (Section 3).
- 10.7 We therefore fully agree with the comments set out in summary Table C (Intertidal and Marine) and consider comments on the loss of saltmarsh has direct relevance to impacts on birds using The Haven, most notably roosting redshank.
- 10.8 With respect to Natural England's Terrestrial Ecology submission, the RSPB supports the comments made in this section, especially Table E. We note comment E4 that queries whether vessels will arrive at night. We also highlight concerns about night vessel movements in Sections 6 and 7 of our Written representation and would appreciate clarity on what activity would be occurring from dusk to dawn (i.e. the hours when it is dark which will vary seasonally). We also support the need for more detail to be provided on lighting at the Facility and from the vessels (comment E5).
- 10.9 We are therefore in full agreement with the areas of concern raised by Natural England regarding the Application.