



**Summary of Comments on Issue Specific Hearing 2:
Environmental Matters
for the
Royal Society for the Protection of Birds**

Submitted for Deadline 3

6 December 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 This note provides a summary of the statements provided at the Issue Specific Hearing on Environmental Matters on 24 November 2021. We also summarise additional points that we raised in response to submissions made by other parties.

2. The RSPB's response to the Examining Authority's Issue 2: The overarching Environmental Statement

- a) Surface water - Please can the Applicant provide an update in respect of the potential need for an EP for discharge to surface water from excavations during construction.

- 2.1 The RSPB highlights that we have concerns about surface water drainage, which we submitted at Deadline 2 (REP2-052). We consider the issue of surface water drainage is also a key consideration for the Habitats Regulations Assessment.

3. The RSPB's response to the Examining Authority's Issue 4: Biodiversity, Ecology and Natural Environment (including HRA)

- a) [3.1.4]. Please can the Royal Society for the Protection of Birds (RSPB) state to what extent the addendums to Chapter 17 of the ES and the HRA included in the Applicant's D1 submissions and the D2 updated Outline Landscape and Ecological Mitigation Strategy (OLEMS) and 'Without Prejudice' Habitats Directive Derogation Case address its concerns, and identify unresolved areas of concern.

- 3.1 Our key concerns with the Application are detailed in our Written Representation (Section 2, REP1-060) and our initial comments on the Ornithology Addendum (paragraph 1.4, REP2-045).

- 3.2 We are continuing to review the Ornithology Addendum. We are also reviewing the 'without prejudice' derogation case documents submitted by the Applicant at Deadline 2 (REP2-011, REP2-012 and REP2-013).

- 3.3 Our submissions to date, have highlighted that there are significant gaps in the evidence and that substantial uncertainty exists regarding impacts from increased vessel movements along the navigation channel from the Port of Boston anchorage area to the Application site. These include, but are not limited to:

- evidence presented on alternative roost sites both within The Wash and along The Haven.
- evidence presented on the use by waterbirds of the navigation channel area at night.
- evidence on the impact of maximum noise levels on waterbirds.
- the current distribution of SPA features along the navigation channel area.

- 3.4 An initial review of the 'Without Prejudice' Habitats Directive Derogation Case is that the documents do not appear to address our concerns. We will submit our detailed comments at Deadline 4 (13 December); however, our immediate observations are:

- A full options appraisal has not been presented to show that any other alternative sites/locations have been considered that would meet the public need and have less environmental impact.

- We do not consider that sufficient evidence has been presented to determine the scale and ecological functions required of habitat needed to compensate for adverse effects on The Wash SPA/Ramsar. A complete assessment of the number of birds affected and their ecological requirements has not been carried out, so the scale of impact is not fully documented.
- We will comment on the specific options at Deadline 4, but no measures have been secured. There is therefore no certainty that any measures could be provided.
- No information has been collected to inform the proposed options, which may impact on important areas for features of The Wash SPA/Ramsar. We note the early nature of the discussions with landowners and the lack of time available to then collect any data. We, therefore, question whether there will be sufficient time available during the Examination to provide confidence that any appropriate measures could be secured which could deliver sufficient and effective compensation.
- We have not seen a timeline to demonstrate how the compensation measures would be investigated, planned and delivered prior to construction starting.

3.5 We will set out our concerns in more detail on the Applicant's draft 'without prejudice' derogation case in our written submissions at Deadline 4 (13 December 2021).

3.6 At this stage in the Examination, neither the additional information in the Ornithology Addendum or the draft 'Without Prejudice' Habitats Directive Derogation Case allays any of our concerns. Our position therefore remains that it is not possible to conclude that there would not be an Adverse Effect on Integrity of The Wash SPA/Ramsar beyond reasonable scientific doubt for the reasons set out in our Written Representations (REP1-060) and initial comments on the Ornithology Addendum (REP2-045).

b) [3.1.5]. Please can NE state whether they consider on the basis of the Applicant's submissions, including the additional bird survey data, to D1 and D2 that the 250m buffer zone for ruff and redshank is appropriate.

3.7 We will review the information submitted at Deadline 3 (6 December 2021) and provide comments as appropriate.

3.8 It is unclear if sufficient evidence is available to justify the 250m buffer.

3.9 We ask for clarity from the Applicant how any restrictions on construction would be enforced should the thresholds for numbers of birds be exceeded. We asked that the Applicant should also identify the implications for pausing construction on the construction timeline.

c) [3.1.7]. Following the submission of the ES/ HRA addendums at D1, containing additional information on cumulative/in combination effects do NE, the Marine Management Organisation (MMO) or any other IPs have any outstanding concerns about the scope of the cumulative/ in combination assessments?

3.10 The RSPB continues to have concerns with the Applicant's cumulative and in-combination assessments, as set out in Section 11 of our Written Representations (REP1-060) and Section 2(n) of our initial comments on the Ornithology Addendum (REP2-045).

3.11 We are not aware that any data have been collected to understand what additional activities may be interacting with vessel movements along the navigation channel out to the Port of Boston anchorage

area. We are particularly concerned by the lack of evidence to assess the impact of recreational activities. This evidence is needed to provide a complete understanding of how waterbirds are currently affected and the cumulative and in combination effect that would occur with additional vessel disturbance. This is important not just for the Habitats Regulations Assessment, but also for assessing the effectiveness of potential compensation sites.

3.12 We will provide our detailed comments on this issue at Deadline 4 (13 December 2021).

d) [3.1.10]. Please can NE confirm whether it is satisfied that the Applicant has identified all of the relevant European sites and features in the HRA?

3.13 We will review the information submitted at Deadline 3 (6 December 2021) and provide comments as appropriate.

3.14 However, we note that a number of locations have been identified in the Applicant's 'without prejudice' derogation case (Assessment of Alternative Solutions, paragraph 1.3.22, p.13; REP2-011) where the Refuse Derived Fuel (RDF) could be sourced. We recommend that all relevant sites within the National Sites Network that could be affected by the delivery of the RDF be identified and included in the Habitats Regulations Assessment.

3.15 We also do not consider that all the relevant features have been identified or correctly considered in the Applicant's assessments. For example, we note that the 30-40% of The Wash SPA/Ramsar breeds at our reserves at RSPB Freiston Shore and RSPB Frampton Marsh (c.3.5km from the mouth of The Haven) but this significant population has not been identified by the Applicant. We identify further concerns in our Ornithology Addendum (REP2-045) and will provide additional comments as appropriate at Deadline 4 (13 December 2021). We are happy to provide any data that would be helpful to the Applicant via a data request.

3.16 In response to the Applicant's query about whether the common terns breeding within or outside The Wash SPA boundary, we confirmed that they are breeding adjacent to The Wash SPA boundary and functionally linked to The Wash SPA. We can provide more detail at Deadline 4.

f) [3.1.13]. Please can NE and other IPs confirm if they are satisfied that the ES/ HRA addendums provided by the Applicant at D1 provide sufficient information on the potential impacts of the Proposed Development on the conservation objectives of the European sites and the condition of their features.

3.17 Our submissions to date have highlighted that there are significant gaps in the Applicant's evidence and that substantial uncertainty exists regarding impacts from increased vessel movements along the navigation channel from the Port of Boston anchorage area to the Application site.

3.18 We are also not aware that any data have been collected to understand what additional activities may be interacting with vessel movements along the navigation channel out to the Port of Boston anchorage area.

3.19 We do not consider the Applicant has provided sufficient information on the potential impacts of the Proposed Development on the conservation objectives of the European sites and the condition of their features.

- 3.20 We will provide our detailed comments on this issue at Deadline 4 (13 December 2021).
- 3.21 Where we hold data that would be helpful to the Applicant, we can make this available through a standard data request.
- h) [3.1.16]. Can the IPs state whether they agree with the justification for a maximum vessel speed of six knots and with the assessment of the potential effects provided by the Applicant at D1.
- 3.22 We questioned if this measure is practical or enforceable.

4. Summary of the RSPB's comments on the Examining Authority's Issue 5: Further questions arising from D1 and D2 submissions

- a) Please can NE & the Applicant expand on their positions in respect of disturbance to birds at high tide.
- 4.1 The RSPB supports Natural England's position that disturbance to birds at high tide is significant. This is the case given the significant numbers of birds that are present (as identified in the Ornithology Addendum). The number of birds affected could be greater and more qualifying species could be affected than currently identified due to limitations of the evidence base.
- 4.2 We made the following observations of the Applicant's statement:
- The importance for redshanks was not known until the Applicant undertook surveys. This highlights the importance of surveying additional areas along the navigation channel to have a full understanding of the area's importance.
 - Vessels will move along the whole of the navigation channel and therefore disturbance will occur along the whole of the navigation channel. The true harm that could be associated with this activity is therefore not known.
 - Roost sites will vary according to tidal states, with smaller neap tides allowing birds to use mudflat that is not covered. Birds are therefore not just using the rocks at the mouth of The Haven at high tide as suggested by the Applicant.
 - No evidence has been presented by the Applicant that predation is driving the distribution of waterbirds around the mouth of The Haven. Birds will be roosting close to areas with good food supply and to enable them to get back feeding as quickly as possible. Predation will be a limited driver. We request more evidence on the importance of predation effects on The Wash waterbirds from the Applicant to justify any statements they make on this subject.
- 4.3 We will provide our detailed comments on the Applicant's comments and any additional information on this issue at Deadline 4 (13 December 2021).
- e) Please can the Applicant update ES Chapter 17 to include an assessment of effects of the Proposed Development on breeding redshank, identified as a feature of The Wash Site of Special Scientific Interest (SSSI).
- 4.4 The RSPB welcomes this information being presented and will review additional information once it is submitted.