



**Response to the Examining Authority's Second Written
Questions**

**for the
Royal Society for the Protection of Birds**

**Submitted for Deadline 5
25 January 2022**

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

We have reviewed the Examining Authority’s second written questions. Below we set out our responses on key questions that have been addressed to us.

Question number	Question addressed to	ExA question	RSPB comments
3.1 Biodiversity, Ecology and Natural Environment (including Habitats Regulations Assessment (HRA))			
Q2.3.1.7	NE, RSPB, LWT	Following the submission of the ES/HRA Addendums at D1, containing additional information on HRA in-combination effects do the IPs have any outstanding concerns about the scope of the in-combination assessments?	<p>The RSPB remains concerned that all potential projects that could have an in-combination effect have not been considered by the Applicant. We note, in particular, that the Boston Solar Park (Lincolnshire County Council Planning Reference B/21/0309 - Proposed solar park on Boston Landfill site)¹ has been in planning since June 2021. This application would see solar arrays constructed adjacent to the Boston Alternative Energy Facility site and on the southern side of Slippery Gowt Pits on the former Boston landfill site. This needs to be considered with respect to the timing of construction and implications for operational effects. This is necessary as this development could impact the viability of the Applicant’s proposed alternative redshank roost site. The in-combination assessment needs to be updated to reflect this.</p> <p>We also have seen no evidence that the Applicant has collected and assessed baseline levels of recreational disturbance that could be impacting on The Haven. This will need to consider land-based activities such as walking, dog walking and cycling from the Application site to the mouth of The Haven. Additional recreational activity on the water must also be considered from the Application site out to the anchorage area in The Wash. This information is necessary to ensure a complete assessment of disturbance effects from the land and water has been carried out to inform conclusions on waterbirds. This has particular relevance when considering the viability and management</p>

¹Application documents can be found at [REDACTED]

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			<p>requirements of the proposed alternative redshank roost site and additional compensation sites the Applicant should be exploring. We set these concerns out in Section 6 (p.47-48) and Section 11 (pp.108-109) of our Written Representation (REP1-060). The RSPB notes that after Deadline 5 there will be less than three months until the Examination closes. The Examining Authority have made it clear that this is a strict deadline. The RSPB's position is that with very limited time left this is one of many issues that it will not be possible to resolve in this timeframe.</p> <p>We have seen no new evidence presented by the Applicant that addresses these concerns. We therefore remain concerned by the Applicant's approach to the in-combination assessment.</p>
Q2.3.1.18	NE, RSPB, LWT	Please could the IPs state if they consider that the updated screening and integrity matrices submitted at D3 [REP3-018] now include all the features that may be affected by the Proposed Development and reflect the likely effect pathways for effects on those features.	<p>We do not consider the screening and integrity matrices provide an accurate assessment of the features affected by the facility. For example, we agree with screening in common scoter, but this is a species of deeper water that occurs outside the survey area of the mouth of The Haven closer to the anchorage area. No data have attempted to be collected to consider impacts on this species. This issue is also applicable to other species such as goldeneye and pintail which are known to occur in the area, but no data have been provided to enable conclusions to be drawn on the potential effect of increased vessel movements. We provide more detail on such data deficient species in our summary of our position submitted at Deadline 5.</p> <p>We set out in our comments on the Ornithology Addendum (REP4-026) our concerns regarding the Applicant's approach to the species that have been scoped into, and out of, the</p>

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			<p>assessments. We also continue to disagree that conclusions of no adverse effect on integrity on The Wash SPA/Ramsar can be concluded beyond reasonable scientific doubt. This is in part based on the substantial limitations with the Applicant's assessments (as set out in Section 2 (pp.5-21) of our comments on the Ornithology Addendum; REP4-026). It is also based on the Applicant's own observations that features of The Wash SPA/Ramsar are disturbed by vessel movements at the Application site and the mouth of The Haven under baseline conditions, and that some of the species recorded may already be adversely affected by current levels of disturbance (as shown by species declines for dark-bellied brent geese, shelducks and other features). Additional vessel movements will cause further disturbance and add to existing baseline pressures.</p> <p>Our response to Q2.3.1.7 highlights that we continue to have concerns regarding the Applicant's in-combination assessment. We, therefore, consider that it is not appropriate for the Applicant to rule out in-combination impacts at the screening stage</p>
Q2.3.1.21	The Applicant, NE, RSPB, LWT	Please can the Applicant and IPs provide an update on progress with the respective SoCGs, particularly in relation to HRA matters, and indicate when draft SoCGs will be submitted.	<p>The Applicant provided the RSPB with an updated blank SoCG template on 7 January 2022 after we had requested an update on their plans for developing the SoCG. On review of the template we had additional comments that we provided to the Applicant on 14 January 2022. We recognise some progress by the Applicant, but there remain areas to resolve and significant work that the Applicant needs to undertake. Our comments on the revised template are:</p> <p>a) Paragraph 1.1.1 should state "<i>This statement of common and uncommon ground (SoCG)...</i>" The wording relating to</p>

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			<p>setting out uncommon ground and the benefit of this must be drawn out in the SoCG that is being prepared between the RSPB and AUBP Ltd. The following wording should be adopted in the SoCG that is being prepared:</p> <p><i>“The purpose of this SoCG is to set out the position of the parties, so far as they relate to the matters of concern (“uncommon ground”) for the RSPB, arising from the application for development consent for the construction and operation of Boston Alternative Energy Facility and the proposed associated development (hereafter referred to as ‘the BAEF Project’).”</i> And,</p> <p><i>“The aim of this SoCG is to inform the Examining Authority and provide a clear position of the state and extent of discussions, agreement and concerns between AUBP Ltd. and the RSPB on matters relating to the BAEF Project.”</i></p> <p>This approach would be in accordance with Paragraph 58 of the DCLG Guidance (‘Guidance for the examination of applications for development consent’ published in March 2015 by the Department of Communities and Local Government) which states: <i>“A statement of common ground is a written statement prepared jointly by the applicant and another party or parties, setting out any matters on which they agree. As well as identifying matters which are not in real dispute, it is also useful if a statement identifies those areas where agreement has not been reached. The statement should include references to show where those matters are dealt with in the written representations or other documentary evidence.”</i> We refer to section 1.2 of the initial SoCG between the RSPB, Suffolk Wildlife Trust and SZC Co. where this wording has been applied (see [REDACTED]).</p>

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			<p>b) Section 1.2 could be simplified further. It is stating information that is provided in other Examination documents regarding e.g. the description of the development. We recommend just signposting to the relevant sections in other Examination documents.</p> <p>c) Irrespective of the above point, we are concerned by reference to the 'Habitat Mitigation Area' (e.g. paragraphs 1.2.2 and 1.2.3) given that we consider this should be part of the compensation package. Any reference to 'Habitat Mitigation Area' should be removed given the disagreement over the language used. Should this continue to be referenced in this way, we will not be able to sign the SoCG. This issue will need to be captured as an area of disagreement within the SoCG</p> <p>d) The text describing the RSPB in paragraph 1.3.3 needs to be revised. The following text should be used: <i>"The Royal Society for the Protection of Birds (the RSPB) was set up in 1889. It is a registered charity incorporated by Royal Charter and is Europe's largest wildlife conservation organisation, with a membership of more than 1.1 million. The RSPB manages 220 nature reserves in the UK covering an area of over 158,725 hectares. The Society attaches great importance to the conservation of the National Sites Network (made up of Special Protection Areas (SPAs) and Special Areas of Conservation (SACs) and due to Government Policy Ramsar sites), and the national network of Sites of Special Scientific Interest (SSSIs) notified by Natural England."</i> This will be consistent with other NSIP SoCGs that we have been party to such as SZC Co REP10-111.</p>

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			<p>e) Paragraph 1.4.2 needs to be deleted. It should be replaced with the following text: <i>“Any area, topic, subject etc not covered should not be taken as the RSPB being in agreement with it and having no concerns. Due to limited resources the RSPB are focusing on their key areas of concern and are unable to review every aspect.”</i> This will be consistent with other NSIP SoCGs that we have been party to, such as with SZC Co. REP10-111.</p> <p>f) Paragraph 2.1.1 mentions that all meeting and correspondence will be provided in Appendix A. The Applicant has indicated that this Appendix would be too large to provide to the RSPB, but could provide specific items contained within the Appendix. Irrespective of whether this information is needed in its entirety given the summary provided in Table 2-1, if this Appendix is to be included then the RSPB will need to review the entire contents of Appendix A. We will not be able to sign up to the SoCG if information will be submitted to the Examination that we have not reviewed and confirmed we are agreed that it is appropriate to submit. Given the limited time available to develop a SoCG, we consider that Table 2-1 should be sufficient to outline the engagement and correspondence and that reference to Appendix A be removed.</p> <p>g) We continue to review Table 2-1 and may have specific comments on the information it contains.</p> <p>h) Paragraph 3.1.2 to make clear that these topics include areas of common and uncommon ground, with reference to paragraph 1.1.1.</p> <p>i) Table 3-1 is clearer with the columns for our respective positions to be set out. The notes section could be useful</p>

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			<p>and we recommend that a RAG rating would be helpful to clearly show status of the matters that are being considered. For clarity, we recommend that the column headed "statement" would be more usefully titled "Matter", "Issue" or other equivalent term to clarify exactly what is to be included in that column.</p> <p>j) Whilst Table 3-1 has an improved structure, the proposed matters/issues should be more specific than is currently outlined. We have set out in our Written Representations (REP1-060) and comments on the Ornithology Addendum (REP4-026) in such a way that it should be possible to identify an issue and then include our respective positions. For example, we have reviewed the conclusions for each of the bird species considered in the ornithology addendum. Specific lines in the SoCG setting out our respective positions on the impacts on each of these species would seem inappropriate and unhelpful to the Examining Authority and repeat information already provided and therefore we propose the focus is on broader areas of uncommon ground. Additional lines should cover topics such as land take, noise, lighting, impacts on water quality, disturbance from vessel movements, effectiveness of measures to compensate for redshank at the application site etc. This is not an exhaustive list. We will review the key areas we have identified to date and share this list with you to help populate Table 3-1.</p> <p>The Applicant has indicated that they would like to have something to submit for Deadline 6 (8 February). We continue to work with the Applicant and will review a revised draft once</p>

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			the SoCG template has information added on the areas of agreement and disagreement.