



**Comments on responses to the 14 October 2022 additional  
information request  
for the  
Royal Society for the Protection of Birds**

**Submitted for  
9 December 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**

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## 1. Introduction

1.1 The RSPB has reviewed the submissions provided by the Applicant, Natural England and the Environment Agency to the request for further information made on 14 October 2022. Below we set out some additional comments that we hope will be helpful and provide a summary of our position at the end of this submission. All references to the need for compensation measures to address adverse effects on the integrity of The Wash SPA/Ramsar site are subject to the BAEF proposal meeting the earlier derogation tests of no alternative solutions and imperative reasons of overriding public interest.

## 2. Comments on the Applicant's Response to Secretary of State Letter of 14<sup>th</sup> October 2022

### a) Construction Noise at the Application Site

2.1 The RSPB's position on the impact of noise on features of The Wash SPA/Ramsar site remain as set out in Written Representation (Section 7c, pp. 48-60; REP1-060), the Summary of the RSPB's position January 2022 (REP5-018) and our Response to Third Written Questions (Question Q3.3.1.34, pp.5-12; REP7-031). We remain particularly concerned that no survey effort has been undertaken to assess impacts of the proposed development on waterbirds using The Haven at night. This remains a significant data gap given the operation of the facility will necessitate night working.

2.2 The Applicant states that there are no established high tide roosts of waterbirds occurring within the area where caution should be applied. Our position remains as set out in our comments on the Ornithology Addendum (REP4-026), our Summary of the RSPB's position January 2022 (REP5-018) and the RIES (REP9-065). As highlighted, it is not simply the impact of noise on roosting waterbirds, but also foraging SPA/Ramsar waterbirds during the day and night.

2.3 It particularly remains unclear that the Applicant has provided sufficient evidence on the impact of noise on ruff and redshank to demonstrate that a 250m buffer zone around the application site with respect to construction, notably pile driving, is acceptable. Our answer to Question Q3.3.1.34 in Response to Third Written Questions (pp.5-12; REP7-031) and our comments on the RIES (Section 'The Wash SPA and Ramsar site – Disturbance to birds at the Application site', pp.12-15; REP9-065) continue to set out our position on this point.

### b) Vessel Disturbance at the Application Site, along The Haven and at the mouth of The Haven

2.4 The RSPB accepts the summary provided by the Applicant regarding the location of high tide roosts impacted by vessel movements. However, it should be clear that numbers foraging on exposed mud during the higher states of tide can be significant. Many of the species affected are features of The Wash SPA/Ramsar site and are impacted along the whole length of The Haven, with the Application Site functionally linked to The Wash SPA/Ramsar site. The peak count of waterbirds recorded at the mouth of The Haven represents over 1% of The Wash SPA/Ramsar site waterbird population and is therefore highly significant. As a consequence, an adverse effect on the integrity of The Wash SPA/Ramsar site cannot be ruled out beyond reasonable scientific doubt. The RSPB position remains our comments on the Ornithology Addendum (REP4-026), our Summary of the RSPB's position January 2022 (REP5-018) and the RIES (REP9-065).. submission at the close of the Examination.

### c) Vessel Disturbance at the Application Site

2.5 The Applicant states that "*no further mitigation measures for disturbance to birds at the Principal Application Site are considered...necessary*" (Paragraph 2.2.8, p.6). The RSPB has outlined concerns about the effectiveness of the proposed alternative roost site (as set out in our response to Third Written Questions (Q3.3.1.34, pp.5-12; REP7-031). We outlined that sufficient management measures must be put in place to provide confidence that the alternative roost would be effective.

We therefore recommend that fencing be provided around the alternative roost location to limit disturbance; not simply as an enhancement measure. This would need planning permission. It should also be of a type appropriate to the location. It is not clear that the specification of the fencing has been provided by the Applicant or that discussions regarding planning permission have taken place.

2.6 Whilst alternative roosting might be provided close to the Application site, this would not address the loss of foraging habitat. Given the relative importance of this area of The Haven for foraging and roosting birds, it would appear that birds will be displaced into less optimal foraging areas. This has not been addressed by the Applicant. We therefore maintain our position that replacement foraging habitat would be necessary. This cannot be mitigated as set out in our response to Third Written Questions (Q3.3.1.34, pp.5-12; REP7-031) and must form part of the Applicant's compensation package.

d) **Vessel Disturbance along The Haven**

2.7 The Applicant states that "*Vessel disturbance to designated feature waterbirds of the protected sites is limited along The Haven interior...*". Vessels can transit The Haven, however, whilst exposed mud remains and waterbirds remain to feed. The Applicant's surveys have been limited in scope, notably the number of visits and lack of assessments at night, and have failed to address the objective concerns that disturbance along The Haven is more significant than suggested by the Applicant. Disturbance along The Haven must be considered in its entirety. Our position remains set out in our comments on the Ornithology Addendum (REP4-026) and as summarised in January 2022 (REP5-018).

2.8 The RSPB's position regarding disturbance along The Haven remains the same as at the end of the Examination. The proposed increase in vessel movements would be significant and no evidence has been presented by the Applicant to show the cumulative impact of all vessels along The Haven: cargo ships, fishing vessels and recreational craft. It is also disingenuous of the Applicant to suggest mitigation measures were not considered necessary (Paragraph 2.2.12, p.9) - no mitigation measures proposed could be enforced (e.g. speed limit) or deemed effective to address the visual and noise impacts of vessels. As such it cannot be concluded that an Adverse Effect On Integrity of The Wash SPA/Ramsar site will be avoided, beyond reasonable scientific doubt, and compensation will be required to address disturbance impacts to roosting and foraging features of The Wash SPA/Ramsar site.

2.9 Whilst we support information sharing to highlight the impact of disturbance on survival and breeding success of birds that use The Haven, 'toolbox talks' will not reduce disturbance impacts given that the visual presence of vessels, as well as their wash and noise, are all factors that result in responses by the different birds species using The Haven, as set out in in our comments on the Ornithology Addendum (REP4-026) and as summarised in January 2022 (REP5-018). This is not something that can be mitigated and certainly not an issue that can be addressed simply through 'toolbox talks'.

e) **Vessel Disturbance at the mouth of The Haven**

2.10 No mitigation measures were deemed possible given the vessels would have to pass through the area. The RSPB's position remains the same as at the close of the Examination. It cannot be concluded beyond reasonable scientific doubt that an adverse effect on the integrity of The Wash SPA/Ramsar site will not occur and therefore an appropriately robust package of compensation measures is required. These must be secured and sufficiently detailed to ensure the criteria set out in Table 12 of our Written Representation (Section 10, pp.103-106; REP1-060) can be demonstrated to be addressed. We do not consider the Applicant's compensation package meets these requirements.

f) The Applicant's response to the request to include, but not be limited to, consideration of concerns raised by Natural England [REP8-024], regarding the Technical Note for Navigation Management and Ornithology [REP6-033] and evidence that adaptation of vessel movement parameters would mitigate impacts and/or can be secured [REP9-063].

2.11 It remains unclear how the different potential mitigation options have been evaluated to determine their overall impact. For example, grouping vessel movements together may cause disturbance to take place in one event, but if this event is over a longer time frame there is no evidence presented to demonstrate how birds would respond. It is possible that the longer duration of the event could put birds off returning back to the location. Such trade-offs do not appear to have been detailed to enable conclusions to be drawn on the appropriateness of options should they be considered enforceable and effective.

2.12 It is not clear that any speed limit will meaningfully address the impacts on foraging and roosting birds, given the size of the vessels and associated noise; speed alone is not the factor causing disturbance, as set out in our comments on the Ornithology Addendum (REP4-026) and as summarised in January 2022 (REP5-018), and our response on the fifth report on outstanding responses (para 6, pp.11-12; REP10-045).

g) The Applicant's response to Question 3.6 - Further Information regarding the without-prejudice proposed compensation sites for The Wash SPA

2.13 The Applicant has largely reiterated the information on the proposed compensation sites, as set out at the end of the Examination. Our position on what is required to give certainty that compensation measures will be delivered is set out in our comments at Deadline 7, 8 and 9 and those set out below against the summary and No. 1 in our Comments on the Fifth Report on outstanding submissions (pp.4-9; REP10-045). The RSPB's position as set out in our Detailed Comments on the Compensation Measures (REP10-043). response therefore remains. However for clarity we note the following:

- Placement of rocks to create a roosting feature in The Wash, may provide benefits, but would need to be far enough away from the navigation channel to not be impacted by incoming vessels. However, we remain unconvinced that this would be appropriate given the impact that this would have on supporting habitat for features of The Wash SPA/Ramsar site and The Wash & North Norfolk Coast SAC. This would create the need to compensate for implementation of a compensation measure, which points to the unsustainable nature of this measure.
- Fields at Wyberton Road have been discussed in our comments set out in our Response to Rule 17 Questions at Deadline 10 (pp.2-13; REP10-046), with respect to meeting the compensation measures criteria set out in Table 12 of our Written Representation (Section 10, pp.103-106; REP1-060).
- The 22ha field at Corporation Point requires more detail to be presented to determine its appropriateness. In principle having multiple locations along The Haven provides greater certainty that suitable habitat could be created. 22ha is a good size site to enable habitat to be created. As with the fields at Wyberton Road, however, substantive detail needs to be provided to demonstrate they can be secured and suitable measures able to be implemented to support the creation and maintenance of roosting habitat. Critically, this habitat must be of a quality to be incorporated as part of The Wash SPA/Ramsar site and maintained in perpetuity. We set this out in our comments at Deadline 7 (see REP7-032, Section 4 (Critique of draft Schedule 11), with particular reference to comments on paragraphs 7 and 8).
- The alternative roost site to the north of the application site could in principle provide a suitable habitat for waders displaced from the Application Site. Having more than one location provided as an alternative roost location gives greater certainty that suitable habitat will be created for roosting birds. We agree that the area would need to be built up to enable birds to roost at the top of the bank and ensure they had good visibility to feel safe from predators. However, more

details are needed to determine that this site could be secured and the habitat delivered. For example, it is not clear if changes to the bank from a flood defence perspective have been discussed with the Environment Agency or the implications of obtaining planning permission on the project timeline.

h) **An updated Proposed Development construction timetable which allows for the design, delivery and implementation of fully ecologically functional compensation measures before the predicted adverse effects occur**

2.14 The updated construction timetable is welcomed. However, we continue to have concerns that it remains unrealistic.

2.15 As set out in our comments on the DCO Schedule 11 (REP7-031 and REP7-032), consistent with Government guidance, it is the RSPB's position that compensation measures should be in place prior to adverse effects on integrity occurring i.e. construction taking place. We set out our concerns that DML clause 18(1) requiring the provision of the Outline Landscape and Ecological Mitigation Strategy only 13-weeks prior to construction starting in our comments on the final DCO (REP10-042). Our concerns remain and it is not clear how they are addressed in the updated timetable.

2.16 We have highlighted that our experience is that planning permission (for a well-prepared proposal) can take between 6-12 months, with substantive work preceding the application, as set out in our Detailed Comments on the Compensation Measures (para 4.8.4-4.8.7, pp.15-16; REP10-043) and RSPB comments on the Fifth Report on outstanding submissions. Specifically, the sub-section entitled "*Paragraphs 4.6.3-4.6.7: timeline to secure, develop and implement compensation*" on pages 6-8 (REP10-045). Baseline surveys are scheduled to last only 9-months and planning is given 5-months. We question whether this is sufficient time and assumes no delays due to unforeseen issues arising, or lodging of local objections (as has been recently experienced with other DCO compensation proposals).

2.17 We also highlighted in our Detailed Comments on the Compensation Measures that it can take up to five years for habitats to be created and ecologically functioning (para 1.2.3, pp.3-5; REP10-043). The Applicant is assuming the facility would become operational based on compensation measures being ecologically functioning in a minimum of two years. The RSPB's considerable experience of habitat creation and management does not support the Applicant's optimistic assumptions (as set out in sections 3(d) and 3(c) of REP7-032).

2.18 We also remain concerned that the Applicant continues to assert that the Application Site is not functionally linked to The Wash SPA/Ramsar site. The RSPB strongly disagrees and maintain our position as set out in our comments on responses to Third written Questions (Q3.3.1.31, pp.16-23; REP8-029).

i) **The Applicant's response to Question 4.2 to Natural England**

2.19 The RSPB's position on the appropriateness of the 'Habitat Mitigation Area' remains as set out in our answer to Question Q3.3.1.34 in our Response to Third Written Questions (pp.5-12; REP7-031). Our position remains that the Application Site is functionally linked to The Wash SPA, as set out in our comments on responses to Third written Questions (Q3.3.1.31, pp.16-23; REP8-029).

j) **The Applicant's response to Question 5.1 to the Environment Agency**

2.20 Whilst the Applicant is looking to work with the Environment Agency to "*potentially achieve a permissible status*" (para 3.4.4, p.52) this does not equate to the certainty expected of a DCO application to demonstrate that it will ultimately have a license to operate. We also consider this to

be at odds with the Environment Agency's statement that no further conversations have taken place with the Applicant since the end of the Examination. We remain concerned by the approach the Applicant has chosen to adopt with the DCO application and Environmental Permitting process, as set out in para 12.12 of our Written Representation.

### 3. Comments on the Environment Agency's submissions

- 3.1 The RSPB notes that the Environment Agency has confirmed that no further conversations have taken place with the Applicant regarding the DCO Application or additional Environmental Permitting. There clearly remains significant uncertainty about the Applicant's ability to demonstrate that the environmental impacts of the proposed development would be acceptable from a permitting perspective. We therefore support the Environment Agency's position that an adverse effect on integrity on The Wash SPA and The Wash & North Norfolk Coast SAC cannot be ruled out beyond reasonable scientific doubt.

### 4. Comments on Natural England's submissions

- 4.1 We note that Natural England have confirmed that they have seen no new evidence from the Applicant and they are therefore maintaining their position, that is, an adverse effect on integrity on The Wash SPA and The Wash & North Norfolk Coast SAC cannot be ruled out beyond reasonable scientific doubt. We support Natural England's position.

### 5. The RSPB's position

- 5.1 We have not seen any new information presented by the Applicant that alters our position set out at the end of the Examination. We consider that an adverse effect on the integrity of The Wash SPA/Ramsar site cannot be ruled out beyond reasonable scientific doubt. A robust compensation package that can be shown to be ecologically viable and legally and financially securable must be in place. We support the principle of securing suitable sites close to both the Witham mouth and the application site to provide alternative roosting and foraging. However, we continue to have serious concerns with the Applicant's compensation package, do not consider it meets the criteria set out in Table 12 of our Written Representation (Section 10, pp.103-106; REP1-060), as discussed in our Response to Rule 17 Questions at Deadline 10 (pp.2-13; REP10-046), and consider substantive detail is missing to provide the Secretary of State with the necessary confidence that the coherence of the National Site Network would be protected. Therefore, consent should be refused.