



**The RSPB's response to Secretary of State's
letter of 25th May 2023**

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

**Submitted
8 June 2023**

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
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1. The RSPB's view of the Applicant's DCO submission and compensation proposals

Overview of the RSPB's position

1.1. The Boston Alternative Energy Facility's DCO application continues to have significant uncertainties regarding its appropriateness and deliverability. There remains no confidence that the integrity of the UK's National Sites Network would be maintained. These uncertainties remain despite significant additional time post-examination to address deficiencies in the Applicant's evidence base and derogation case. We consider these outstanding uncertainties result from:

- **A failure to recognise or appreciate the technical challenges of developing such a facility adjacent to a site as sensitive as The Wash.** This is demonstrated through the Applicant's failure to commission any bird surveys until after the Preliminary Environmental Information Report had been consulted on, a failure to accept the functional linkage of the application site to The Wash SPA/Ramsar, and a reluctance to discuss compensation measures until after the first DCO application was forced to be withdrawn due to a lack of information.
- **Acceptance of the DCO application despite significant concerns by regulators and Interested Parties at the point the application had been submitted.** This relates to the evidence base to ensure ecological impacts would be addressed. We are still debating suitable locations for compensation sites, whether the Applicant has the ability to secure compensation sites, whether all legal consents can be secured, whether suitable funding has been secured or put in place etc. All these issues should have been addressed prior to Examination. It is critical that sufficient detail outlining how significant legal and regulatory barriers associated with each measure will be overcome, instead of asserting confidence these barriers will be resolved in the future once DCO consent has been granted.
- **Substantial evidence gaps around the Applicant's derogation case at DCO submission and post-examination.** It remains unclear if all alternatives have been explored by the Applicant to ensure the current proposal is the least environmentally damaging, or that there is a suitable needs case for the development (i.e. could the proposed objectives of the development be achieved through other projects that would have less environmental impact?).

1.2. We consider these all undermine the ability to assess and determine whether a specific compensation measure can meet the ecological, technical and legal requirements, to enable the Secretary of State to have confidence that it will have a reasonable guarantee of success, and

thereby protect the overall coherence of the relevant species' National Site Network (see Appendix 1 where we have revisited the criteria for identifying and delivering compensation measures¹, as set out in Table 12 of our Written Representations (REP1-060) and provide our assessment of the Applicant's current position with respect to the criteria).

- 1.3. For some compensation proposals, notably the proposed alternative roosts within The Wash SPA/Ramsar, the issues are so fundamental that measures should not be considered as a possible compensation measure (as outlined our submission of 15th May 2023). At this stage, the RSPB has no confidence in any of the compensation measures being deliverable due to the failure to confirm a suitable water supply, or that the necessary planning and legal consents will be obtained.
- 1.4. We consider it regrettable that these issues have not been resolved through a combination of fuller application documentation and submission of more substantive information pre-examination, during the examination, and through further information requested post-examination. Consequently, this has led to a significant delay in reaching a decision on the DCO.

Example of Able Marine Energy Park demonstrating the need to ensure sufficient detail of the development is agreed pre-consent

- 1.5. With respect to securing a suitable water supply, we refer back to our Deadline 10 response to the Rule 17 questions (REP10-046).and our illustrative example of the Able Marine Energy Park.
- 1.6. The Able Marine Energy Park² was consented by the Secretary of State on 18 December 2013 and was approved on the basis that compensation measures would be secured, designed and delivered following consent of the DCO. Part of the proposed compensation for this scheme is an area of wet grassland known as the Cherry Cobb wet grassland and this was subject to a separate planning application.³ At the time of the original DCO examination and the subsequent planning application, Natural

¹ EC (2018) Managing Natura 2000 sites – The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC (21/11/18) C(2018) 7621 final.

² See <https://infrastructure.planninginspectorate.gov.uk/projects/yorkshire-and-the-humber/able-marine-energy-park/>

³ 13/30266/CONDET | Submission of details required by Condition 5 (Environment Management Plan), Condition 6 (Water Level Management Plan), Condition 7 (Pond Design) of planning permission <https://newplanningaccess.eastriding.gov.uk/newplanningaccess/applicationDetails.do?activeTab=documents&keyVal=MPPVEVBJ0PH00>

England and the RSPB had concerns over whether the site would be functional with the current water budget and supply calculations.⁴

- 1.7. After the proposal was consented, further work was carried out on the hydrological calculations.⁵ This showed that there would be a shortfall in freshwater supply to the site and the potential need to use either a desalination plant or use mains supply potable water in dry periods to maintain the functionality of the compensation habitat. As a result, Natural England expressed further concerns regarding water supply and appropriateness of the site design. Discussions about site redesign and water supply were happening over eight years after the initial consent was granted.
- 1.8. We consider this aspect of the Able Marine Energy Park compensation provides a clear example of where deferring to the post-consent period the agreement of critical detail that goes to the ecological viability of a compensation measure is not appropriate when the decision maker must have confidence the compensation measure will work in practice.
- 1.9. The Able Marine Energy Park example also highlights how the timeline for delivery of compensation measures can be impacted by the need to resolve planning and legal consents not secured as part of the DCO permission. It is precisely for this reason we have highlighted our concerns about the Applicant's approach to the securing of all necessary consents and why we have serious concerns that the Applicant's outlined timeline for delivery does not appear to be realistic.

Outstanding information that the RSPB considers necessary in order for the Secretary of State to safely consent the DCO

- 1.10. In order for the Secretary of State to safely determine the DCO, the RSPB considers the following information would need to have been submitted and reviewed by Interested Parties to provide confidence that due process has been followed and that adverse effects on the integrity of The Wash SPA/Ramsar will be addressed:
 - **Confirmation that land has been legally secured** to enable compensation sites to be developed and maintained to maintain the integrity of the National Sites Network (any compensatory habitat

⁴ RSPB comments on 12/30266/CONDNET
https://newplanningaccess.eastriding.gov.uk/newplanningaccess/files/E6DC8FFD1BA0F96237D4F7773B4AD654/pdf/13_30266_CONDET-RSPB-1088587.pdf

⁵ Hydrological calculation explanation note
https://newplanningaccess.eastriding.gov.uk/newplanningaccess/files/C3DA50DD06CB2BAC755D80307F6980A0/pdf/21_30100_CONDET-HYDROLOGICAL_CALCS_EXPLANATORY_NOTE-3968871.pdf

created should be to a standard to enable it to be included as part of The Wash SPA/Ramsar). Whilst a 'letter of comfort' may signify an intent to lease land to the Applicant this is not the same as a signed agreement that can be set before the Examination, including to check that the terms of the lease are compatible with meeting specified compensation objectives. We do not consider that this provides the certainty required in order to satisfy the tests of the Habitats Regulations. We have also commented on why we do not consider that 30-year leases are appropriate with respect to the delivery of compensation measures. These measures are designed to maintain the integrity of the National Site Network with the expectation that they would be designated as part of the National Site Network. Such sites must therefore be provided and maintained in perpetuity; a 30-year lease is simply not acceptable.

- **Confirmation of financial security.** Without detailed and costed plans for the creation and long-term management of the compensation measures, we are not clear how the Applicant can have a proper basis for costing the compensation measures and therefore putting the necessary financial guarantees in place. This relates in particular to fencing, vegetation management, water pumping costs and other site management requirements needed to maintain the compensation sites in the long-term given the uncertainty of site location and the ability to consider the full requirements needed to effectively deliver and maintain the necessary ecological functions in the long term. These guarantees must be secured via an appropriate mechanism and in place prior to consent being granted.
- **Confirmation that all necessary consents and licenses have been secured.** The Applicant has deliberately chosen to pursue these separately from the DCO process and there is no confirmation from the Environment Agency, Marine Management Organisation, Internal Drainage Boards or Boston Borough Council that necessary consents would be given based on the currently available information.
- **Revised derogation case** that ensures a more comprehensive evidence base is provided to demonstrate that a) all potential alternative solutions have been considered that would be less environmentally damaging, b) that there is a very clear needs case presented that is in line with local planning policy and c) that the proposed development does indeed meet the appropriate tests for Imperative Reasons for Overriding Public Interest.
- **Detailed designs for the proposed compensation sites** to, for example, ensure that an appropriate type and scale of habitat will be created, understand volumes of spoil that will be created and inform water volumes needed to create and maintain the appropriate ecological requirements that meet the needs of the different features of The Wash/Ramsar that will be impacted.

- **Detailed ecological assessments** to understand the impact of development of the compensation sites on protected features, including any constraints that would need to be overcome or management required to ensure success.
- **Detailed water budget** to understand the water requirements to create and maintain the compensation habitats.
- **Detailed hydrological assessments** to identify suitable water sources, water quality and salinity required to ensure suitable water supply will be available when required (as determined by the ecological assessments).
- **Confirmation a sufficient water supply exists** from the Internal Drainage Board to enable the compensatory habitat to be created.
- **Water Framework Directive Assessment** needed to confirm that the proposed works would not impact water quality within the wider area or that any abstraction of saline water will not cause an adverse effect on integrity.
- **Detailed spoil disposal plans/Quantity Survey.** There needs to be a clear understanding of how much material could be disposed of on site and if there will need to be any waste licencing to dispose of any material not able to be reused within the site. This will be dependent on having a detailed design to inform how much material would be used for any land raising requirements, such as islands and any bunding to retain water above ground level and/or prevent flooding of adjacent land.
- **Understanding of any wider assessments that would need to be undertaken in order to meet planning requirements.** These could include, for example: archaeology, landscape assessments, unexploded ordnance. A full suite of assessments required by the local authority (Boston Borough Council) should be requested to understand the complexity of developing the compensation sites. This information is also essential to ensure appropriate conclusions are being made about the timelines for the proposed development.

1.11. Based on the above, the RSPB considers that the Secretary of State does not have an adequate package of compensation measures in front of him that would enable him to safely conclude the overall coherence of the SPA National Site Network would be protected and therefore be able to safely grant consent for the DCO as currently presented.

Government recognition of the biological importance of The Wash

1.12. The Wash is the most important estuary in the UK, providing a vital site for birds migrating along the east Atlantic flyway and supports many rare and priority species and habitats. As a consequence, The Wash along with

other east coast wetland sites between Yorkshire and Kent, have been added to the Tentative List for designation as a World Heritage Site, with Government support, as set out in the announcement of successful applications on 10th April 2023 (emphasis added):

*"Five new sites from across the UK and Overseas Territories have been added to the Tentative List meaning they are **now part of a seven site list to be put forward by the Government for inscription on the illustrious list.***

The Tentative List is published around every ten years by the UK Government. It sets out the sites it feels have the best chance of succeeding and will now work with local authorities and devolved administrations to develop their bids...

UNESCO also awards World Heritage Site status to the most extraordinary natural places on the planet...

The East Atlantic Flyway, a migratory bird route over western parts of Europe including Yorkshire, Lincolnshire, Norfolk, Suffolk, Essex and Kent, joins the UK's list in recognition of its vital importance to bird populations and wildlife. The area sees huge transient bird populations pass through every year as the seasons change...

Heritage Minister Lord Parkinson of Whitley Bay said:

*"Today we are confirming **our support** for some of the most enchanting heritage sites and breathtaking landscapes in the UK and its Overseas Territories as they bid for UNESCO World Heritage Site status.*

"All the locations being put forward would be worthy recipients of this accolade – and we will give them our full backing so they can benefit from the international recognition it can bring."⁶

Should the DCO be consented, the RSPB considers this would be at odds with Government recognition of the importance of The Wash and the World Heritage Site application.

Conclusion

- 1.13. We continue to have serious concerns about the Applicant's compensation measures. Whilst we welcome progress on the identification of sites in suitable locations we have no confidence in the Applicant's ability to

⁶ Government article announcing nominated sites for World Heritage Site status: <https://www.gov.uk/government/news/seven-sites-confirmed-in-the-running-for-unesco-world-heritage-status> (Accessed 24/05/2023)

secure a suitable supply of water or obtain the necessary planning and legal consents.

- 1.14. We consider that a damaging precedent would be set should this application be consented given the substantial outstanding information and the conscious decision by the Applicant to have deviated from best practice approach to the DCO process.

2. The RSPB's comments on the 'Applicant's Response to Secretary of State's Letter of 24th April 2023.

- 2.1. The RSPB has welcomed the additional information submitted by the Applicant since the close of the Examination. However, we continue to have serious concerns about the Applicant's approach to the DCO process and their evidence base. We have provided detailed comments on these issues both through the Examination and at each of the additional information requests made by the Secretary of State since the Examination closed. Our position remains that there is insufficient information to conclude that there would not be an adverse effect on integrity of The Wash SPA/Ramsar.
- 2.2. We have reviewed the latest submissions by the Applicant and Table 1 below provides our responses to comments made by the Applicant in their 'Response to Secretary of State's Letter of 24th April 2023.

Table 1: The RSPB's comments on the Applicant's 'Response to Secretary of State's Letter of 24th April 2023' document

Para	The Applicant's comment	The RSPB's response
2.1.4	<p>The measures proposed to mitigate impacts to SPA birds during construction are: the Habitat Mitigation Area, providing additional roosting areas (which would be in place and available prior to construction occurring); together with fencing of the construction area (which would be in place prior to construction commencing); the condition for no piling to take place during overwintering periods¹; and restrictions on dredging for sensitive environmental periods around fish movements.² These measures, together with monitoring of the behaviour of birds during construction with incorporated adaptive monitoring and management, should ensure that no significant disturbance occurs.</p>	<p>The RSPB position remains that impacts are occurring from the point that construction starts and these have not been addressed by the Applicant.</p>
2.1.6	<p>This timeline for development of the compensation features is highly conservative and allows 20 months lead-in time prior to construction of the habitats (for permits and design together with agreement with the Ornithology Engagement Group (OEG) on the plans), 12 months for construction of the habitats and two years for subsequent adaptive management/development to ensure functional habitats.</p>	<p>20-months is limited given the need for assessments to be conducted to inform design of compensation sites and then complete the necessary planning. Given the nature of the area 12-24 months of ecological survey work would be expected, along with more detailed hydrological assessments. This does not consider the landscape assessment work that would also be required. Securing land is also essential. We have set out our position on the timeline for creation of new habitats. 12 months to construct the habitat will be dependent on the condition of the site and any</p>

Para	The Applicant's comment	The RSPB's response
		<p>challenges in getting suitable water supply on site, as well as addressing issues such as archaeology, unexploded ordnance etc. Two years for adjusting the habitat to ensure it is functioning may be appropriate, but this will be dependent on the complexity of the final scheme design. We have highlighted that this could take longer.</p>
2.1.8	<p>Natural England's most recent 'compensation timing' suggestions (i.e. to "<i>ensure that compensation measures are sufficiently delivering prior to construction works commencing</i>" or that compensation measures should be fully functioning prior to works commencing) are not considered to be feasible, or justified by evidence. The wording proposed is arbitrary and provides for no clear milestone or end point. 'Fully functioning' infers that the habitats are being used by birds already, but the habitats may not be used until any actual impact occurs (should an impact in occur which causes displacement of the birds from their existing alternative roosting sites). Therefore, it will not be possible to determine whether the sites are delivering compensation or are 'fully functional' until the impact occurs. The habitats will be constructed and have been developing for a minimum of two years; Natural England previously considered this proposal acceptable at Deadline 9 of the Examination. The Applicant would (if required) expect to</p>	<p>Where habitat is created close to optimum foraging areas our experience is that sites do get used. Should sites not be used then it will be necessary to explore monitoring data to inform what is happening with the birds on The Haven and The Wash SPA/Ramsar site and enable the OEG to make informed decisions about any further actions that may be required to meet the "fully functioning" criteria.</p>

Para	The Applicant's comment	The RSPB's response
	progress the compensation works in accordance with paragraph 2.1.7 above.	
2.1.9	Once farming activity has ceased and groundworks have been carried out to make the site more attractive to birds it is expected that birds would use the area relatively quickly (birds can be expected to be using the site within the first few months, whilst other species would be expected to use the sites once the vegetation/wetland habitat has had time to establish over the two-year period).	Only a few species will benefit from any immediate changes from arable. The main requirement for wetland habitats will only happen once suitable water supply has been established for the sites. This remains a serious uncertainty with all identified compensation sites at this stage. Any compensation habitat must ensure it meets the ecological requirements of the bird species affected and it is disingenuous to suggest that habitat could be considered functioning once groundworks have been completed. LiDAR and the presence of a ditch network will identify potentially suitable areas to investigate their potential for wetland creation, but <u>will not</u> provide certainty that a site will <u>actually</u> be viable; this requires more detailed site assessment. This again highlights the importance of ensuring that all decisions are signed off through the OEG.
2.1.11	Work previously undertaken to investigate the topography of each potential compensation site in relation to the water levels to show that it would be feasible to create wetland areas has been updated for the current submission deadline (document reference 9.112(1)) to show the results for Corporation Point. It confirms that wetland creation is also feasible in this area.	Whilst it might appear feasible to create habitat that could function as wetland habitat, this is dependent on a suitable water supply. It remains unclear what water budgeting has been undertaken by the Applicant to consider: 1. volume of water needed for each site

Para	The Applicant's comment	The RSPB's response
		<p>2. volume of water available to the Applicant to create and maintain the habitat</p> <p>3. infrastructure needs to store water should any deficits in the water budget be identified.</p> <p>We have detailed our concerns on this issue throughout the Examination.</p>
Table 2-1, No. 4, p.7	...Fencing would also be established around the construction area to minimise visual disturbance...	The measures outlined do not appear to address the loss of habitat associated with the area where vessels will be moored at the wharf site. This will cause the direct loss of mudflat available for foraging. This does need to be accounted by the developer, but will not be delivered through the proposed Habitat Mitigation Area. Foraging habitat will be created through the proposed compensation sites, hence the need for this to be created and fully functioning prior to construction starting.
Table 2-1, No. 5, p.8	1. the OEG is consulted on the Ornithology Compensation Implementation and Monitoring Plan (OCIMP) prior to submission to the Secretary of State for approval and the OEG shall consulted further as required during the OCIMP approval process (paragraph 3 of Schedule 11 to the dDCO);	The Applicant's proposed wording provides no confidence that the OEG's position would be taken on board in submitting the OCIMP. Without prejudice to our overarching objection to the scheme, should consent be granted there needs to be a formal oversight group that signs off on any such documents to ensure that the plans will meet the ecological requirements for all species and habitats impacted by the proposal. We have no

Para	The Applicant's comment	The RSPB's response
		<p>confidence in the Applicant's approach to the DCO process that appropriate decisions will be made with respect to the OCIMP. This is based on:</p> <ul style="list-style-type: none"> • When the RSPB first engaged with the proposed development (after the Preliminary Environment Information Report was submitted for consultation), no bird surveys had been completed despite the presence of The Wash SPA/Ramsar. • Despite outstanding concerns from interested parties about the Applicant failing to address concerns that it was not possible to conclude that an adverse effect on integrity would not occur, the DCO application was submitted to the Planning Inspectorate. • During the Examination, substantial new information was presented on the Applicant's derogation case. This attempted to address considerable detail that should have been considered prior to the Examination when there was more time to develop detailed proposals. • Despite additional information being provided, this has not been adequate to address potential adverse effects on integrity of The Wash SPA/Ramsar.

Para	The Applicant's comment	The RSPB's response
		<ul style="list-style-type: none"> • Post-examination there remain significant outstanding concerns about the Applicant being able to deliver adequate compensation measures. This is linked to the lack of secured land, failure to confirm an adequate water supply, and there is no certain that any Environmental Permits, Marine Licenses or other consents would be granted. <p>Consequently, our position remains that should consent be granted, and without prejudice to our overarching objection to the scheme, the role of the OEG must be further strengthened.</p>
Table 2-1, No. 6, p.9	The Applicant confirms that it expects the OEG to be a critical party in aiding the detailed design of successful compensation measures (should these be decided by the Secretary of State to be necessary).	The phrase "critical party" is ambiguous and confirms the need to add additional clarity on the role of the OEG with Schedule 11.
Table 2-1, No. 7, p.14	<ul style="list-style-type: none"> • Finally, the Applicant considers that the OEG has a vital role in the evolution of the OCIMP. However, it would not be appropriate for the OEG to be responsible for approving the OCIMP; that responsibility must sit solely with the SoS. 	Without prejudice to our overarching objection to the scheme, should consent be granted the OEG should provide final sign off on documents to be provided to the SoS. The advice provided by the OEG to the SoS should ensure that the plan is appropriate and that there is a consensus with all relevant parties that the plan is justified and appropriate to meet the ecological requirements of the features affected. "Approval" in this context is

Para	The Applicant's comment	The RSPB's response
		simply for an agreed plan to be submitted to the SoS for their approval.
Table 2-1, No. 88[sic], p.15	The Applicant reiterates that the OEG has a vital role in the evolution of the OCIMP. However, it should not be responsible for confirming the Applicant's compliance in terms of implementing any compensation measures. The Applicant is confident that the dDCO contains sufficient controls to require the delivery of the measures (if required by the SoS). If there should be any non-compliance with the terms of Schedule 11 to the DCO, enforcement action could be taken against the undertaker.	Without prejudice to our overarching objection to the scheme, should consent be granted the OEG should be able to report to the SoS to confirm it is satisfied that all measures have been undertaken by the Applicant to ensure suitable compensation measures will be in place and that the OEG is satisfied that all necessary ecological requirements will be met. This will provide supporting information to the SoS that the OCIMP can be considered compliant. The OEG should therefore be seen as mechanism by which the SoS can have confidence that the right approach is being taken to the development and required mitigation and compensation measures.
Table 2-1, No. 9, p.15	The Applicant does not believe that there is a reasonable justification for the OEG having an approval role in respect of amendments to the OCIMP; the SoS must be the relevant arbiter.	It is expected that the SoS would seek advice on whether any amendments to the OCIMP were reasonable. By using the OEG to provide this guidance, the RSPB's recommendation is seeking to ensure the process is as efficient as possible. This is particularly important given the capacity issues faced by many interested parties. A statement from the OEG confirming that it was satisfied with the OCIMP and any amendments would seem a practical and pragmatic approach to ensuring consensus had

Para	The Applicant's comment	The RSPB's response
		been reached on the proposals and avoid the need for any lengthy additional information requests.

Appendix 1:

For each criterion for identifying compensation proposals (as set out in Table 12 of our Written Representation; REP1-060), we have accorded them each a Red, Amber, Green rating in Table 2 below. The RSPB's Red, Amber, Green (RAG) rating is assessed as follows:

- **RED**: Criteria not met and substantive issues relating to viability and feasibility of the measure are unresolved. Substantial evidence gaps remain. Unless complex issues resolved before consent, RSPB advice is that the Secretary of State cannot conclude that the coherence of the National Site Network for the affected species will be protected.
- **AMBER**: Criteria not fully met: significant issues relating to viability and feasibility of the measure are unresolved. Significant evidence gaps remain. Unless these issues are resolved before consent, the RSPB advice is that the Secretary of State is at risk of agreeing to a compensation measure that will not protect the coherence of the National Site Network for the affected species.
- **GREEN**: Criteria met. No substantive or significant issues relating to viability and feasibility of the measure remain. Any remaining issues are relatively minor and could be dealt with through requirements under the DCO

Table 2: Criteria for designing compensatory measures

EC criteria	EC guidance summary (emphasis added)	RSPB additional commentary	RSPB assessment of Applicant's compensation measures
<p>Targeted</p>	<p>Measures should be the most appropriate to the impact predicted and focused on objectives and targets addressing the Natura 2000 elements affected.</p> <p>Must refer to structural and functional aspects of site integrity and habitats/species affected.</p> <p>Must consist of ecological measures: payments to individuals/funds are not appropriate.</p>	<p>Clear objectives and success criteria must be established for the compensation measures.</p> <p>Must address the ecological functions and processes required by impacted species/habitat. Requires shared understanding and agreement on what the impacts are i.e. need to agree nature, magnitude including that they will continue for as long as the project's impacts. This includes the time likely to be required for the SAC/SPA to recover from those impacts in the case of proposals that are in place for a specified time period.</p> <p>This is in order to define objectives for compensation measures and to set out the success criteria to determine whether those objectives have been/are being achieved.</p>	<p>Suitable locations for features of The Wash SPA/Ramsar using <u>the upper and middle reaches of The Haven.</u></p> <p>More detail needed to confirm suitable water supply to develop and maintain wetland targeted at the ecological requirements of the impacted features.</p> <p>More certainty needed that all planning and consenting requirements can be met.</p> <p>No suitable compensation measures identified for impacts to features <u>at the mouth of The Haven.</u></p>

EC criteria	EC guidance summary (emphasis added)	RSPB additional commentary	RSPB assessment of Applicant's compensation measures
Effective	<p>Based on best scientific knowledge available alongside specific investigations for the location where the measures will be implemented. Must be feasible and operational in reinstating the conditions needed to ensure the overall coherence of the Natura 2000 network.</p> <p>Measures where no reasonable guarantee of success should not be considered. The likely success of the compensation scheme should influence final approval of the plan or project in line with the prevention principle.</p> <p>The most effective option, with the greatest chance of success, must be chosen.</p>	<p>Scientific evaluation of proposed measures must be carried out before consent is granted to avoid agreeing to measures that is/are not effective or technically feasible. This should include appropriate baseline survey and assessment.</p> <p>Compensation must address the impacted SPA/SAC (or Ramsar site) feature to ensure overall coherence of the network for that feature is maintained. Substitution is not acceptable.</p> <p>Must be clearly defined timescales for delivery and measuring success (See success criteria under Targeted above).</p> <p>Monitoring must directly relate to the target species or habitat and the relevant ecological functions and processes.</p> <p>The compensation measures should be provided in perpetuity in line with obligations to ensure the overall</p>	<p>Suitable locations for features of The Wash SPA/Ramsar using <u>the upper and middle reaches of The Haven.</u></p> <p>More detail needed to confirm suitable water supply to develop and maintain wetland targeted at the ecological requirements of the impacted features.</p> <p>More certainty needed that all planning and consenting requirements can be met.</p> <p>The lack of this critical information means that high levels of uncertainty continue to surround the effectiveness of the proposed locations and measures, such that there cannot, at this time, be a reasonable guarantee of success.</p> <p>No suitable compensation measures identified for impacts to features at <u>the mouth of The Haven.</u></p>

EC criteria	EC guidance summary (emphasis added)	RSPB additional commentary	RSPB assessment of Applicant's compensation measures
	<p>Detailed monitoring required to ensure long-term effectiveness with remediation provisions if shown to be less effective.</p>	<p>coherence of the National Site Network is maintained.</p> <p>Where it is not possible to devise compensatory measures to offset the adverse effects on site integrity, the project should not proceed.</p>	
Technical feasibility	<p>Design must follow scientific criteria and evaluation in line with best scientific knowledge and take into account the specific requirements of the ecological features to be reinstated.</p>	<p>See Effective above.</p>	<p>More detail needed to confirm suitable water supply to develop and maintain wetland.</p> <p>More certainty needed that all planning and consenting requirements can be met.</p> <p>The lack of this critical information means that high levels of uncertainty continue to surround the technical feasibility of the proposed locations and measures, such that there cannot, at this time, be a reasonable guarantee of success.</p>
Extent	<p>Extent required directly related to:</p>	<p>Based on an assessment of the necessary ecological requirements to restore species' populations and the</p>	<p>Suitable locations for features of The Wash SPA/Ramsar using <u>the upper and middle reaches of The Haven.</u></p>

EC criteria	EC guidance summary (emphasis added)	RSPB additional commentary	RSPB assessment of Applicant's compensation measures
	<ul style="list-style-type: none"> - the quantitative and qualitative aspects inherent to the elements of integrity likely to be impaired - estimated effectiveness of the measure(s) <p>Therefore, ratios best set on a case-by-case basis. Ratios should generally be well above 1:1. Ratios of 1:1 or below only considered when shown measures will be fully effective in reinstating structure and functionality in a short period of time.</p>	<p>related habitat structure and functions identified in the compensation objectives. Determining the minimum appropriate quantity will require an understanding of the quality of the compensation measures and how effective they will be in reinstating the required structures and functions.</p> <p>Any identified uncertainty in success should be factored in to increased ratios.</p> <p>Ratios need to be used where they make ecological sense and will help secure a successful outcome by providing more of something. Simply multiplying capacity to address uncertainty risks giving a false level of confidence.</p> <p>If there is no reasonable guarantee of success that measure should not be considered (see Effective under EC criteria).</p>	<p>More detail needed to confirm suitable water supply to develop and maintain wetland targeted at the ecological requirements of the impacted features.</p> <p>More certainty needed that all planning and consenting requirements can be met.</p> <p>Lack of detailed plans for the compensation sites means that the full extent of habitat that could be created on the identified sites is unclear. For example if water storage reservoirs were required to maintain the habitats it is critical to understand what impact this would have on the habitat extent needed to meet the ecological requirements of the impacted species. Therefore uncertainty continues to surround the extent of the proposed locations and measures, such that there cannot, at this time, be a reasonable guarantee of success.</p>

EC criteria	EC guidance summary (emphasis added)	RSPB additional commentary	RSPB assessment of Applicant's compensation measures
			No suitable compensation measures identified for impacts to features at <u>the mouth of The Haven</u> .
Location	<p>Located in areas where they will be most effective in maintaining overall coherence of the Natura 2000 network.</p> <p>Pre-conditions to be met include:</p> <ul style="list-style-type: none"> - must be within same range/ migration route/wintering areas for bird species and provide functions comparable those justifying selection of original site esp. geographical distribution; - must have/be able to develop the ecological structure and functions 	<p>While the preference is for compensation measures as geographically close to the location of the damage, it is important to consider whether or not the compensation measures will be subject to pressures impacting their efficacy in that location e.g. prey availability, disturbance, and/or other impacts from the same or similar developments.</p> <p>Therefore, compensation measures should be located so as to maximise proximity while minimising external pressures that may reduce likelihood of success.</p> <p>Compensation measures proposed to benefit one SPA/SAC/Ramsar site feature must not result in damage to the integrity of any other</p>	<p>Suitable locations for features of The Wash SPA/Ramsar using <u>the upper and middle reaches of The Haven</u>.</p> <p>More detail needed to confirm suitable water supply to develop and maintain wetland targeted at the ecological requirements of the impacted features. More certainty needed that all planning and consenting requirements can be met.</p> <p>Lack of detailed plans for the compensation sites means that it is unclear if the proposed locations will allow for all technical requirements to be met. For example, can a suitable water supply be developed for each compensation site to meet the ecological requirements of the features of The Wash SPA/Ramsar affected by the development.</p>

EC criteria	EC guidance summary (emphasis added)	RSPB additional commentary	RSPB assessment of Applicant's compensation measures
	<p>required by the relevant species (or habitat)</p> <p>- must not jeopardise integrity of any other Natura 2000 site.</p> <p>Spatial search hierarchy starting as close as possible to the impacted Natura 2000 site and working out from there.</p>	<p>SPA/SAC/Ramsar site and their features.</p>	<p>Therefore significant uncertainty continues to surround the location of the proposed sites.</p> <p>No suitable compensation measures identified for impacts to features at <u>the mouth of The Haven</u>.</p>
<p>Timing</p>	<p>Case by case approach but must provide continuity in the ecological processes essential to maintain the structure and functions that contribute to the Natura 2000 network coherence.</p> <p>Requires tight co-ordination between implementation of the plan or project and the compensation measures.</p> <p>Factors to consider include:</p>	<p>Compensation measures should be fully functional before any damage occurs to ensure the overall coherence of the National Site Network is protected. This requires careful alignment of the timelines for implementing the plan or project and the compensation measures.</p> <p>Suggested time lags in delivering fully functional compensation will need to be carefully considered and can only be accepted where this will not compromise the continuity of essential ecological processes.</p>	<p>More certainty needed that all planning and consenting requirements can be met. This will be dependent on have sufficient detail on the site design to understand the range of assessment work required to secure all necessary consents. The range and technical nature of the assessments will determine the timeline for the project. No detailed confirmation of the different assessments required have been outlined, therefore there is no confidence in the Applicant's proposed timeline.</p>

EC criteria	EC guidance summary (emphasis added)	RSPB additional commentary	RSPB assessment of Applicant's compensation measures
	<ul style="list-style-type: none"> - no irreversible damage to the site before compensation in place - compensation operational at the time damage occurs. If not possible, over-compensation required - time lags only admissible if will not compromise objective of "no net loss" to coherence of Natura 2000 network; - May be possible to scale down in time depending on whether the negative effects are expected to arise in short, medium or long term. <p>All technical, legal or financial provisions must be completed before plan or project implementation starts to prevent unforeseen delays that compromise</p>	<p>Any effect of delay should be factored into the design and additional compensation measures provided (see also Extent above).</p>	<p>The lack of this critical information means that high levels of uncertainty continue to surround the timing of the compensation delivery, such that there cannot, at this time, be a reasonable guarantee of success.</p>

EC criteria	EC guidance summary (emphasis added)	RSPB additional commentary	RSPB assessment of Applicant's compensation measures
	effective compensation measures.		
Long-term implementation	Legal and financial security required for long-term implementation and for protection, monitoring and maintenance of sites to be secured before impacts occur.	<p>Legal rights to secure and implement the compensation measures must be in place prior to consent being granted.</p> <p>And robust financial guarantees are required to fund implementation, monitoring and any necessary remediation measures.</p> <p>In line with Government policy, the Government should commit to including compensation measures, once delivered, within the National Site Network.</p>	<p>More detail needed to confirm suitable water supply to develop and maintain wetland.</p> <p>More certainty needed that all planning and consenting requirements can be met.</p> <p>The lack of this critical information means that high levels of uncertainty remain that the compensation measures will have the necessary legal and financial security, such that there cannot, at this time, be a reasonable guarantee of success.</p>

