



Meeting note

Project name	Boston Alternative Energy Facility
File reference	EN010095
Status	FINAL
Author	The Planning Inspectorate
Date	26 February 2021
Meeting with	Alternative Use Boston Projects Limited
Venue	Microsoft Teams Meeting
Meeting objectives	Project Update
Circulation	All attendees

Summary of key points discussed and advice given

The Planning Inspectorate (the Inspectorate) advised that a note of the meeting would be taken and published on its website in accordance with section 51 of the Planning Act 2008 (the PA2008). Any advice given under section 51 would not constitute legal advice upon which applicants (or others) could rely.

Update from previous meeting

The Applicant confirmed that following its meeting with the Inspectorate on [7 January 2021](#) the dredging and Crown Land issue has been addressed by extending the Order limits and consulting with the Crown Estate. The Applicant also advised that the Funding Statement has been updated.

HRA Update

The Applicant has prepared a draft Habitats Regulations Assessment (HRA) Report for review. The Inspectorate's comments on this are at Annex A. The Applicant confirmed it is engaging with RSPB, Natural England (NE) and Lincolnshire Wildlife Trust regarding the HRA. The Applicant advised that these parties are not currently in agreement in respect of the outcome of the draft HRA (of no Adverse Effect on Integrity), due to their view that there is insufficient ornithological data presented at this time. The Applicant advised that the key issue is the loss of roosting and feeding habitat for redshank within The Haven. There is an area of land to the south of the Order limits, assumed to be Crown land, which could be used as mitigation in that it would provide a location to re-use the rocks that are used by roosting birds in the proposed footprint of works and enable habitat enhancement of foraging areas. Natural England has suggested that the Applicant needs to provide a detailed compensatory package addressing issues identified in the HRA in order for the Inspectorate to accept the application.

The Applicant is also looking at the impact of increased vessel movements at the mouth of the Haven and whether there is potential for an adverse effect on integrity that would then require compensation.

The Applicant sought the Inspectorate's advice about the merits of including a "without prejudice" compensation package in the application.

The Inspectorate stated that they could not advise the Applicant when to submit their application and it was for the Applicant to decide whether or not to provide a without prejudice compensation package. The Applicant was advised to ensure the ES includes assessments of any land included for mitigation/compensation outside the Order limits.

The Inspectorate advised the Applicant to include an audit trail of the conversations had with RSPB and NE in the HRA documentation to provide confidence that engagement with key stakeholders on these matters was being proactively pursued and that tangible progress is shown. Following on from that, the Inspectorate advised the Applicant to provide evidence of any risk management in the application documentation.

The Inspectorate advised the Applicant to address specific details on how the measures of the thresholds of bird numbers for construction mitigation are to be secured by the DCO or other binding provision and at what point in time the thresholds would be agreed (pre or post-consent). This would provide comfort regarding the certainty that the SoS could ultimately attach to such measures.

The Applicant queried hypothetically whether if the application was submitted without a compensation package, and the application was accepted, the Inspectorate could agree to an extended pre-examination period so that they could then prepare that work, if necessary. The Inspectorate pointed the Applicant towards the Department for Communities and Local Government's examination guidance, which states that the Secretary of State's expectation is that the start of an examination will not normally be postponed longer than an additional three months to the usual 3 to 4 month Pre examination period.

Resubmission Date

The Inspectorate enquired about the Applicant's intended timeframe for resubmission. The Applicant confirmed it intends to resubmit the application as soon as possible. The Inspectorate suggested the Applicant could produce a "without prejudice" compensation package prior to resubmission, if necessary, and advised it to make any necessary amendments to the HRA Report and ES.

Annex A

The Inspectorate provided the following comments on the Applicant's draft HRA. The comments are limited by the time available and are raised without prejudice to the acceptance or otherwise of the eventual application.

The Inspectorate notes the revised assessment conclusions (which are no longer reliant on mitigation measures to conclude no Adverse Effects on Integrity (AEoI) as was the case in earlier iterations of the HRA report). The report would benefit from commentary on the robustness of the approach from NE, RSPB and any other relevant consultation body views where this is available. Although there are citations of additional meetings in Appendix A17.1.3 of the revised report, original copies of minutes / formal written responses etc would be useful (as advocated in PINS AN10). The Applicant is strongly encouraged to seek to agree SOCGs with relevant organisations, and in this case, draft / framework versions of SOCGs with NE and RSPB at the point of making the DCO application would be a good way to articulate the outcomes of the most recent engagement with NE and RSPB around the revised HRA conclusions. These are valuable both in terms of matters that are agreed and those which remain in dispute / subject to further discussion.

Paragraphs A17.6.5 - A17.6.25. The worst case loss of intertidal habitat is stated as being 1ha, and the conclusion is that the habitat in the wider area would be able to support feeding and roosting birds affected by the proposed Facility with no AEoI. It may be worth clarifying the size of "Area B" in comparison to the loss, and whether or not the conclusions in A17.5.25 refer to just "Area B" or if it is other land beyond this (as seems to be the case). It may be that this is stated somewhere but has not been picked up in the time we have had to review. Further, although not apparently relevant to the HRA conclusions, we understood from the last meeting that it is proposed that "Area B" (and / or other areas) are to be enhanced as part of the wider mitigation / enhancement package. It may be worth clarifying this point albeit that such enhancements are not relevant to the HRA conclusions. Appreciate that this may be clearly expressed elsewhere in the application and could be a case of cross referencing.

Paragraph A17.6.9 states that "Piling works should therefore be undertaken between May to September to avoid effects on overwintering birds". Paragraph A17.6.10 refers to the need for "monitoring of bird numbers and behaviour associated with any noisy activities and stopping works if a threshold value is exceeded for numbers of birds within a 250 m radius before commencement of the noisy activity. The thresholds of bird numbers will be agreed with Natural England but is expected to be the same as for the works by the Environment Agency". Specific details of how these measures are to be secured by DCO or other binding provision and at what point in time the thresholds would be agreed (pre or post-consent). This would provide comfort regarding the certainty that the SoS could ultimately attach to such measures. Similarly, paragraph A17.6.100 refers to "mitigation will be undertaken for piling works during high tides" including soft start piling protocols in respect of marine

mammals without clear reference to the securing mechanism (eg via the DML or other DCO provision).