



**Written Representation
for the
Royal Society for the Protection of Birds
Comments on Deadline 6 submissions and actions from the
Examining Authority**

**Submitted for Deadline 7
10 August 2022**

Planning Act 2008 (as amended)

In the matter of:

**Application by Hornsea Project Four Limited for an Order
Granting Development Consent for the Hornsea Project Four Offshore Wind
Farm**

Planning Inspectorate Ref: EN010098

RSPB Registration Identification Ref: 20029909

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1. Introduction

Scope of submission

- 1.1. This submission takes account of the following documents submitted by the Applicant and Natural England at Deadline 6.
 - REP6-031: G6.3 Kittiwake onshore artificial nesting structure site selection and evidence on nesting limitations update. Revision 01.
 - REP6-038: G6.11 Written Summary of the Applicant's Oral Case at Issue Specific Hearing 11 (ISH11). Revision 01.
 - REP6-039: G6.12 Written Summary of the Applicant's Oral Case at Issue Specific Hearing 12 (ISH12). Revision 01.
 - REP6-055: Natural England cover letter dated 27 July 2022.
 - REP6-056: Natural England's response to G5.34 Applicant's response to Natural England's additional guidance on apportioning of seabirds to Flamborough and Filey Coast (FFC) Special Protection Area (SPA) for Hornsea Project Four [REP5a-018].
 - REP6-057: Natural England Risk and Issues Log.
 - REP6-059: Natural England's comments on G4.7 Ornithological Assessment Sensitivity Report - Revision: 2 [REP5- 065].
 - REP6-060: Natural England's response to G5.6 Indirect Effects of Forage Fish and Ornithology – Revision 1 [REP5-085].
- 1.2. In section 2, the RSPB has provided comments on issues arising from the review of the above documents.
- 1.3. In sections 3 and 4, the RSPB provides responses to the actions arising from the Issue Specific Hearings and set out in the Examining Authority's Article 17 letter dated 25 July 2022.
- 1.4. Separately, the RSPB has provided additional comments on offshore ornithology matters following the provision of updated information and clarifications from the Applicant at Deadline 6. These are contained in Annex A to this submission.

Statement of Common Ground – progress update

- 1.5. Following receipt of the additional information provided by the Applicant at Deadlines 5, 5a and 6, the RSPB is in the process of reviewing its draft Statement of Common Ground with the Applicant. Our ability to finalise our view on many of the matters contained in the SOCG hinges on our Deadline 7 submissions. Therefore, the current intention is to submit an agreed version of the SOCG at Deadline 8.

2. Comments on documents submitted at Deadline 6

2.1. Below, the RSPB makes brief comments on issues arising from documents submitted at Deadline 6:

- Kittiwake onshore nesting site selection
- Kittiwake offshore nesting structures
- Connectivity of auk compensation measures with the Flamborough and Filey Coast SPA

Kittiwake onshore nesting site selection

- 2.2. The RSPB's position relating to onshore artificial nesting sites as a compensation measure for kittiwakes was set out in REP2-089: section 5 (level of detail required, including securing of location, evidence of relevant consents etc) and paragraphs 6.16-6.17 (whether further onshore nesting structures can be identified, secured and address key uncertainties).
- 2.3. REP6-031 (Kittiwake onshore artificial nesting structure site selection and evidence on nesting limitations update) provides an update on the Applicant's steps to select sites for the possible location of onshore artificial nesting structures for kittiwakes, utilising Hornsea Project Three's approach (REP6-030).
- 2.4. It states a total of 28 potential sites were identified and that seven sites with 152 land parcels were selected to progress to land acquisition stage. Just four suitable land parcels at two sites were taken forward for more detailed work. Of these four, the Applicant considered only one (Lythe, near Whitby) was a good case for an area with nesting space limitation. A second (Hawsker, south of Whitby) had suitable nesting habitat within 500m of the existing colony, making additionality difficult to prove. The remaining two land parcels were deemed unsuitable.
- 2.5. No site for an onshore kittiwake artificial nesting structure has yet been secured or relevant consents obtained.
- 2.6. This reinforces the RSPB's view (set out in REP2-089) that identifying and securing suitable sites from an ecological perspective is extremely challenging and cannot be relied upon.
- 2.7. Recent experience with Hornsea Three compensation measures further underlines subsequent barriers with regard to obtaining relevant consents to secure the compensation measure. The Hornsea Three project (approved on 31 December 2020) has recently (June 2022) had its planning application for the installation of artificial nesting structures refused by Hartlepool Borough Council (see Appendix 1 to this submission). It is not yet known whether Hornsea Three will appeal this decision.
- 2.8. This serves to highlight the vulnerability of such outline compensation proposals to post-DCO decision making on consents required from other regulators, which can act to undermine claims that compensation measures can be secured.
- 2.9. This reinforces the RSPB's longstanding position that to reduce these very predictable uncertainties and risks, much greater certainty is required prior to DCO consent on the legal securing of compensation measures, both in terms of land tenure and relevant legal

consents. That certainty does not exist for this compensation measure in respect of Hornsea Four.

Kittiwake offshore nesting structures

- 2.10. The RSPB notes that on page 17 of REP6-039 (Written Summary of the Applicant's Oral Case at Issue Specific Hearing 12), under Item 6.2, the Applicant confirms that the repurposing of the oil and gas platform is a novel approach and that further surveys, including those relating to structural integrity, still need to take place in respect of the currently identified platform (Wenlock Platform).
- 2.11. This confirms the RSPB's concerns as set out in section 7 of REP6-069.

Connectivity of auk compensation measures with the Flamborough and Filey Coast SPA (FFC SPA)

- 2.12. The RSPB has reviewed the Applicant's response to the Examining Authority's questions regarding connectivity of the proposed compensation measures for auks with the FFC SPA (page 23, Item 6.2 of REP6-039).
- 2.13. We have noted the Applicant's statement:
- "Mr Carter noted that section 3.4 of Annex 1 to the Compensation Measures for FFC SPA: Ecological Connectivity of Compensation Measures (REP3-034) outlined the weaknesses in the data for guillemot and razorbill. The Applicant has provided an overview of the data that does exist. The ability to prove that a bird from one location recruits into another is almost impossible based on current technology. Due to a lack of alternatives, the Applicant has to go on the basis of the data that exists, from which the Applicant has been able to show that there is likely connectivity between the Channel Islands and the national site network. Mr Carter advised that colonies all along the coast of England would be supported by these measures."*
- 2.14. This confirms the RSPB's view set out in section 3 of REP5-120 that there is no direct evidence either for the existence, or the extent of, connectivity between the English Channel and the FFC SPA in respect of guillemots and razorbills. For the reasons set out in REP5-120, we do not support the Applicant's claim that there is a sufficient scientific evidence base to conclude the proposed compensation measures for guillemots and razorbills will directly benefit their UK SPA network populations, in particular that of the Flamborough and Filey Coast SPA. In many respects, there is simply no direct evidence currently available. In the absence of the necessary evidence, it is difficult to come to any conclusions as to what scale of compensation measures would be required to accomplish sufficient recruitment into the UK SPA populations. Therefore, we consider the Applicant's claim that colonies all around the coast of England "would be supported by these measures" are massively overstated and unsubstantiated.

3. RSPB responses to actions set out in the Examining Authority's Rule 17 dated 25 July 2022

- 3.1. The Examining Authority has highlighted a number of action points for the RSPB arising from the Issues Specific Hearings in week beginning 18 July 2022. The RSPB has set out its response to these in Table 1-3 in section 4 below.

Request within the Rule 17 letter

- 3.2. In addition to the listed actions (see Tables 1-3 below), the Examining Authority also made the following request of the RSPB and Natural England:

“Finally, during discussions under Agenda item 4 of ISH12 [EV-036] on the Habitat Regulations Assessment on Friday 22 July 2022, the Applicant referred to a recent publication, the Offshore Round 4 Leasing Plan-level Habitats Regulations Assessment (Crown Estate, July 2022). The Applicant noted this had been approved by the Secretary of State and suggested that it highlighted similar concerns to its own around some of the collision risk and displacement parameters used in offshore wind farm ornithological assessments and consequent compounding of precaution. The Applicant intends to submit this document into the Examination at Deadline 6, with commentary on its relevance at Deadline 7. As NE and the Royal Society for the Protection of Birds (RSPB) did not attend that ISH, the ExA invites them to listen to the relevant part of the Hearing [EV036b and EV-036c] and to submit written comments on the document at Deadline 7 (Wednesday 10 August 2022). The ExA would welcome views on the weight that should be given to it in this Examination.

As NE and the Royal Society for the Protection of Birds (RSPB) did not attend that ISH, the ExA invites them to listen to the relevant part of the Hearing [EV036b and EV-036c] and to submit written comments on the document at Deadline 7 (Wednesday 10 August 2022). The ExA would welcome views on the weight that should be given to it in this Examination.”

- 3.3. The RSPB notes that the Applicant submitted The Crown Estate's Round 4 Habitats Regulations Assessment document as REP6-032 (G6.4 Key Documents Regarding the Crown Estate Leasing Round 4 Record of the Habitats Regulations Assessment - Revision: 01). The RSPB has also reviewed the Applicant's written summary of its oral case to ISH12 on this matter.
- 3.4. As described above, the issues relate to the issue of precaution and the relevance or not of The Crown Estate's Round 4 HRA to the Hornsea Four examination.
- 3.5. The RSPB makes the following comments:
- The RSPB has recently set out its position on the issue of precaution in relation to the assessment of ornithological impacts (see section 2 in REP6-068) and fundamentally disagrees with the Applicant's position on this matter;

- The Round 4 Habitats Regulations Assessment document presents the conclusions of The Crown Estate, acting as both competent authority and as a commercial organisation in respect of leasing of the seabed for the purposes of offshore wind development;
- The RSPB was a consultee during the HRA process as part of a confidential Expert Working Group. While wishing to respect the confidentiality of that process, the RSPB can confirm that it did not agree with The Crown Estate’s conclusions in respect of implications of Round 4 projects for the Flamborough and Filey Coast SPA, and that it was consistent in its position on the issue of precaution as expressed in section 2 of REP6-068;
- The Crown Estate has not published the consultation responses of the RSPB and other consultees. Therefore, the picture presented by the Applicant is entirely partial and we note although “The Applicant intends to submit this document into the Examination at Deadline 6” its commentary on its relevance is being submitted at Deadline 7, therefore we may have further points to make once it is clear what reliance is being suggested and why.
- For now, in the context of the Hornsea Four Project, we consider no weight should be given to the Round 4 Habitats Regulations Assessment due to:
 - Given its strategic nature, the Round 4 HRA lacks the level of detail available in respect of understanding and assessing the impacts of the Hornsea Four project;
 - We wish to point out to the Examining Authority that the conclusions in respect of recent offshore wind leasing rounds in England (Round 3 and, most recently, the Project Extensions leases) was that they would have no adverse effects on the integrity of any Special Protection Area.
 - However, those strategic level conclusions have been superseded in the sense that subsequent project decisions have been made by the Secretary of State on Round 3 projects in respect of kittiwakes (Flamborough and Filey Coast SPA) and lesser black-backed gull (Alde-Ore Estuary SPA). This is especially the case with the Project Extensions for which seabed rights were awarded in September 2020 following an HRA process. By 31 December 2020 (and following lengthy post-examination consultation), the Secretary of State for BEIS concluded the Hornsea Three project would have an in-combination adverse effect on the integrity of the FFC SPA in respect of kittiwake. Similar decisions have followed on subsequent Round 3 projects.
 - Again, respecting the confidentiality of the leasing stakeholder consultation process, the RSPB can confirm it argued that adverse effects on integrity of the Project Extensions on the FFC SPA (and Alde-Ore Estuary SPA) could not be ruled out.
 - Therefore, we consider it would be wholly inappropriate for the Examining Authority to place any weight on the Round 4 HRA report.

4. Responses to action points for the RSPB arising from Issue Specific Hearings 10, 11 and 12

4.1. The table below sets out each of the Action Points addressed to the RSPB, with the corresponding RSPB response. These include actions from:

- ISH10 - relating to marine processes and ecology (excluding ornithology)
- ISH11- matters relating to marine ornithology
- ISH12- matters relating to the Habitats Regulations Assessment

For each of the action points below highlight if we covered them in D6 and what the submission reference is.

Table 1: Response to Action Points from ISH10 - relating to marine processes and ecology (excluding ornithology)

Action	Description	Action by	When	RSPB response
5	Provide feedback on the Clarification Note on Marine Processes Mitigation and Monitoring [REP5a-017], including the Applicant's proposals for monitoring any effects on the Flamborough Front.	RSPB and NE	D6	Please see our response to ISH12 Action 5 below.

Table 2: Response to Action Points from ISH11 - matters relating to marine ornithology

Action	Description	Action by	When	RSPB response
7	NE and RSPB to update their positions on the suitability of the revised ornithological baseline for use in the assessment.	NE and RSPB	D6	The RSPB are content that the revisions to the ornithological baseline mean that a full assessment of relevant impacts can be carried out
12	NE and RSPB to confirm whether they accept the Applicant's analysis that a kittiwake productivity rate of 0.800 should be used instead of 0.580?	NE and RSPB	D6	The RSPB do not agree with the use of a kittiwake productivity rate of 0.800 instead of 0.580. The FFC SPA has in place a robust monitoring scheme that this productivity

Action	Description	Action by	When	RSPB response
				rate is derived from. When available and robust, demographic rates derived from local monitoring will always be preferable to generic rates such as 0.800, a point made in the Horswill <i>et al.</i> , (2022) paper the Applicant draws on. The paper also recommends incorporating temporal variation in demographic rates into models, a process that the application of a simple generic productivity rate does not allow. We also note that in response to Natural England's REP5a-029 further clarification on why the validation exercise carried out by the Applicant may suffer from an issue with the PVA tool is expected and we will comment further when this clarification is provided.
13	NE and RSPB to confirm whether they accept the Applicant's suggestion that guillemot survival data should be used as a proxy for razorbill data in the additional razorbill PVA modelling?	NE and RSPB	D6	The RSPB is content with the use of guillemot survival data as a proxy for razorbill data, provided, as has been done, the models are parametrised using both razorbill survival rates and a second analysis substituted with guillemot survival rates for context. We also note that part of the utility of counterfactual metric is that they are relatively insensitive to misspecification of demographic rates.
14	RSPB to provide an updated position on the need to use both counterfactuals (Counterfactual of Population Growth Rate and Counterfactual of Final Population Size) having seen the further revisions.	RSPB	D6	Please see section 5 on counterfactual metrics in the RSPB's submission on offshore ornithology REP6-068.
18	NE and RSPB to comment on the use of a 70% macro avoidance factor in the combined displacement and collision mortality assessment for gannet, noting that the Applicant does also provide a range around this central figure.	NE and RSPB	D6	The RSPB disagree with the use of 70% macro avoidance for reasons set out in section 6 in our Deadline 7 submission on offshore ornithology.

Action	Description	Action by	When	RSPB response
19	Do NE and RSPB believe that the ExA and Secretary of State can now have full confidence in the marine ornithology environmental impact assessment, or is further work and commentary still needed before that stage is reached?	NE and RSPB	D6	While the RSPB have a number of issues with how the results of the assessment have been presented, it is now possible to derive conclusions with respect to adverse impact from the assessment, as the RSPB has done in section 2 of our Deadline 7 submission.
20	NE and RSPB to comment on the Applicant's report into <i>Indirect Effects of Forage Fish and Ornithology</i> [REP5-085] and the extent to which they believe that the findings affect the overall ornithological assessment.	NE and RSPB	D6	Please see our response to ISH12 Action 5 below.
21	Update Statements of Common Ground with NE and RSPB so that the ExA can clearly identify any outstanding points of difference that may remain at the close of the Examination.	Applicant, NE and RSPB	D7	See paragraph 1.5 in section 1 above.

Table 3: Response to Action Points from ISH12- matters relating to the Habitats Regulations Assessment

Action	Description	Action by	When	RSPB response
2	NE and the RSPB to provide comment on the adequacy of the revised ornithological baseline and any need for further assessment, mitigation and compensation considerations in relation to the HRA.	NE and RSPB	D6	<p>The RSPB's offshore ornithology submissions at Deadlines 6 and 7 set out the RSPB's views on the adequacy of the revised ornithological baseline and the need for any further assessment.</p> <p>The RSPB has set out its position with regard to the Applicant's compensation measures in its Deadline 6 submission (see REP6-069) and the further information required in order to be able to assess whether they will have a reasonable guarantee of success. This includes comments in relation to the disagreement on the scale of</p>

Action	Description	Action by	When	RSPB response
				impact on relevant features of the FFC SPA and whether the Applicant has demonstrated connectivity with the species' UK National Site Network. This all bears on the Applicant's ability to demonstrate the compensation measures will protect the coherence of the species' UK National Site Network.
4	In relation to NE's advocated approach to apportioning seabirds to the Flamborough and Filey Coast Special Protection Area, and having seen the Applicant's report and calculations, do NE and the RSPB have any further views on the approach that has been taken? Do they have any concerns around the quantum of compensation that NE's advocated approach appears to generate for guillemot in this case?	NE and RSPB	D6	The RSPB agrees with Natural England's advocated approach to apportioning seabirds and does not agree with the Applicant's assertions in REP5a-018. In particular the "quantum of compensation" is in regard to cumulative and in-combination assessments if the NE approach for Hornsea 4 is applied to them. NE have been entirely clear and transparent in their advice that their bespoke approach is only to be applied in the Hornsea 4 project alone assessment, so the "quantum of compensation" does not exist.
5	RSPB and NE to comment on any implications that come out of the report into <i>Indirect Effects of Forage Fish and Ornithology</i> [REP5-085] for the HRA.	NE and RSPB	D6	This forms the RSPB's response this action as well as Action 5 (ISH10) and Action 20 (ISH11). The RSPB is aware of the discussions and exchanges between the Applicant and Natural England relating to the Flamborough Front and the issue of indirect effect on forage fish and thereby ornithology. The RSPB has reviewed Natural England's submission (AS-048) and REP6-060 setting out its response to REP5-085 (G5.6 Indirect Effects of Forage Fish and Ornithology. Revision 1). The RSPB agrees with Natural England that the reports conclusions as to the relative importance of the

Action	Description	Action by	When	RSPB response
				<p>Hornsea 4 array area compared to other locations in the vicinity of the Front should be given limited credence. We also agree that the report lacks consideration of any cumulative impact of multiple large scale wind farms all being built within the region of the Flamborough Front and any combined effects on stratification / seawater mixing, and therefore pelagic productivity and forage fish availability.</p> <p>The RSPB agrees with Natural England’s conclusion in the ornithology section of REP6-060 that <i>“it remains unclear whether such effects could have a net negative or net-positive impact upon these species [guillemot and razorbill]”</i>.</p> <p>We note and support Natural England’s proposal for a monitoring strategy to address the uncertainties around the impact of Hornsea Four on stratification and mixing of the Flamborough Front (see row E42 of Natural England’s REP6-057 Risk and Issues Log and pages 3-4 of AS-048).</p>
6	NE and the RSPB to respond to the principles of the Applicant’s suggested approach to strategic compensation. Also, to comment firstly on whether the Applicant’s HRA compensation documentation provides a robust rationale and justification for the alternative strategic approach to compensation, and secondly, on whether the Applicant has demonstrated that the strategic approach could fully address the type and quantum of compensation that is required.	NE and RSPB	D6	The RSPB has set out its position on the Applicant’s strategic compensation approach in section 2 of REP6-069. In summary, it is the RSPB’s view that “strategic compensation” is not yet at a sufficient stage of development and implementation whereby the Secretary of State can rely on it as an alternative to the Hornsea Four provision of project level compensation measures. The uncertain status of this whole proposal is underlined in the Applicant’s Written Summary of its oral case to ISH12:

Action	Description	Action by	When	RSPB response
				<p><i>"A detailed comparison of strategic and physical (i.e. project specific) measures could be difficult at this stage, as it is not yet clear exactly what compensation projects the Marine Recovery Fund will cover."</i></p> <p>Whilst we welcome the Applicant confirming any obligations would be secured through the DCO (page 14, REP6-039 ISH12 summary), the Marine Recovery Fund (MRF) itself does not exist and is subject to consultation including within the Offshore Wind Environmental Improvement Package consultation being led by Defra. Therefore it may change in light of consultation responses and further work being done by Defra and BEIS. Also as the consultation document states legislation is required (page 9) <i>"to enable the establishment of a dedicated Marine Recovery Fund (MRF) that can collect and deploy financial contributions from developers to meet the costs of compensatory measures identified in the library of measures."</i> And of course that legislation needs to go through the parliamentary process.</p> <p>We note the Applicant's position at ISH12 (as set out on page 14, REP6-039) including <i>"It is also important to note that the Applicant does not place exclusive reliance upon the Marine Recovery Fund and it is not the only compensation measure being proposed for Hornsea Four. Rather, it is a tool in the toolbox"</i> following the ExA asking for an explanation as to how the measures would be secured. <i>"Mr McGovern advised that any obligations would</i></p>

Action	Description	Action by	When	RSPB response
				<p><i>be secured through the DCO. Mr McGovern also reiterated, in relation to the weight to be attached to the potential establishment of the Marine Recovery Fund, that commitment is published policy in the BESS for the Secretary of State for Business, Energy and Industrial Strategy, who is the decision maker for this DCO, and weight can be attached accordingly. The Secretary of State is entitled to be satisfied that he will implement the policy commitments made in the BESS."</i></p> <p>In light of our points above, although the MRF is part of the British Energy Security Strategy we would suggest any commitment, weight and/or reliance on it is premature.</p> <p>It is apparent from the recent consultation on the BESS "Offshore Wind Environmental Improvement Package" policy paper that the Government's main focus of the MRF is Round 4 projects (only recently announced) and where possible "some earlier projects". We would suggest that is most likely to refer to Project Extension schemes.</p> <p>Therefore, the RSPB considers strategic compensation cannot be relied on as a compensation measure with a reasonable guarantee of success of protecting the coherence of the UK National Site Network for the impacted species in relation to Hornsea Four. We make additional comment on this issue below in response to the Examining Authority's second question.</p>

Action	Description	Action by	When	RSPB response
				<p>In relation to the second question (whether the Applicant has demonstrated that the strategic approach could fully address the type and quantum of compensation that is required) but also relevant to the first question, the RSPB consider that this is not demonstrated for the following reasons:</p> <ul style="list-style-type: none"> • The quantum of compensation required is not agreed: <ul style="list-style-type: none"> ○ The RSPB and Natural England disagree with the Applicant on the scale of impact that Hornsea Four will cause to FFC SPA species (e.g. see RSPB REP6-068). This has major implications for whether any (as yet unknown) strategic compensation would be capable of meeting the ecological requirements; ○ The RSPB does not agree with the Applicant's approach to calculating the compensation requirements (see section 2, REP4-057), including the need to consider the implications of the level of connectivity with the UK National Site Network for those calculations (see REP5-120); • No strategic compensation measures exist or are agreed upon, nor are any formal mechanisms and governance agreed and in place. The timescale for establishing these is unknown c.f. the many years it has taken to establish the mechanisms for a formal Biodiversity Net Gain system, which is still not operational. • Further to this, should any strategic compensation measures relevant to any impacted species affected by Hornsea Four eventually be identified, it will be several years before:

Action	Description	Action by	When	RSPB response
				<ul style="list-style-type: none"> ○ Suitable locations are identified, agreed and secured; ○ Detailed design and requirements are agreed; ○ Relevant consents obtained; ○ Any measure is implemented; ○ Any implemented measure is providing quantifiable benefit to relevant species. ● Therefore we consider the assumption such measures will be available from the end of 2023 is unrealistic. ● Any significant delay in the implementation of required compensation measures would need to be accounted for in the quantum of compensation required to compensate for the predicted impacts.
8	RSPB and NE to respond to the updated predator eradication studies and compensation proposals, including the Applicant's further submissions about the future protection of any sites that could be utilised.	NE and RSPB	D6	<p>The RSPB's position on the Applicant's predator eradication compensation proposals is set out in section 5 of RSPB REP6-069. In summary, we consider the measure as proposed means the Secretary of State cannot conclude that the compensation measure is fit for purpose and thereby that the coherence of the National Site Network for the affected species will be protected.</p> <p>Due to the critical and substantive nature of the additional information required to assess this compensation measure, we have recommended that the Secretary of State should consider:</p> <ul style="list-style-type: none"> ● Requiring the Applicant to submit to them the information set out in Table 3 of REP6-069; and

Action	Description	Action by	When	RSPB response
				<ul style="list-style-type: none"> • Re-consulting with Interested Parties on that additional information prior to determining the DCO. <p>For example, this is underlined by the lack of detail on biosecurity requirements in answer to the Examining Authority’s questions at ISH12 (page 22):</p> <p><i>“The exact detail of what biosecurity measures would look like will depend on the location of the islands and islets. The Applicant would discuss that with the Offshore Ornithology Engagement Group (the “OOEG”).”</i></p> <p>The RSPB agrees that biosecurity measures must be tailored to the proposed eradication plan. It is evident from this response (and subsequent reference to unspecified “novel monitoring techniques”) that the proposal lacks the necessary detail (as set out by the RSPB) to enable critical evaluation of the proposed measure and its likely success.</p> <p>Future protection of sites The RSPB has considered the Applicant’s further submissions about the future protection of any sites that could be utilised set out in:</p> <ul style="list-style-type: none"> • REP5a-014: Applicant’s comments on further submissions received at Deadline 5 (page 19-20, Reference 4.18 and 4.20) • REP6-039: Written Summary of the Applicant’s Oral Case at Issue Specific Hearing 12

Action	Description	Action by	When	RSPB response
				<p>Our response below covers both the MoU with the States of Guernsey (referred to in REP6-069) and the Applicant’s statement regarding the level of protection afforded Ramsar sites in Guernsey.</p> <p>We are grateful to the Applicant for the updates provided within REP5a-014: Applicant’s comments on further submissions received at Deadline 5, (specifically on pages 19-20, Reference 4.18 and 4.20), including (with our further comments afterwards):</p> <ul style="list-style-type: none"> • An MoU with the States of Guernsey has been signed, being clear that such a document “<i>is in part legally binding</i>” reflecting points made during ISH12 and included within REP6-039: Written Summary of the Applicant’s Oral Case at Issue Specific Hearing 12, including . We believe it is important for this to be submitted as an Examination document with an opportunity for Interested Parties to review and comment on it especially due to such reliance being placed on it by the Applicant re the long term security of the compensation measures and to enable the Examining Authority to have the confidence with it. We note the further detail contained within REP6-045: Hornsea Project Four Applicant’s Schedule of Side Agreements Deadline: 6, Date: 27 July 2022 Document Reference: G6.18 Revision:1 (page 6) as follows <p><i>“An MoU to explore the opportunities for carrying out a Predator Eradication programme including ongoing monitoring and biosecurity for the lifetime of Hornsea</i></p>

Action	Description	Action by	When	RSPB response
				<p><i>Four. A number of workstreams (technical, regulatory and ecological) are included in the MoU to ensure successful collaboration between the parties. Guernsey has agreed to work exclusively with the Applicant in relation to the various workstreams with a view to implementation of the programme.”</i></p> <p>And also (on page 6) the progress towards a second MoU with the States of Alderney and the Alderney Wildlife Trust to include the following:</p> <p><i>“An MoU to explore the opportunities for carrying out a Predator Eradication programme including ongoing monitoring and biosecurity for the lifetime of Hornsea Four. A number of workstreams (technical, regulatory and ecological) are included in the MoU to ensure successful collaboration between the parties”</i></p> <p>However it appears this has not been concluded as the final column reports <i>“Ongoing discussions relating to general drafting points in the MoU. Workstreams progressing.”</i></p> <ul style="list-style-type: none"> • Special sites of interest by legislation v Ramsar sites protection. We also want to raise the issue again as discussed within ISH12¹ that although the Applicant’s

¹ For ease of reference the relevant extracts from REP6-039: Written Summary of the Applicant’s Oral Case at [ISH12] are as follows (pgs 19 & 20) “The ExA asked what weight it could give to the MoU, given that it had not seen the content of that document.

Action	Description	Action by	When	RSPB response
				preferred sites are all within an existing Ramsar site some of the alternative locations are not. They are however special sites of interest by legislation, the Applicant have confirmed these are “ <i>only considered a planning designation and the necessary environmental</i> ”

Mr McGovern advised that the Applicant intended to discuss with Guernsey to assess whether any more of the content of the MoU could be disclosed. Mr McGovern stated that the ExA could place reliance on the fact that the Applicant has secured a legally binding agreement that secures exclusivity in respect to the territory needed for this measure. The Applicant feels it has gone further than other offshore wind farm projects have in relation to without prejudice compensation measures.

The ExA noted that the MoU guarantees the Applicant the area but did not mean the measures would be delivered.

Mr McGovern agreed that the existence of the MoU was not a cast iron guarantee that the compensation measures would be delivered but it was still an important milestone in the compensation case for the Applicant. Mr McGovern also noted that the area secured by the MoU was the Applicant’s preferred site, but not the only one available. Ultimately, if the Secretary of State were to decide that this compensation should be necessary, the Applicant would need to provide it in order to progress the project, so it is in the Applicant’s interests to ensure that the measures are capable of being provided.

The ExA noted that the Applicant had said in some of its documents relating to compensation that cliffs are protected as special sites of interest by legislation. The ExA asked if that protection was for all cliffs in Guernsey or just those forming part of Ramsar sites.

Mr McGovern advised it was his understanding that this protection applied to all cliffs but this would be checked and confirmed.

The ExA asked what sort of protection the cliffs benefitted from and whether it was similar to what would be expected in respect of a UK SSSI.

Mr McGovern highlighted that he was not qualified to practice in Guernsey but that he believed the protection was similar to that received under Site of Special Scientific Interest protection in England.

The ExA asked the Applicant to provide a clarification note on the nature of the protection after the hearing and confirm that it applied to all cliffs.

Post Hearing Clarification: The States of Guernsey have confirmed that the Sites of Special Significance relate to the south coast cliffs of Guernsey, this particular designation does not extend to Herm, Jethou and the Humps however it is only considered a planning designation and the necessary environmental protections are pursuant to the Ramsar listing and Animal Welfare Law adopted by the State.

The ExA asked if all sites under consideration for the provision of compensation measures were Ramsar sites.

Dr Randall advised that not all sites under consideration were covered by Ramsar but all of the Applicant’s preferred sites for the provision of compensation were within Ramsar sites”

Action	Description	Action by	When	RSPB response
				<p><i>protections are pursuant to the Ramsar listing". Therefore for the confidence and certainty suggested, we would recommend that only areas within the Ramsar site listing should be allowed to be compensation.</i></p> <ul style="list-style-type: none"> • <i>Page 19 "Permission has been granted to undertake the implementation study by States of Guernsey and tenants, including the necessary permission from the States of Guernsey Veterinary Officer required due to the Ramsar site designation protection." – As above we believe it is important for this permission and any conditions to also be submitted to the Examination.</i> • <i>Page 20 "The Applicant is confident the necessary permissions and consents can be secured" – it would be helpful for the reasons for this confidence to be explained further. We are grateful for the details of the relevant laws including The Land Planning and Development (Environmental Impact Assessment) Ordinance, 2007 and The Land Planning and Development (General Provisions) Ordinance, 2007 and accompany guidance "The Strategy for Nature document has been formally adopted as Supplementary Planning Guidance by the Planning Service. Guernsey's Strategy for Nature coordinates the delivery of Guernsey's commitments to the Convention on Biological Diversity and other international agreements including the Ramsar Convention on Wetlands and the Convention on Migratory Species."</i>

Action	Description	Action by	When	RSPB response
				<p>However what is not clear from these documents and the Applicant's explanation is how exactly the legal protection afforded to Ramsar sites in Guernsey is on parity with that provided in England since:</p> <ul style="list-style-type: none"> ○ part of what is being relied on are the EIA requirements within The Land Planning and Development (Environmental Impact Assessment) Ordinance, 2007.²We note the specific reference to Ramsar sites within Schedule 4: In carrying out screening, matters which Department shall consider in particular Potential vulnerability of any area adjoining/adjacent to the development, including the presence of...Ramsar sites (Schedule 4(b)(iii)(A)) <p>this is not equivalent to the protections and requirements within Part 6, the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations). Whilst we appreciate that it is due to policy that Ramsar sites receive the same level of protection as European Sites within England as set out in the Habitats Regulations, it is those protections and requirements that are key not the policy.</p> <ul style="list-style-type: none"> ○ The Land Planning and Development (General Provisions) Ordinance, 2007³ – whilst this does include protections and requirements for Special sites of interest by legislation, for example within

² See: [REDACTED]

³ See: [REDACTED]

Action	Description	Action by	When	RSPB response
				<p>section 4: what constitutes development in a site of special significance, section 13: sets out “general material considerations” in making decisions on planning applications, unlike protected monuments, protected building and protected trees, no additional material considerations are set out in subsequent Sections. Although section 17: conditions does include (s.17(h)(iv)): where the development is to be carried out <u>in</u> a site of special significance, <u>may</u> place conditions to preserve, enhance or manage the character, appearance and environment of that site or any feature of special interest it is designated for. However Ramsar sites are not included nor equivalent protections to the Habitats Regulations.</p> <ul style="list-style-type: none"> ○ The Strategy for Nature document⁴ - <i>“incorporates a framework of high-level objectives that encompass the latest advances in mainstreaming biodiversity and horizon scanning for pressures on nature, through increasing community awareness of nature and its health and wellbeing benefits.”</i>. Whilst we appreciate the objectives it contains for example Objective 4 (on p11) “• Objective 4: Ensure an integrated, broad-scale approach to the conservation and management of our nature” This is obviously not an equivalent protection framework to the Habitats Regulations.

⁴ See: [REDACTED]

Action	Description	Action by	When	RSPB response
				<p>In addition there remains the possibility to use sites that are special sites of interest by legislation not Ramsar sites including for any adaptive management measures that may be required.</p> <ul style="list-style-type: none"> • In addition details of the Applicant's preferred site have not been provided nor confirmation as to what their first alternative may be should issues arise.
9	NE and RSPB to summarise their current positions in relation to project and in-combination HRA effects.	NE and RSPB	D6	Please see section 2 in the RSPB's Deadline 7 response on Offshore Ornithology for the RSPB's position on project alone and in-combination impacts on the Flamborough and Filey Coast SPA.

Appendix 1: Copy of Hartlepool Borough Council Refusal of Planning Permission for Artificial Nesting Structures for Hornsea Three (dated 28 June 2022)

REFUSAL OF PLANNING PERMISSION

Town and Country Planning Act 1990



PART I - PARTICULARS OF APPLICATION

Application No	H/2022/0009
Proposal	Demolition of existing structure and construction of artificial nesting structures for kittiwakes and associated infrastructure
Location	THE OLD YACHT CLUB FERRY ROAD HARTLEPOOL TS24 0AE
Applicant	ANTONIOU

PART II - PARTICULARS OF DECISION

The Hartlepool Borough Council hereby give notice in pursuance of the provisions of the above Act that **PLANNING PERMISSION HAS BEEN REFUSED** for the carrying out of the development referred to in Part I hereof in accordance with the application and plans made valid on 27/01/2022 for the following reason(s):

1. In the opinion of the Local Planning Authority, the proposed development would have the potential to result in a constraining impact on the activities of the adjacent port and the economy of the area, contrary to policies LS1 and EMP4 of the Hartlepool Local Plan (2018)
2. In the opinion of the Local Planning Authority, the applicant has failed to demonstrate that the proposal would not result in an adverse impact on the amenity of neighbouring land users in terms of noise, contrary to policy QP4 of the Hartlepool Local Plan (2018)
3. In the opinion of the Local Planning Authority, the proposed development would result in an adverse impact on the visual amenities of the area, contrary to policy QP4 of the Hartlepool Local Plan (2018).

Date of issue: 28/06/2022

Signed



Director of Neighbourhoods & Regulatory Services

Local Policy

The following policies in the adopted Hartlepool Local Plan 2018 are relevant to the determination of this application:

CC1: Minimising and adapting to climate change
EMP4: Specialist Industries
LS1: Locational Strategy
NE1: Natural Environment
QP3: Location, Accessibility, Highway Safety and Parking
QP4: Layout and Design of Development
QP5: Safety and Security
QP6: Technical Matters
SUS1: The Presumption in Favour of Sustainable Development

National Planning Policy Framework (NPPF)(2021)

In July 2021 the Government issued a revised National Planning Policy Framework (NPPF) replacing the 2012, 2018 and 2019 NPPF versions. The NPPF sets out the Government's Planning policies for England and how these are expected to be applied. It sets out the Government's requirements for the planning system. The overriding message from the Framework is that planning authorities should plan positively for new development. It defines the role of planning in achieving sustainable development under three overarching objectives; an economic objective, a social objective and an environmental objective, each mutually dependent. At the heart of the Framework is a presumption in favour of sustainable development. For decision-taking, this means approving development proposals that accord with an up-to-date development plan without delay or, where there are no relevant development plan policies or the policies which are most important for determining the application are out-of-date, granting permission unless policies within the Framework provide a clear reason for refusal or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. The following paragraphs are relevant to this application:

PARA001: Role of NPPF
PARA002: Determination of applications in accordance with development plan
PARA003: Utilisation of NPPF
PARA007: Achieving sustainable development
PARA008: Achieving sustainable development
PARA009: Achieving sustainable development
PARA010: Achieving sustainable development

PARA011: The presumption in favour of sustainable development
PARA012: The presumption in favour of sustainable development
PARA038: Decision making
PARA047: Determining applications
PARA055: Planning conditions and obligations
PARA056: Planning conditions and obligations
PARA110: Considering development proposals
PARA124: Achieving appropriate densities
PARA130: Achieving well-designed places
PARA134: Achieving well-designed places
PARA154: Meeting the challenge of climate change, flooding and coastal change
PARA157: Meeting the challenge of climate change, flooding and coastal change
PARA169: Planning and flood risk
PARA218: Implementation

INFORMATIVE

1.0 Statement of Proactive Engagement

The Local Planning Authority in arriving at its decision to refuse this application has, without prejudice to a fair and objective assessment of the proposals, issues raised, and representations received, sought to work with the applicant in a positive and proactive manner with the objective of delivering high quality sustainable development to improve the economic, social and environmental conditions of the area in accordance with the NPPF. However it is has not been possible in this instance to address or overcome the identified impacts.

See also notes overleaf

NOTES FOR APPLICANTS

1. If you are aggrieved by the decision of the Local Planning Authority to refuse permission for the proposed development, or to grant permission or approval subject to conditions, you may appeal to the Secretary of State for Communities and Local Government in accordance with Sections 78 and 79 of the Town and Country Planning Act 1990. Details of time limits for appeal are set out below. Almost all appeals are determined by Planning Inspectors. Appeals must be made using a form which you can get from the Secretary of State at Initial Appeals, Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN (Tel: 0303 444 5000) or online at <http://www.gov.uk/appeal-planning-inspectorate>. The Secretary of State has power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him that permission for the proposed development could not have been granted otherwise than subject to the conditions imposed by them, having regard to the statutory requirements, to the provisions of the development order and to any directions given under the order. He does not in practice refuse to entertain appeals solely because the decision of the Local Planning Authority was based on a direction given by him.
 2. If permission to develop land is refused or granted subject to conditions, whether by the Local Planning Authority or by the Secretary of State and the owner of the land claims that the land has become incapable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the Council of the District in which the land is situated, a purchase notice requiring that Council to purchase his interests in the land in accordance with the provisions of Part V1 of the Town and Country Planning Act 1990.
 3. In certain circumstances, a claim may be made against the Local Planning Authority for compensation, where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in Section 114 of the Town and Country Planning Act 1990.
- * *Householder development means development of an existing dwellinghouse or development within the curtilage of such a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse. It does not include a change of use or a change to the number of dwellings in a building.*

TOWN AND COUNTRY PLANNING ACT 1990

NOTIFICATION TO BE SENT TO AN APPLICANT WHEN A LOCAL PLANNING AUTHORITY REFUSE PLANNING PERMISSION OR GRANT IT SUBJECT TO CONDITIONS

Appeals to the Secretary of State

- If you are aggrieved by the decision of your local planning authority to refuse permission for the proposed development or to grant it subject to conditions, then you can appeal to the Secretary of State under section 78 of the Town and Country Planning Act 1990.
- If this is a decision on a planning application relating to the same or substantially the same land and development as is already the subject of an enforcement notice, if you want to appeal against your local planning authority's decision on your application, then you must do so within 28 days of the date of this notice.
- If an enforcement notice is served relating to the same or substantially the same land and development as in your application and if you want to appeal against your local planning authority's decision on your application, then you must do so within:
28 days of the date of service of the enforcement notice, or within 6 months [12 weeks in the case of a householder appeal] of the date of this notice, whichever period expires earlier.
- If this is a decision to refuse planning permission for a householder application or for a minor commercial application if you want to appeal against your local planning authority's decision then you must do so within 12 weeks of the date of this notice.
- In all other cases if you want to appeal against your local planning authority's decision then you must do so within 6 months of the date of this notice.
- Appeals must be made using a form which you can get from the Secretary of State at Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN (Tel: 0303 444 5000) or online at www.planningportal.gov.uk/pcs.
- The Secretary of State can allow a longer period for giving notice of an appeal but will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.

- The Secretary of State need not consider an appeal if it seems to the Secretary of State that the local planning authority could not have granted planning permission for the proposed development or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.