

Examination Deadline 4

For EN010117 – Rampion 2 Offshore Wind Farm

Comment on the Examining Authority's request for further information from Natural England arising out of the Issue Specific Hearing 2 Issued on Monday 20 May 2024

Representation Submitted by:
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Comment:

We focus on the last three questions in the Examining Authority's (ExA's) request for further information from Natural England following the Issue Specific Hearing 2 (ISH2) held on Wednesday 15- 16 May 2024. The ExA notes the questions arise out of Natural England's decision not to attend the Hearings. The three questions are:



The Planning Inspectorate

Annex A

Agenda Item 6d Seascape Landscape and Visual Effects – Assessment of Special Qualities and Statutory Purposes of the South Downs National Park.		
Q6d-1	<i>Special Qualities</i> Natural England	Provide an explanation on why any harm to special qualities inevitably compromises the Statutory Purpose of the South Downs National Park in response to ExA WQ1 SLV1.5 [REP3-085].
Q6d-2	<i>Special Qualities</i> Natural England	Does the above (Q6.d.1) remain Natural England's view when taking account of the Applicant's answer to ExA WQ1 SLV 1.5 [REP3-051] Appendix F SLV: Examples of Permitted NSIPs affecting special qualities and statutory purpose of national landscapes.
Agenda Item 6 Seascape Landscape and Visual Effects – Assessment of Cumulative Effects		
Q6e-1	<i>Seascape Effects</i> Natural England	If the Secretary of State were to accept the Applicants need case, alternatives case and that the seascape, landscape and visual effects of the Proposed Development had be reduced as far as possible, set out Natural England's contention that the Seascape effects alone should result in a recommendation to withhold the DCO for the Proposed Development.

Q6d-1: Provide an explanation on why any harm to special qualities inevitably compromises the Statutory Purpose of the South Downs National Park in response to ExA WQ1 SLV1.5 [REP3- 085].

Our Comment:

- The special qualities of the SDNP are noted in the SDNPA Local Plan and have been extensively addressed in SDNP submissions to the Rampion 2 ExA.
- SDNP Representatives note there is harm to the special qualities of the National Park and uniquely so give the proximity and scale of the highly visible offshore turbines proposed in the Rampion 2 design (infrastructure actually located inshore, including up to 90 wind turbine generators (WTGs) up to 325m tall to transform the seascape day and night) and of course the transmission right- of-way through the National Park.
- Rampion 2 would interfere with the SDNP's integrity and statutory functions as a high-status designated landscape with its associated seascape, which together also define the quality and character of the area.
- We add further that the adverse impacts of the Rampion 2 transformations would be felt by present and future generations of Residents and visitors on the south coast and inland areas. These considerations are highly important and relevant to the national planning decisions, including the immense opportunity costs where Rampion 2 constitutes a huge national disbenefit given pressure to protect, retain and conserve the quality of valuable national seascape / landscape assets (not degrade them, or seek not to degrade them).
- Among the multiple reasons for this essential protection is that pressures will mount on all UK citizens to travel less and remain on these islands in the name of climate change travel emission reductions. Thus future proofing of our designated natural landscapes/seascapes with safeguards is an important part of the rationale and context for the Levelling up and Regeneration Act (LURA) boosting this duty of all actors.
- How will compensation be arranged for future generations who are left with a legacy of degraded seascapes / landscapes – against the aims and ambitions of policy and law?
- LURA clearly enhances the active duty to protect and conserve the Special Qualities of National Parks and designated Landscapes. Natural England provided the following response 15 Dec 2023 to the ExA in another DCO examination on the effect of the Levelling up Act, which has specific relevance to its application the Rampion 2 Examination. It stated: Natural England reading on this again in Dec 2023 and should inform the SH2 discussion on the matter.¹

Q6d-2: Does the above (Q6.d.1) remain Natural England's view when taking account of the Applicant's answer to ExA WQ1 SLV 1.5 [REP3-051] Appendix F SLV: Examples of Permitted NSIPs affecting special qualities and statutory purpose of national landscapes.

Our Comment:

¹ Natural England provided a response 15 Dec 2023 to the Lower Thames Crossing Letter title, "Application by National Highways for an Order Granting Development Consent for the Lower Thames Crossing, Natural England's response to Deadline 9a".

Natural England in relation to the above already stated (as noted in the footnote).

2.1.3 It is anticipated that the government will provide guidance on how the duty should be applied in due course. In the meantime, and without prejudicing that guidance, Natural England advises that:

- *The duty to ‘seek to further’ is an active duty, not a passive one. (PCS underlining) Any relevant authority must take all reasonable steps to explore how the statutory purposes of the protected landscape (A National Park, the Broads, or an AONB) can be furthered;*
- *The new duty underlines the importance of avoiding harm to the statutory purposes of protected landscapes but also to seek to further the conservation and enhancement of a protected landscape. That goes beyond mitigation and like for like measures and replacement. (again PCS underlining) A relevant authority must be able to demonstrate with reasoned evidence what measures can be taken to further the statutory purpose. If it is not practicable or feasible to take those measures the relevant authority should provide evidence to show why it is not practicable or feasible.*

Q6e-1 If the Secretary of State where to accept the Applicants need case, alternatives case and that the seascape, landscape and visual effects of the Proposed Development had be reduced as far as possible, set out Natural England’s contention that the Seascape effects alone should result in a recommendation to withhold the DCO for the Proposed Development.

Our Comment:

- The Examination Library shows several IP Relevant Representations (RRs) and Written Representation (WRs) and subsequent submissions have already identified clear and fatal shortcomings in the Applicant's argument of the need and alternative case for Rampion 2, but nonetheless accepting that the ExA can ask a hypothetical in Q6e-1, the answer we believe the evidence indicates is yes.
- We believe applicable law and policy totally validates Natural England’s position and assertion that the Seascape effects alone should result in a recommendation to withhold the DCO for the Proposed Development.
- Among the reasons, the Rampion 2 application is a clear case-specific breach of the UK commitments under the European Landscape Convention (ELC). That fact cannot be dismissed lightly in the Examination and the recommendation to the Secretary of State - in our view.
- This breach is clearly interpreted by the OESEA Strategic Environmental Assessment (OESEA) process and is reinforced by aligned UK policy and law including the Marine Policy Statement (MPS, 021) that indicates the indivisibility of Seascape / Landscape protection and the LURA (2023) in respect to duty, aspiration for sustainable outcomes and enhancing the Special Qualities of National Parks.
- OESEA-4 (2022) explicitly states the UK objectives and indicators for seascape / landscape protection include the, **“Objective: To accord with, and contribute to the delivery of the aims and articles of the European Landscape Convention and**

minimise significant adverse impact on seascape/landscape including designated and non-designated areas.” Our bold text and underlining for emphasis.

- The OESEA visual buffers updated in 2020 and adopted in OESEA-4 (2022) are based on a comprehensive review of domestic and international experience with visual buffers for offshore windfarms, including project-level assessments and laws associated with the application of the ECL in European jurisdictions.
- The proposed design for the offshore component of Rampion 2 (up to 90 WTGs up to 325m tall in arrays starting 6 nautical miles from shore, so visibly fixed in the legally defined and ecologically sensitive inshore (i.e., not offshore that starts 12 nautical miles from shore) is at the extreme end of the visual impact spectrum due to its scale, expanse or spread along the coast and proximity to people and designated landscapes.
- It cannot be disputed that Rampion 2 is literally “off the charts” in regard to the UK Government’s ECL commitments and the UK Government’s own strategic environmental advice (OESEA) that derives from the ECL interpretation and experience as clearly stated in the OESEA-4 objectives. Statutory consultees have raised this with the Applicant and in their submissions including Principal Areas of Disagreement (PADs) statements.
- On top of this, Rampion 2 constitutes a clear violation of NPS policy on sustainable development as defined in UK Planning Act (2008 updated) and elaborated in the NPPF and NPS (2011 and Nov 2023) - as in previous PCS representations.
- Sustainable development requires net gains and interdependent balance across social, economic and environmental dimensions where Rampion 2 dramatically fails to deliver sustainable development for current and future generations.

Further Observations on the Questions to NE:

Further observations that community based IPs feel are important and relevant when considering Natural England’s Response to the three questions we cite include.

From early days in the 2021 developer-led statutory pre-application consultations and through to the Application submission in August 2023, the Applicant has attempted to wrangle its way around the meaning and interpretation of international commitments on the protection of Landscapes / Seascapes. The Applicant overtly states the UK Government’s OESEA strategic environmental advice has no material relevance in the Rampion 2 Application. And the Applicant aggressively refutes comments by Statutory Consultees to the contrary as well as civil society representations that are documented.

- This assertion by the Applicant is fundamentally not true. That is clearly explained in the Government’s OESEA process and documentation and is highlighted and elaborated in several IP Representations for the consideration of the Rampion 2 ExA.
- We note also that we are constantly and very sternly warned by the ExA not to repeat evidence offered previously in the Examination.
- In this case, for the Seascape / Landscape visual impact Hearing that same stern warning was issued via the ExA instruction to all IPs in the monologue at the start of ISH2 on the Thursday morning session.

We further note that in response to the hypothetical question by an ExA Member in the ISH2 conversations in the Thursday morning session on whether the Levelling Up and Regeneration Act (LURA, 2023) precluded a Rampion 2, the SDNP representative remarked that the application of the LURA has yet to be tested in courts.²

Our overall substantive comment is that:

We believe the ExA should give substantial weight to the UK's OESEA interpretation of the European Landscape Convention (ELC). The OESEA-4 2022 primary objective on this matter bears repeating for emphasis - so it is not missed or underplayed. That connect directly to the LURA and the three questions that the ExA poses to Natural England that we focus on.

As interested Parties and directly affected Residents we note there are growing concerns among Residents who are following the Examination with the apparent silence of the ExA on the relevance of the European Landscapes Convention and the interpretation of its application on Rampion 2 by the OESEA.

Together with the LURA the ECL / OESEA / MPS form a body of law that argues strongly against consent of the Rampion 2 Application. If the ExA is minded to recommend consent for this Application to the Secretary of State which will be in the public domain, then:

- Firstly, we believe that recommendation should contain explicit cautions and statements that consenting Rampion 2 means setting aside international commitments under the ECL which have been clearly interpreted by the Government's own comprehensive OESEA process and Strategic Environmental advice, and
- Secondly, we believe the Rampion 2 as a case-specific situation warrants testing the legality of design offered in the courts, this given the scale and significance of the impact on both current and future generations, the cost £3-4 billion and how it challenges all important and relevant applicable law and policy.

We agree with the inference of the SDNPA Representation in regard to the need to test these considerations in court to better inform the Secretary of State, however that is best done.

We as locally impacted residents and community organisations who have diligently and in good faith constructively engaged in the Rampion 2 DCO process see the fallacy of the Applicant's case for the need for this Application and failure informed the Examination with by proper analysis of alternatives, which adds further impetus for refusing consent.

² Specifically when asked (at 1;01:40) into the ExA SH2 Session 5 on the morning of 16 May 2024 whether the Levelling up and Regeneration Act precluded decisions on Rampion 2 that were harmful to the special qualities of the SDNP the SDNP representative responded that (a) new legal provision not yet tested in court so no one has given a definitive view as yet, (b) and that "seek to further" has been perceived by the courts as an active duty to do something. Or seek to simply try but fail; ie., the duty to seek to further the special qualities of the Park. This is addressed in Natural England's interpretation that the LURA duty is imposed on all Parties including the ExA, Secretary of State and the Rampion 2 Applicant – as well as IPs as interested and affected Parties in this Examination.

Supplement for European Landscape Convention Context

For clarity we note also the following extracts from the ECL website:

<https://www.coe.int/en/web/landscape>

“The aim of the Council of Europe Landscape Convention, ratified to date by 40 member States (including the UK), is the protection, management and planning of the landscape, with reference to the entire territory of the States parties, promoting public awareness and participation.

The Convention is based on the assumption that landscape is a key element of individual and social well-being everywhere, an essential component of human beings' surroundings and an important part of their quality of life.

It thus helps to strengthen the link between human rights and the environment with a view to their mutual protection and enhancement

As part of the Parties' co-operation in implementing the Convention within the Council of Europe... the considerations contained in the Preamble to the Convention are an important reference for this work:

*“... the landscape ...has an important public interest role in the cultural, ecological, environmental and social fields;
... is a basic component of the European natural and cultural heritage, contributing to human well-being and consolidation of the European identity;
... is an essential component of human being's surroundings;
... is an important part of the quality of life for people everywhere: in urban areas and in the countryside, in degraded areas as well as in areas of high quality, in areas recognised as being of outstanding beauty as well as everyday areas;
... is a key element of individual and social well-being and ...its protection, management and planning entail rights and responsibilities for everyone.”*

UK Website on ELC Commitments

Signed by the UK government in 2006 and introduced in March 2007, the ELC provides a people-centred and forward-looking way to reconcile management of the environment with the social and economic challenges of the future, and aims to help people reconnect with place.

<https://www.landscapeinstitute.org/policy/13732-2/>