



The Planning Inspectorate
Yr Arolygiaeth Gynllunio

REPORT on the IMPLICATIONS for EUROPEAN SITES

Proposed Mallard Pass Solar Farm

An Examining Authority report prepared with the
support of the Environmental Services Team

Planning Inspectorate Reference: EN010127

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1 INTRODUCTION

1.1 Background

- 1.1.1 Mallard Pass Solar Farm Limited (the Applicant) has applied to the Secretary of State for a development consent order (DCO) under section 37 of the Planning Act 2008 (PA2008) for the proposed Mallard Pass Solar Farm (the application). The Secretary of State has appointed an Examining Authority (ExA) to conduct an Examination of the application, to report its findings and conclusions, and to make a recommendation to the Secretary of State as to the decision to be made on the application.
- 1.1.2 The relevant Secretary of State is the competent authority for the purposes of the Habitats Directive¹ and the Habitats Regulations for applications submitted under the PA2008 regime. The findings and conclusions on nature conservation issues reported by the ExA will assist the Secretary of State in performing their duties under the Habitats Regulations.
- 1.1.3 This Report on the Implications for European sites (RIES) documents and signposts the information in relation to potential effects to European Sites² that was provided within the DCO application and submitted throughout the Examination by the Applicant and Interested Parties (IPs), up to 19 September 2023 to include Deadlines 1 to 6. It is not a standalone document and should be read in conjunction with the Examination documents referred to. Where document references are presented in square brackets [] in the text of this report, that reference can be found in the Examination library published on the National Infrastructure Planning website at the following link:
<http://infrastructure.planninginspectorate.gov.uk/document/EN010127-000304>
- 1.1.4 This RIES is issued to ensure that IPs including the Appropriate Nature Conservation Body (ANCB) – Natural England (NE) – is consulted formally on Habitats Regulations matters. This process may be relied on by the Secretary of State for the purposes of Regulation 63(3) of the Habitats Regulations.
- 1.1.5 It also aims to identify and close any gaps in the ExA’s understanding of IPs’ positions on Habitats Regulations matters, in relation to all sites and

¹ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (as codified) (the ‘Habitats Directive’).

² For the purposes of this RIES, in line with the Habitats Regulations and relevant Government policy, the term “European sites” includes Special Areas of Conservation (SAC), candidate SACs, possible SACs, Special Protection Areas (SPA), potential SPAs, Sites of Community Importance, listed and proposed Ramsar sites and sites identified or required as compensatory measures for adverse effects on any of these sites. For ease of reading, this RIES also collectively uses the term “European site” for ‘European sites’ defined in the Habitats Regulations 2017 and ‘European Marine Sites’ defined in the Conservation of Offshore Marine Habitats and Species Regulations 2017, unless otherwise stated. “UK National Site Network” refers to SACs and SPAs belonging to the United Kingdom already designated under the Directives and any further sites designated under the Habitats Regulations.

features of interest as far as possible, in order to support a robust and thorough recommendation to the Secretary of State.

- 1.1.6 Following consultation, the responses will be considered by the ExA in making their recommendation to the Secretary of State and made available to the Secretary of State along with this report. The RIES will not be revised following consultation.

1.2 Documents used to inform this Report

- 1.2.1 The Applicant's Habitats Regulations Assessment (HRA) Report (the HRA Report) comprised the following document:

- Shadow Habitat Regulations Assessment [[APP-063](#)] provided as Appendix 7.5 of the Environmental Statement (ES), updated at D5 [[REP5-054](#)].

- 1.2.2 In addition to the HRA Report, the RIES refers to representations submitted to the Examination by IPs, Issue Specific Hearing (ISH) documents, Statements of Common Ground (SoCG) and other Examination documents as relevant. All documents can be found in the Examination Library.

1.3 Questions in this Report

- 1.3.1 This RIES contains a question targeted at NE which is drafted in *blue, underlined italic text.*
- 1.3.2 The responses to the question posed within the RIES and comments received on it will be of great value to the ExA in understanding IPs' positions on Habitats Regulations matters. However, it is stressed that responses to other matters discussed in the RIES are equally welcomed.
- 1.3.3 In responding to the question in Table 2.2, please refer to the ID number in the first column.
- 1.3.4 Comments on the RIES are timetabled for Deadline 8 (D8, 25 October 2023).

1.4 HRA Matters Considered During the Examination

- 1.4.1 The Examination to date has focussed on the following matters:
- Whether proposed vegetation planting is considered as an embedded mitigation measure.
 - Whether sufficient information has been provided by the Applicant to consider the in-combination assessment.

2 LIKELY SIGNIFICANT EFFECTS

2.1 European Sites Considered

Introduction

- 2.1.1 The Proposed Development is not connected with or necessary to the management for nature conservation of any European site.
- 2.1.2 The scope of the assessment and justification is described within paragraph 3.7 of the HRA Report [REP5-054]. The Applicant identified European sites within 10km of the Order Limits and 30km for European sites designated for bats.

Sites within the UK National Site Network

- 2.1.3 The HRA Report [REP5-054] identified five European sites within the UK National Site Network for inclusion within the assessment. These are listed in Table 1 of the HRA Report and are detailed in Table 2.1 below.

Table 2.1: UK National Site Network European sites identified in the Applicant's HRA Report [REP5-054]

Name of European Site	Approximate distance from Proposed Development (km) at the closest point
Rutland Water Special Protected Area (SPA)	5.6km west
Rutland Water Ramsar site	5.6km west
Baston Fen Special Area of Conservation (SAC)	6.1km northeast
Grimsthorpe SAC	4.6km north
Barnack Hills and Holes SAC	6.8km south

- 2.1.4 There was inconsistency across the application documents, namely ES Chapter 7 (Ecology and Biodiversity) [APP-037], ES Chapter 11 (Water Resources and Ground Conditions) [APP-041], and the HRA Report [APP-063], regarding the distance of the Proposed Development site from Baston Fen SAC. At D5 the Applicant confirmed [REP5-012] that at its closest point the Order Limits is located 6.1km from Baston Fen SAC and provided an updated HRA Report [REP5-054]. Any further references to the HRA Report in the RIES refer to this updated version.
- 2.1.5 The locations of these sites relative to the Proposed Development are not provided within the HRA Report [REP5-054] but instead are depicted on Figure 7.1 (Maps 1 and 2) [APP-175] and [APP-176] of the ES.

- 2.1.6 As stated in paragraph 6.4 of the HRA Report [[REP5-054](#)] impact pathways to Grimsthorpe SAC and Barnack Hills and Holes SAC were scoped out of further assessment due to distance and the nature of the Proposed Development.
- 2.1.7 No additional UK European sites have been identified by IPs for inclusion within the assessment in the Examination to date.
- 2.1.8 NE raised no concern regarding the European sites selected for assessment and state in its Draft Statement of Common Ground (SoCG) provided at D5 [[REP5-009](#)] that it agrees with the approach set out within the HRA Report.

Non-UK European sites

- 2.1.9 The Applicant has not identified any potential impacts on European sites in other European Economic Area (EEA) States.
- 2.1.10 Only UK European sites are addressed in this RIES.

2.2 Potential impact pathways

- 2.2.1 Section 6 of the HRA Report [[REP5-054](#)] detailed the potential impacts from the Proposed Development, along with the potential geographical extent of effects. Paragraph 6.4 of the HRA Report identified three pathways that have been scoped out of the assessment.
- 2.2.2 The following two potential impact pathways were scoped in for assessment by the Applicant and are set out in paragraph 6.3 of the HRA report:
 - Loss of land used by species which form part of the designated ornithological interest of the Rutland Water SPA and Ramsar site during construction (Functionally Linked Land); and
 - Changes in hydrology or degradation of the Baston Fen SAC during construction and decommissioning.
- 2.2.3 The HRA Report assessed the potential impacts during construction and decommissioning; it did not assess impacts during the operational phase. Paragraph 6.5 of the HRA Report [[REP5-054](#)] states that due to the nature of the Proposed Development and distances to the European sites no impacts are considered likely during operation.
- 2.2.4 Table A1 in Annex 1 of this RIES details the potential impact pathways considered in the HRA Report [[REP5-054](#)] by European site and qualifying features.
- 2.2.5 At ISH2, Mallard Pass Action Group (MPAG) raised concern regarding potential nutrient runoff from the creation of wildflower grassland and storage of arisings that may result in adverse effects on the Baston Fen SAC, as summarised in the Applicant's summary of oral submissions [[REP4-041](#)]. NE [[REP5-037](#)] stated that whilst storage of arisings on the site may lead to some nutrient runoff this is likely to be a considerably smaller nutrient load compared to the current arable agriculture usage.

Rutland County Council [[REP5-024](#)] also agreed that adverse impacts on Baston Fen SAC are unlikely to occur from this impact pathway. The HRA Report [[REP5-054](#)] was not updated to include this impact pathway.

- 2.2.6 No additional impact pathways have been identified by any other IPs for inclusion within the assessment in the Examination to date.

2.3 In-combination effects

- 2.3.1 Section 7 of the HRA Report [[REP5-054](#)] detailed the Applicant's approach to assessing in-combination effects. In-combination effects were screened out on the basis that the Proposed Development would not have any effects on European sites alone and therefore could not add to any effects from other development, as stated in paragraph 7.1 of the HRA Report. No methodology was provided to support this statement and it was unclear what other plans and projects were considered within the assessment of in-combination effects.
- 2.3.2 At the ExA's First Written Questions (ExQ1) [[PD-008](#)] the Applicant was asked to provide the methodology and evidence used for reaching the conclusion of no likely significant in-combination effects including the list of other plans and projects considered. NE's Written Representation and Response to ExQ1 provided at D2 [[REP2-093](#)] stated that further information was required from the Applicant to understand the in-combination assessment. At D3 the Applicant responded [[REP3-026](#)] that it did not consider further information regarding the in-combination assessment was required.
- 2.3.3 During Examination the ExA and NE raised queries regarding the in-combination assessment. This matter is discussed within Table 2.2 below.
- 2.3.4 At the ExA's Second Written Questions (ExQ2) [[PD-014](#)] the LPAs were asked which other plans or projects should be considered within the in-combination assessment. No plans or projects were provided by the LPAs. No plans or projects were highlighted by any other IPs in the Examination to date.

2.4 The Applicant's assessment

- 2.4.1 The Applicant's conclusions in respect of screening are presented in Table 3 of the HRA Report [[REP5-054](#)].

Sites for which the Applicant concluded no likely significant effects on all qualifying features

- 2.4.2 The Applicant concluded that the Proposed Development would not be likely to give rise to significant effects, either alone or in combination with other projects or plans, on all qualifying features of the following European sites:
- Rutland Water SPA;
 - Rutland Water Ramsar site; and
 - Baston Fen SAC.

2.4.3 NE confirmed it agreed with the Applicant's conclusion of no likely significant effects in respect of the above European sites [[RR-0823](#)] [[REP2-093](#)]. At D5 NE [[REP5-009](#)] stated that the Applicant's HRA Report is acceptable.

2.4.4 No matters have been raised in the Examination to date in relation to the Applicant's screening assessment.

2.5 Examination matters

2.5.1 Matters raised in the Examination to date, or for which the ExA seeks clarity, in relation to likely significant effects screened out by the Applicant are summarised in Table 2.2 below.

Table 2.2: Issues raised in the Examination to date by the ExA and IPs in relation to the Applicant's screening of likely significant effects (alone and in-combination)

ID	Potential impact pathway	Details of issue	ExA observation/ question
Baston Fen SAC			
2.2.1	Changes in hydrology or degradation during construction and decommissioning	<p>The Applicant ruled out significant effects via this impact pathway due to the distance via the watercourse (over 10km) meaning any changes in hydrology or pollutants entering the watercourse would be sufficiently diluted. The HRA Report also referred to “<i>significant planting</i>” and so it was unclear whether this mitigation measures is being relied upon for the conclusion of no likely significant effects and therefore whether an Appropriate Assessment was required.</p> <p>The Applicant confirmed [REP2-037] that this planting is not additional mitigation to reduce the risk of pollution and would be embedded into the project design.</p>	N/A – matter resolved.
2.2.2	Potential runoff from creation of wildflower grassland and storage of arisings	Mallard Pass Action Group (MPAG) raised this potential impact pathway [REP4-041]. The Applicant stated that significant effects are not likely to occur via this impact pathway. NE [REP5-037] and Rutland County Council [REP5-024] agreed that this impact pathway is unlikely to adversely affect Baston Fen SAC.	N/A – matter resolved.
Rutland Water SPA, Rutland Water Ramsar, Baston Fen SAC, Grimsthorpe SAC, and Barnack Hills and Holes SAC			
2.2.3	All impact pathways – in-combination effects during construction and decommissioning	The Applicant screened out in-combination effects on the basis that no effects would occur alone and so there was no potential for in-combination effects. The ExA [PD-008] and NE [REP2-093] requested further information including	<u>Can NE explain the reasoning for agreement with the Applicant’s conclusion that in-combination effects are</u>

		<p>the methodology used to inform this decision along with the other plans and projects considered.</p> <p>At D5 NE subsequently agreed [REP5-009] with the Applicant's conclusion that in-combination effects are unlikely to occur. No further justification for this stance is provided.</p>	<p><i><u>unlikely to occur at D5 considering NE's response at D2 indicated that further information was required to understand the in-combination assessment.</u></i></p>
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3 CONCLUDING REMARKS

- 3.0.1 This RIES is based on information submitted throughout the Examination by the Applicant and IPs, up to D6 (19 September 2023), in relation to potential effects on European sites. It should be read in conjunction with the Examination documents referred to throughout.
- 3.0.2 The ExA's understanding of the Applicant's and NE's current positions in relation to likely significant effects is set out in Annex 1 Table A1 of this RIES.
- 3.0.3 The RIES has identified gaps in the ExA's understanding of IPs' positions on Habitats Regulations and comments on the RIES will be of great value to the ExA in order to support a robust and thorough recommendation to the Secretary of State. In particular, the ExA seeks:
- Responses to the question identified in Table 2.2 of this RIES.
 - Confirmation whether the ExA's understanding of screening and adverse effects conclusions at point of RIES publication (Table (A.1) in Annex 1) is correct.
- 3.0.4 Comments on the RIES must be submitted for D8 (25 October 2023).

ANNEX 1 EXA'S UNDERSTANDING OF SCREENING AND ADVERSE EFFECTS CONCLUSIONS AT POINT OF RIES PUBLICATION

3.0.5 The table in this Annex summarise the ExA's understanding of the Applicant's screening exercise and assessment of effects on integrity, and agreement with NE at time of publication of this RIES, for all European sites assessed.

Key to tables:

- C = Construction
- O = Operation
- D = Decommissioning

Table A1.: European sites and features for which the Applicant concluded no likely significant effects and degree of agreement with Interested Parties

Designated Site	Feature	Potential impact (C, O and D)	Likely significant effects?		AEoI?	
			Applicant's conclusion (alone or in combination)	Agreement with NE? ³	Applicant's conclusion (alone or in combination)	Agreement with NE? ³
Rutland Water SPA	Over-wintering bird species: Shoveler (<i>Anas clypeata</i>), Teal (<i>Anas crecca</i>), Wigeon (<i>Anas Penelope</i>), Gadwall (<i>Anas strepera</i>), Tufted duck (<i>Aythya fuligula</i>),	Loss of land used by species which form part of the designated ornithological interest (C and D)	X	✓	N/A	N/A

³ Applies to impacts from the Proposed Development alone and in combination, unless otherwise stated.

Designated Site	Feature	Potential impact (C, O and D)	Likely significant effects?		AEoI?	
			Applicant's conclusion (alone or in combination)	Agreement with NE? ³	Applicant's conclusion (alone or in combination)	Agreement with NE? ³
	Goldeneye (<i>Bucephala clangula</i>), Mute swan (<i>Cygnus olor</i>), Coot (<i>Fulica atra</i>), Goosander (<i>Mergus merganser</i>) and Great crested grebe (<i>Podiceps cristatus</i>). Assemblage					
Rutland Water Ramsar	Criterion 5 – Internationally important assemblage	Loss of land used by species which form part of the designated	X	✓	N/A	N/A

Designated Site	Feature	Potential impact (C, O and D)	Likely significant effects?		AEoI?	
			Applicant's conclusion (alone or in combination)	Agreement with NE? ³	Applicant's conclusion (alone or in combination)	Agreement with NE? ³
	Criterion 6 – species occurring at levels of international importance	ornithological interest (C and D)				
Baston Fen SAC	Spined loach <i>Cobitis taenia</i>	Changes in hydrology or degradation (C and D)	X	✓	N/A	N/A