

## The Examining Authority's first written questions and requests for information – Royal Society for the Protection of Birds (RSPB) responses

Planning Inspectorate Ref: EN060004

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Question Reference	Question to	Question and RSPB Answer
5.4	Natural England (NE) and the Royal Society for the Protection of Birds (RSPB)	<p><i>[RR-029] In point 4 of their relevant representation the Royal Society for the Protection of Birds have raised the need to assess impacts on SPA assemblage species against the populations of the assemblage's constituent rather than the assemblage as a whole. [APP-027] 5.4 HRA, para. 5.4.40 onwards provides assemblage information. Do you consider the existing information adequate and if not why not?</i></p> <p>Please see paragraph 2.30 of the RSPB's Written Representation (WR), which also addresses this matter.</p> <p>The information provided from para. 5.4.40 onwards is sufficient for describing the status and recent population trends for the assemblage's constituent species. The RSPB's concerns are in relation to the assessments of impacts and whether these adequately consider the importance of the recorded assemblage species (in terms of numbers) and therefore the magnitude of impacts on the assemblage. An example to illustrate our concerns is Table 62 of the same document, which uses counts against the assemblage population as a whole, rather than using the counts of constituent species against their individual populations. The latter is the necessary approach if the assemblage is to be given proper protection, which must include protection of both its overall numbers and its species diversity. The only way to achieve this is via consideration of the constituent species on a species-by-species basis.</p>
5.6	Natural England (NE); Yorkshire Wildlife Trust (YWT); Lincolnshire Wildlife Trust (LWT); Royal	<p><i>[APP—019] Statement of Reasons 4.3.5 - 7.6 ha of set aside land for roosting has been identified. Is this of adequate size, in the best location, how should it be prepared and should consideration be given to its (or an alternative piece of land) long term retention as a positive environmental benefit from the project?</i></p> <p>Please see paragraphs 2.44 to 2.47 of the RSPB's WR, which addresses this matter in detail. In brief, the RSPB considers the proposed 7.6ha to be of neither adequate size nor in a suitable location to offer habitat of value to the key species (golden plover, black-tailed godwit and curlew). This is based on these species' habitat preferences and</p>

	Society for the Protection of Birds (RSPB)	the potential disturbance effects of the construction compound. Paragraphs 2.45 to 2.47 of the RSPB's WR describe our views on the necessary preparation of alternative habitat in this case. Essentially, our view is that enhanced stubble and pasture habitats would be an appropriate habitat type. The total area of habitat required is currently under discussion with the Applicant and dependent on updates to the noise impact assessments (please see paragraphs 2.17, 2.21 & 2.42 of the RSPB's WR). Provision of such habitat over the long-term, if appropriately sited and managed, could certainly offer positive environmental benefits from the project. The RSPB would therefore welcome consideration of such an approach.
5.13	Royal Society for the Protection of Birds, Applicant	<p><i>[RR-029] Can the RSPB share the information on nesting marsh harrier at Goxill (which they refer to in their relevant representation) with the applicant as quickly as possible to enable the applicant to update the assessment? Can the applicant comment upon on how this information affects their assessment of impacts on marsh harrier at Goxhill?</i></p> <p>The information referred to in the RSPB's Relevant Representation (RR) was provided to the RSPB by the Applicant and therefore they have the information necessary to update the assessment. The RSPB has no additional information on nesting activity in this particular area that we can provide to assist with this process. This issue is covered in paragraphs 2.25 to 2.27 of our WR. The RSPB's view is that a mitigation strategy should be devised at this point, which can be implemented in the event of marsh harriers nesting in the proximity of the construction compound. Without the production of such a strategy, at this stage, there is not sufficient certainty to conclude that the proposed construction works will not lead to disturbance of nesting marsh harriers, the associated adverse effect on the integrity of the Humber Estuary SPA and potentially offences under the Wildlife and Countryside Act 1981 (as amended).</p>
5.18	Applicant; Natural England; Yorkshire Wildlife Trust; Lincolnshire Wildlife Trust & Royal Society for the Protection of Birds	<p><i>[APP-047] 6.7 Ecology and Nature Conservation (paras. 7.3.8-7.3.9 and Table 7-3). Please clarify (applicant) whether the desk study covered the access improvement areas and are any interested parties aware of any information available for these areas which could affect the assessment undertaken?</i></p> <p>The RSPB is not aware of any such information that would be of use at this stage.</p>
6.1	Natural England (NE)	<i>There are no specific requirements for measures to mitigate for impacts on the SPA and SAC interest features within the draft DCO, however an initial CEMP has been provided which is to be controlled by Requirement 12. Can you please comment on the sufficiency of the initial CEMP, specifically for mitigating impacts on European sites? If you</i>

		<p><i>consider separate requirements should be incorporated into the DCO, can you work with the applicant to propose appropriate wording?</i></p> <p>The RSPB would like to take this opportunity to highlight our view that the mitigation measures proposed in paragraph 2.47 of our WR will need to be secured through a specific DCO requirement. The RSPB would welcome the opportunity to working with the Applicant on the wording for this requirement.</p>
6.2	<p>Natural England, East Riding of Yorkshire Council; North Lincolnshire Council; Environment Agency and all interested parties</p>	<p><i>Schedule 3 – Requirements 12 - CEMP – Is sufficient information known about the project from the application documentation including the [APP-084] Initial CEMP and [APP-088] Environmental Mitigation Commitments Document to control the necessary environmental mitigation identified in the ES? If there are outstanding concerns please identify them and what you would require to reduce or remove your concern(s)?</i></p> <p><i>The ExA would be interested in particular for comments from Natural England, the Environment Agency and the local planning authorities who would be responsible for approving the CEMP under requirement 12 of the DCO.</i></p> <p>As identified in response to question 6.2, the RSPB’s view is that mitigation to address the potential habitat loss impacts on non-breeding birds of the Humber Estuary SPA will require a specific requirement in the DCO. In order to control this mitigation, it will ultimately be necessary to lay out detailed management and monitoring prescriptions, with appropriate targets and remedial measures, for the mitigation site(s). It is the RSPB’s view that this would be best achieved through a standalone document that can be cross-referenced by the CEMP and Environmental Mitigation Commitments Document. Similarly, the mitigation for breeding marsh harrier (paragraph 2.26 and 2.27 of our WR) will require the provision of further detail by the Applicant. The RSPB’s view is that the principles of this mitigation could be secured through the CEMP and Environmental Mitigation Commitments Document, with a separate, more detailed plan provided as a separate document. This reflects the scale of detail that would be needed to properly understand the likely effectiveness of the respective mitigation elements (i.e. for non-breeding and breeding birds).</p>
7.4	<p>Natural England; Yorkshire Wildlife Trust; Lincolnshire Wildlife Trust &amp; Royal Society for the Protection of Birds</p>	<p><i>[APP-027] Habitats Regulation Assessment, para. 8.3.19, Page 80 ‘Noise Disturbance’ references documented reports in evidence to support that 70dB is the relevant limit for construction noise levels and that ‘where possible, sudden, irregular noise above 50dB should also be avoided’. Are these noise levels agreed? If not what alternative levels are suggested and on what basis?</i></p> <p>This issue is covered in paragraphs 2.19 to 2.20 of the RSPB’s WR. In brief, the suggested 70dB and 50dB “thresholds” are not agreed by the RSPB. The use of thresholds take no account of either the local context for noise (i.e. existing background levels) nor the differing reactions shown by different species. The RSPB’s view is that the most appropriate approach is to consider predicted noise levels against existing background noise levels, with the</p>

		aim of ensuring that the former do not exceed the latter. Where exceedances are predicted to occur, mitigation will be required.
7.5	Applicant; Natural England; Yorkshire Wildlife Trust; Lincolnshire Wildlife Trust & Royal Society for the Protection of Birds	<p><i>Baseline sound levels were taken at each site at the SPA boundary and are stated to be in excess of noise levels predicted during construction of the project. Applicant - Please provide the source of LAmox at the boundary of the SPA on both sides of the river that was recorded during the baseline monitoring. Can the applicant share this information with Natural England the Wildlife Trusts and RSPB and can these organisations subsequently confirm whether they agree an adverse effect on the integrity of the Humber Estuary SPA and Ramsar site can be ruled out?</i></p> <p>As recorded in paragraph 2.24 of our WR, the RSPB does not consider it currently possible to rule out adverse effects on the integrity of the Humber Estuary SPA and Ramsar site. The Applicant has committed to providing the RSPB with further information on this matter, as described in paragraph 2.17 of our WR, and we will review our position on this issue in light of any new information received.</p>
7.10	Applicant	<p><i>The Wildlife Trusts and Royal Society for the Protection of Birds highlight a remaining concern as the potential disturbance to birds due to remaining noise impacts on golden plover, black tailed godwit and stone curlew in fields 4, 5 and 6. Has agreement been reached on a solution or do there remain matters that are not agreed? Please summarise the position in a SOCG.</i></p> <p>Please note that the third species is curlew <i>Numenius arquata</i>, rather than stone-curlew <i>Burhinus oedicephalus</i>. This matter is under ongoing discussion with the Applicant.</p>
14.2	Applicant and all interested parties	<p><i>There are supporting documents/plans referred to in the application ES, some of which are then directly referred to within the DCO and others which are not and some of which have been drafted and submitted for examination and others not, including;</i></p> <p><i>A. Initial Construction and Environmental Management Plan (CEMP) [APP-084]</i>  <i>B. Schedule of Mitigation Commitments [APP-088]</i>  <i>C. Initial Site Water Management Plan [APP-073]</i>  <i>D. Flood Incident Response Plan (FIRP) (at Annex C to the Flood Risk Assessment) [APP-025]</i>  <i>E. Site Waste Management Plan (SWMP) (not currently provided but referred to in section 2.5 of the CEMP)</i>  <i>F. Materials Management Plan (MMP) (not currently provided but referred to in para. 2.5.16 of the CEMP)</i>  <i>G. Initial Traffic Management Plan (TMP) [APP-083]</i>  <i>H. Initial Scheme of Noise Management (not currently provided but referred to in Schedule 3, requirement 13 of the draft DCO)</i>  <i>I. Stages of Authorised Development – (not currently provided see also EXQ1_2.3)</i></p>

		<p><i>J. Independent Validation of Design (not currently provided but referred to in para. 5.6.3 of the FRA [APP-025]</i></p> <p><i>K. Decommissioning Scheme (not currently provided)</i></p> <p><i>1. Whilst these documents (A-K) are contained (or mentioned) within the ES documentation due to their importance in securing mitigation, or ensuring viable delivery of the project within the order limits and scope of the ES should they all be available and listed for ‘certification’ in Article 42 of the draft DCO as Article 49 of the final draft order for the Yorkshire and Humber (CCS Cross Country Pipeline) DCO and Article 45 of the Hinckley Connector final draft DCO.</i></p> <p>The RSPB’s view is that all documents referred to in the ES as necessary for securing mitigation or ensuring delivery of the project within the limits and scope of the ES should be available and listed for certification.</p> <p><i>3. Given the current definition of ‘commence’ (within Article 2 Interpretation of the draft DCO) which excludes certain pre-commencement works including for example site clearance and erection of a contractors’ works compound and the wording of Requirement 13 ‘Noise’ should an Initial Scheme of Noise Management (H) be produced and submitted during the examination to secure adequate mitigation? Should ‘pre-commencement’ works also be defined and is the scope of the existing list of exclusions necessary?</i></p> <p><i>4. The programming of the individual operations within the defined project and date of commencement has potential to alter the effects on the SPA/RAMSAR, water voles etc. In order to minimise these effects could an outline programme (I) be produced and submitted during the examination to secure mitigation created by appropriate timing of key activities? If not how can the ExA be assured that programming would consider and minimise potential adverse impacts remaining within the parameters of the application ES assessment?</i></p> <p>The RSPB considers the two questions above to be linked. In terms of the potential impacts of the Project, particularly disturbance and habitat loss, pre-commencement works should be considered as part of the construction element, with any mitigation in place prior to <u>any</u> works commencing on site (i.e. prior to pre-commencement works). On this basis, the provision of an outline programme is key to understanding the likely impacts and ensuring that the necessary mitigation will be in place at the required times. This must include all pre-commencement works, construction phases, operation phases and decommissioning, with the programme matching and illustrating any timing commitments made via the ES, HRA, CEMP or other documents detailing mitigation requirements.</p>
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