



Your reference EN070005

Our reference 3251

The Planning Inspectorate
National Infrastructure Planning
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Date: 20 February 2020

Dear Sir or Madam

Application by Esso Petroleum Company, Limited for an Order Granting Development Consent for the Southampton to London Pipeline Project

I refer to a letter dated 13th February 2020 from my colleague Luisa Stuart, please now find attached comments on the responses submitted at deadline 4 in particular from NE.

Yours faithfully

[REDACTED]

PP **Catriona Herbert**
Corporate Manager – Legal Services

Comments to Natural England's Deadline 4 representations

**Application by ESSO Petroleum Company Ltd
for an Order Granting Development
Consent for the Southampton to London
Pipeline Project**

Application Reference EN070005

Interested Party Reference 20022787

Internal Reference 19/00432/PINS

1. Introduction

1.1 RBC refers the ExA to our comments and legal case submitted for deadline 2 – 5 which are summarised below.

- There are 48 breeding territories and 30.68ha of breeding habitat within the order limits passing through the Thames Basin Heath SPA. The application documents do not make clear how much of this habitat will need to be cleared, and therefore the significance of the losses cannot be assessed. There is no mitigation or compensation for the mature heathland to be lost with only natural regeneration being proposed.
- Up to 7.61ha of European dry heath designated within Thursley, Ash Pirbright and Chobham SAC will be lost due to the proposed route.
- RBC still has concerns regarding the discharge of untreated water into rivers and ditches in an emergency. This could cause pollution within the Natura 2000 network. There is no information as to how the SPA would be protected in the case of an emergency, and what constitutes an emergency is not defined.
- Despite the order limits impacting on multiple Suitable Alternative Natural Greenspaces, visitor deflection onto the SPA has been discounted as insignificant. No attempt has been made to assess the numbers of visitors that may be discouraged from using the site despite all SANGs having strict capacities and SANGS in operation being required to keep records of visitor numbers.
- The decommissioning of the old pipeline and the new pipeline, at end of life, has not been assessed within the information for the HRA or the EIA.
- No in-combination assessment has been provided to examine either the loss of breeding habitat across the three SPA sites or the disturbance within multiple SANGS over the same period.

2. A1. Please set out the advice given to the Applicant and other Interested Parties on the ecological value of the heathland at Turf Hill.

2.1 RBC is surprised and concerned that no written advice was provided by Natural England (NE) to the applicant in relation of protection of the Thames Basin Heaths Special Protection Area (SPA), with site visits only undertaken. It is standard practice on major development applications, for written advice to be provided to enable the determining authority to appraise NE's advice, to ensure it fully protects the Natura 2000 site, and that the applicant has followed the advice given by NE at the pre application stage.

3. A2. Please explain the ecological value of the woodland habitat at Turf Hill, specifically the location of the route of the proposed pipeline F1a.

3.1 It would appear from NE's response that they acknowledge the value of some woodland within the sites that form part of the SPA as *"Nevertheless, semi-natural woodland is often a valuable component of the mosaic of habitats associated with lowland heath land, in that it often provides supporting habitat for specialised invertebrates which inhabit both heath and*

woodland. Additionally the transitions between woodland and heath can be important foraging or song perch areas for nightjar and woodlark. This mirrors our view laid out within our submissions. However we also acknowledge the need to clear scrub invading the heathland and support the need to eradicate *Gaultheria shallon* from the sites. Therefore we have not included any woodland loss within the calculations detailed above

4. A3. Please provide a view as to the acceptability of route F1c.

4.1 NE acknowledges that “Route F1c will result in significant damage to lowland heathland habitat, the primary reason for the designation of the land as part of Colony Bog and Bagshot Heath SSSI, and classification of the land as part of Thursley, Ash, Pirbright and Chobham SAC.” They also acknowledge that “we do not have the details before us as to whether this could actually be avoided or mitigated. Esso could find themselves at an IROPI and alternatives test.”

4.2 NE go on to state that “Route 1c will also result in the loss of a considerable extent of habitat known to regularly support nesting and feeding Dartford warbler, one of the three Annex 1 birds for which the land is included in Thames Basin Heaths SPA. A significant length of Route 1c is occupied by structurally varied and dense common gorse, which is an important habitat for this species. We have not discussed the implications of these effects with the applicant and how they might minimise the scale of damage or provide compensation as this option was never presented as a preferred option.”

4.3 Without information on how the significant damage detailed above can be mitigated or whether IROPI will be required, Rushmoor Borough Council (RBC) questions how NE could agree to the Statement of Common Ground or endorse the Information to Inform the HRA. NE within their comments question whether the damage could indeed be mitigated, or whether IROPI would be required. This is the point RBC have been making throughout the examination process and our concerns appear to be endorsed by NE.

5. A5. Was the option of translocating sand lizards (as is proposed at Chobham Common) from Turf Hill discussed with the Applicant? If so, what was NE’s advice in this regard? If translocating sand lizards from Turf Hill was not considered appropriate please explain the reasons why.

5.1 In relation to the protection of sand lizards as this is not our site we will not comment in detail. We would only reiterate that the lack of survey and information to ensure protected species are protected from harm, and all impacts are mitigated is absent in relation to all protected species along the route. If the proposals do not include this information and the works were to go ahead as planned, the council is of the opinion that there would be an infringement of the Conservation of Habitats and Species Regulations 2017 and the Wildlife and Countryside Act 1981.

6. B1. What consideration did NE give to the construction effects on SANGs in the vicinity of the proposed pipeline?

6.1 RBC finds NE’s response to this question very unhelpful. Although they state they provided information NE does not express an opinion on whether they feel that there is an individual or

in-combination impact on the SANG network. As the ExA is aware RBC have serious concerns about deflection of visitors onto the SPA within the construction period.

7. B2. The Applicant's HRA report [APP-130] and [APP-131] does not specify the duration of the proposed works within SANGs and there are no proposed timing restrictions for works within SANGs. It was however indicated at the ISH of 4 December 2019 that works within SANGs could take place for a period of up to two years. Could NE comment on whether they are content that works within SANGs (including consecutively or concurrently) would not result in an adverse effect on the integrity of the Thames Basin Heaths SPA, given that they provide an avoidance and mitigation strategy for recreational impacts from new development? Are you content that no restrictions to the duration and timing of works within SANGs are required to ensure no adverse effects on the integrity of the Thames Basin Heaths SPA?

7.1 NE state that *"It is our opinion from discussion with Esso, that this project is going to move fast and that no area of SPA or SANG will be impacted for any great length of time, along the route of the pipeline. They have their own targets to meet and it wouldn't be in their interest to keep trenches open for two years."* It would appear from these comments that NE is merely relying on the verbal assurances of ESSO, with no reference to the application documents which clearly state that work within SANGs will be limited to 2 years. This opinion also takes no account of the construction compounds situated in most of the SANGs, which will serve not just the work in the SANGs but other phases of the pipeline but merely focuses on the trenching proposed.

7.2 NE goes on to state *"However we do understand and acknowledge the concerns raised by the Local Planning Authorities on this matter of securing timescales. It would seem worthwhile for the applicant to discuss the matter on a SANG by SANG basis to see whether it could be possible to reduce the working timescales on areas the Local Planning Authorities have concerns."* At no time during the application process have ESSO been willing to discuss either limiting the time they are within the SANGs, ensuring that only one SANG is impacted at a time or providing additional Suitable Alternative Natural Greenspace. We have presented a solution to deflection of visitors onto the SPA, but so far have been unable to engage with the applicant to discuss funding enhancements to the Cove Brook Greenways. By making this corridor attractive to visitors it could easily accommodate the overspill from the Country Park, and its connectivity with SCP and the fact it is not designated as a SANG makes it ideal for this purpose. The funding of this project combined with a work schedule that minimises the time that ESSO are working within the SANG would, the council feels, provide appropriate mitigation to alleviate the individual impacts on SCP.

7.3 In relation to in-combination impacts a commitment by the applicant to ensure multiple SANGs were not impacted at the same time, would mitigate multiple visitor deflection onto the SPA from a number of sites.

7.4 Despite providing the above solutions we appear to still be in the same position as at the start of the examination, with the applicant merely insisting NE supports the HRA.

8 B3. Would any impact on SANGs during construction result in likely significant effects and / or adverse effects on the integrity of the assessed European sites including the Thames Basin Heaths SPA?

8.1 RBC do not agree with NE's assessment that *the impacts to SANGs during construction are short term temporary impacts, that won't lead to integrity issues on the SPA*, as we do not feel that 2 years is temporary.

9 B4. Could NE comment on the assumptions and methodology applied by the Applicant in their assessment [APP-130 and APP-131] of effects on SANGs and the Thames Basin Heaths SPA? NE is directed to responses in the Applicant's response to Written Questions [REP2-040] and the Written Representations of Rushmoor BC [REP2-081] and Surrey Heath BC [REP2-092]

9.1 RBC do not agree that this is a rigorous EIA assessment as it is not based on reliable baseline surveys, especially in the case of protected species, and it is our view that the mitigation is inadequate to mitigate impact.

10 Please explain the purpose, status and relevance of the EIP.

C2. Please explain whether the EIP is intended to mitigate the effects of the Proposed Development. Is the EIP relied upon for the conclusions in the ES?

10.1 RBC fully support the concept of providing net gain within developments, however due to the severe impacts on designated sites, SANGs, habitats and protected species, and the lack of mitigation within the application, the claim cannot be made that this application is providing a net gain. NE acknowledges within their response that *"The EIP is not intended to mitigate effects of this proposed development."* The projects detailed within the EIP are very minor projects, such as providing signage within SCP and tools for the Cove Brook Greenways Group, a wildlife pond and a woodland ride in QEP. The EIP certainly does not compensate for the lack of mitigation commitments within the draft DCO and the application documents, merely providing a few minor funding opportunities. The EIP does nothing to protect the biodiversity within the sites and in the case of QEP could be very damaging.

10.2 We would be happy to discuss appropriate net gain projects with the applicant, but feel the highest priority should be to ensure appropriate protection and mitigation for the SPA, important habitats and protected species.

11 BIO 2.3 ii) In response to ExA WQ BIO.1.13 [PD-008] the Applicant confirmed that Biodiversity Net Gain is not necessary but instead is negotiating voluntary agreements under the EIP. This approach is described as being consistent with the approach of Natural England (NE) to seek voluntary agreements. Explain why voluntary agreements are sought.

11.1 RBC agrees that net gain is an important concept which we also promote within our Local Plan and any planning applications. However as this is not mandatory we cannot require applicants to provide net gain.

11.2 The council is not however arguing for net gain but no net loss as a result of the proposals. At present it is our opinion that the application would lead to significant net loss on the Natura 2000 network, the SANGS, the SSSIs, the SINCs and priority habitats and priority and protected species

- 12 BIO 2.18** Rushmoor Borough Council have made legal submissions on the validity of the HRA [REP3-040]. It states that *“the HRA does not give a legally compliant basis for carrying out the Appropriate Assessment. The Applicant should be required to provide further information to justify its conclusions on these principal issues”*.

The ExA notes the Applicant’s responses at D3 [REP3-016] to Rushmoor Borough Council’s WR and responses to the ExA’s WQs [REP2-080] and [REP2-081] which states that it has worked with NE who have confirmed its satisfaction with the project’s HRA. In addition, the ExA notes that NE have not raised any issue with the HRA Report and that a SoCG with NE has been completed and signed.

Provide a detailed response to the above and advise whether or not the SoS has sufficient evidence and information to undertake an Appropriate Assessment of the Proposed Development.

- 12.1 RBC’s concerns in regards to the impacts on the SPA and the SANGs from the proposals are well documented within our submissions and legal case. The concerns are summarised at the start of these comments. We do not agree with NE’s appraisal of the Information to Inform the SPA or its conclusions.
- 12.2 We also note that there is no mention of our concerns in relation to SCP, with only St Catherine’s Road SANG mentioned. SCP is a far more sensitive site with biodiversity value in its own right. It is also mitigation for a far greater number of new residents, 5875. With Southwood Woodlands at capacity and the adjoining Cove Brook Greenways requiring enhancement to make it an attractive alternative to the SANG, we have no alternative open space within the locality that would accommodate the 875 people that could be displaced by the proposals.

- 13 BIO 2.20** In its WR [AS-030], NE concluded that the Application should be able to continue without harm to any key designations or species. Provide the evidence to justify this view.

- 13.1 NE’s response here seems to contradict the response to A3 where they acknowledge that *Route F1c will result in significant damage to lowland heathland habitat and will also result in the loss of a considerable extent of habitat known to regularly support nesting and feeding Dartford warbler, one of the three Annex 1 birds for which the land is included in Thames Basin Heaths SPA*. In relation to the SANGs they state that *we do understand and acknowledge the concerns raised by the Local Planning Authorities on this matter of securing timescales* Given that the only mitigation provided for the habitats lost is natural regeneration, and ESSO refuse to move from their position of a 2 year construction within the SANGs or provision of alternative SANGs, the council does not see how NE can conclude that there is no significant impact and are very concerned that they have made this assessment.

- 14 BIO 2.21** In its SoCG with the Applicant [REP1-005], NE supported the conclusion of no adverse effects on the integrity of European sites after implementation of appropriate mitigation and good practice measures. It also confirmed agreement with the assessment and conclusions in the HRA [REP2-074]. A number of local authorities have expressed concerns about the HRA, particularly in relation to habitat loss during construction (screened out as not significant on the basis that effects would be small scale and temporary) and the displacement of users from

SANGs to the TBH SPA thereby having a potential impact on the integrity of the TBH SPA (ruled out at appropriate assessment stage).

Provide further explanation/justification for their conclusions in relation to these matters. In addition, notwithstanding NE's position, the Applicant is asked to clarify whether or not there would be any direct habitat loss and/or indirect impacts on the TBH SPA and supporting habitat. If, so, how would the impacts be mitigated.

BIO 2.22 NE in its response to the ExA's WQs BIO.1.38, BIO.1.41, BIO.1.42 and BIO.1.56 [REP2-074] has provided the same response namely "*Natural England confirm agreement with the assessment and conclusions in the Habitat Regulations Assessment*".

NE is requested to review these ExA's WQ again and provide reasoning/justification as to why it is in agreement with the assessment and conclusions with particular reference to the specific questions asked.

- 14.1 RBC disputes NE's assertion that the impacts will be temporary and short term. Dense heather and gorse used by the ground nesting birds will take years to generate. In the case of heather 15 – 25 years. Gorse is a shorter lived species and takes less time to regenerate.
- 14.2 In respect of the small proportion of the SPA to be impacted it is true that the overall SPA is extensive. However the Thames Basin Heaths SPA, unlike other sites, is spread over a number of individual sites. If one is to assess the loss to the breeding birds, it is the council's view that the HRA needs to look at the proportion of individual sites that will be lost. RBC requests that the applicant provide information on the proportion of the individual sites to be lost.
- 14.3 RBC support the timing restrictions agreed with NE, and feel that this will at least avoid the direct impacts on the birds due to disturbance of nests. This does not however mitigate the habitat loss, or the length of time that birds are unable to use the habitat to nest due to the immaturity of the habitat. 48 breeding territories are to be destroyed which will not be able to be used for at least 5 years in the case of gorse and 15 – 25 years in the case of heather. The council believe this is a significant impact that needs to be mitigated. At present the council cannot envisage any mitigation that could be provided on site to alleviate this impact and therefore RBC is concerned that the ExA may need to consider IROPI in this case.
- 14.4 Although RBC welcomes the avoidance measures detailed with NE's response, and acknowledge that without these measures impacts would be even greater. We cannot agree with NE's conclusion "*that the applicant has taken reasonable steps to avoid direct impacts on habitats of European interest and habitats supporting Annex 1 birds and that residual impacts are sufficiently small in scale to be considered insignificant.*" 48 breeding territories and 30.68ha of breeding habitat used by Thames Basin Heaths SPA birds and 7.61ha of European dry heath designated within Thursley, Ash Pirbright and Chobham SAC will be lost to the development with little mitigation besides natural regeneration, which will take many years, is provided. NE has insisted rightly that the indirect impacts due to recreational pressure from new housing should be mitigated with development needing to provide significant financial contributions for SANG and SAMMS, however in this case they are willing to class a significant loss of habitat, a direct

impact to the integrity of the site as insignificant. The council is confused and concerned regarding the disparity in these two approaches.

14.5 In respect of NE view that the works could be positive for the breeding bird population, although RBC acknowledges the need for structural diversity within the heathland complex, this is not done over 30.68ha at one time but in discreet areas. Although more hunting ground maybe available for the woodlark, this will not compensate for the breeding habitat lost to the ground nesting birds, which is likely to decrease fecundity significantly and could cancel out the rises in population noted since the 2009 mitigation strategy was agreed within the individual sites to be impacted.

14.6 Although we would dispute the assertion that heathland only takes 5-10 years to regenerate, if this is accepted by the ExA this can hardly be called short term. This will lead to a loss of breeding habitat for 48 breeding pairs, and therefore could lead to a reduction of between 240 and 480 successful broods, lowering fecundity significantly.

14.7 In respect of the Thursley, Ash, Pirbright and Chobham SAC, again the council welcomes the avoidance measures listed with NE's response as this will minimise impact. However this does not absolve the applicant from ensuring that there is mitigation for the 7.61ha to be lost as a result of the proposals and the council could not agree with NE's conclusion "*that appropriate measures are proposed to ensure there is **no direct loss or damage to habitats of European importance***" when the applicant acknowledges that 7.61ha of habitat will be lost in its entirety.

15 BIO 2.23 In line with the requirement within the Conservation of Habitats and Species Regulations 63(5), provide details as to how they were able to conclude there would be no significant impacts on the integrity of the TBH SPA "*beyond reasonable scientific doubt*" when the application confirms that within Colony Bog and Bagshot Heath SSSI, Chobham Common SSSI, and at Bourley and Long Valley SSSI breeding territories for Dartford warblers, nightjars and woodlarks will be lost.

15.1 The applicant themselves acknowledge that 48 breeding territories will be lost and therefore RBC is concerned that NE do not acknowledge this fact. RBC is aware that breeding sites change on a yearly basis; however such extensive destruction will limit the opportunities for the birds that require denser habitats. We note the need to provide habitat complexity within heathlands, but this is never undertaken by clearing hectares of land but by careful management of small areas of habitat over a number of years. RBC therefore cannot agree with NE conclusion that "*Natural England is confident that the proposed works do not compromise the ability of site managers to continue to provide this habitat diversity capable of supporting nesting (and feeding) Annex 1 birds.*"

16 BIO 2.25 Confirm the mitigation strategy that has been agreed to ensure no loss of bird breeding territories within the TBH SPA in the short and medium term, 15 -25 years, whilst the European dry heaths regenerate and reach maturity.

16.1 RBC cannot agree with NE's conclusion that "*Natural England is satisfied that the selected route poses very low risk of significant adverse effects on the integrity of the SPA.*" due to the

concerns regarding direct habitat and breeding territory loss detailed in this and previous representations.

17 BIO 2.26 In line with the requirement within the Conservation of Habitats and Species Regulations 63(2), detail the baseline studies that were used to assess the level of impact on the TBH SPA and the Thursley, Ash, Pirbright and Chobham Special Area of Conservation (SAC) and explain how this is deemed to be adequate.

17.1 RBC has discussed the use of the data by ESSO with the surveyor that collected and collated the data. The surveyor confirmed that, in his professional opinion, the surveys were inadequate to calculate impact as they just recorded where a breeding territory was present and did not map the extent of the territory. He agreed that further more detailed surveys should be required to map the extent of breeding territories accurately to provide a reliable and accurate calculation of impact. This data is collected and paid for by developer contributions to monitor the effectiveness of the mitigation strategy. It was never intended to be used to evidence impact or as a basis for mitigation for a large and damaging infrastructure project.

18 BIO 2.27 With reference to the Conservation of Habitats and Species Regulations 63(6), in respect of the Thursley, Ash, Pirbright and Chobham SAC, explain how there would be no significant impacts on the SAC when 7.61 ha of European dry heaths are within the Order limits, open trenching is to be used and only natural regeneration is relied on for mitigation.

18.1 The figure of 7.61 ha of dry heath came from the applicants own HRA. Despite repeatedly asking the applicant for a breakdown of areas of actual heathland and the area of the tracks within the order limits, over many months this information has still not been provided. To resolve the issue of the habitat loss on the SAC, RBC requests that the ExA require the applicant to provide accurate figures of the amount of actual SAC habitat to be lost. Without such information it is difficult to identify or assess the impact on the designated sites.

19 BIO 2.28 With reference to the Conservation of Habitats and Species Regulations 63(6), provide details as to what mitigation would be provided to ensure no net loss of qualifying mature and semi mature European dry heath during the regeneration of the heathland.

19.1 RBC agrees with NE that micro habitats are extremely important within the heathland complex; however the extent of the damage that is to be occasioned by the SLP pipeline would not conform to regular heathland management as promoted within the NE response. In heathland management small areas would be cut or the site would be grazed, in the case of these proposals up to 7.61 ha of heathland could be lost.