

**Comments on REIS and information
submitted in relation to the Thames
Basin Heaths and Southwood Country
Park SANG at Deadline 6 and 6a**

**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. Report on the implications for the European Sites

- 1.1 RBC wish to confirm that this report provides an accurate appraisal of the council's position on protection of the Thames Basin Heaths SPA and our concerns regarding the damage to the network that would be occasioned by the works being applied for by ESSO within the DCO. The RIES does not draw any conclusions on the points of dispute. RBC invites the Secretary of State, in considering the REIS and in carrying out his own screening and appropriate assessment, to have regard to RBC's legal submissions.
- 1.2 Within 4.1.98 it is stated that Landowners such as Rushmoor BC have made it explicitly clear to the Applicant (meeting 27 February 2020) that they would not want works to take place in Southwood SANG during the winter months. We note this is a quote from representations made by the applicant. This is not the council's position, and on reviewing our notes of the meeting on the 27th February the council stated that ESSO would not want to work within the winter months in Southwood Country Park which ESSO confirmed, and therefore RBC suggested that work should be undertaken wherever possible within the autumn after bird breeding season within the SPA. We did discuss areas where work would need to be earlier such as the flood storage area. ESSO suggested work could commence in August. RBC stated they were willing to consider this but it would mean people would be displaced in the breeding season and therefore it was the council's view that further mitigation would be required in the form of alternative SANG capacity.

2 Natural England's response to the ExA Questions at Deadline 6a

1. Natural England (NE) [REP4-064] stated in response to question B2 of the ExA's Rule 17 further information request [PD-010] that they "regularly receive consultations on items of infrastructure that run through Suitable Alternative Natural Greenspaces (SANGs) and Special Protection Areas (SPAs) for that matter. Whether that be water utilities (water pipes through Swinley Forest) or electrical utilities (such as the undergrounding of pylons at Edenbrook Country Park in Hart)."

- 3.1.1 a. Could NE specifically expand on their experience of such works permitted within SANGs and what measures (if any) do they typically require for works within SANGs (e.g. restrictions to timing and/or duration of works; provision of alternative space; provision of information for users of SANGs)?
- 3.1.2 b. How long were such infrastructure works taking place both within the European sites and SANGs? What area of the European sites and SANGs were affected by such works?

2.1 Direct Habitat Loss

- 2.1.1 Within their response to the ExA Question, in relation to Direct Habitat Loss, Natural England has used the example of a water main being installed through Swinley Forest. Although on the face of it this appears to incorporate works similar to those being undertaken as part of this application, on closer inspection these applications and the mitigation and compensation provided are very different. NE state in relation to Swinley Forest that:-

Much of the area affected was conifer plantation, and where this was the case the route is being maintained as a broad heathy 'ride', which is intended to provide improved supporting habitat conditions for Annex 1 birds.

- 2.1.2 Although nightjar use scots pine to display, both on the periphery of heathland habitat and at strategic points within the heathland, dense conifer is not a habitat that would be used by the breeding birds for which the Thames Basin Heaths SPA is designated. This is due to them requiring the complex of habitats within the heathland. Dense conifer is not a biodiverse habitat and the trees are non-indigenous. Therefore, clearance of conifer would be seen as a significant biodiversity gain in respect of the TBH SPA. This project provided new heathland in the form of a heathy ride through the once unusable habitat, in compensation for the habitat lost or disturbed within the more biodiverse heathland. Although this habitat would take 15 – 25 years to mature, these significant gains, coupled with the avoidance measure listed, would have meant that HRA would have been likely to conclude no significant impact. In comparison, at the applicant's own admission there is to be at least 9ha of breeding habitat loss as a result of the Southampton to London Pipeline. This comprises dense heather used by the birds to nest, limiting the available breeding habitat, rather than conifer clearance which will increase the breeding habitat in the longer term.
- 2.1.3 RBC also notes that one of the mitigation measures agreed was: *Proposals for habitat restoration where natural recovery was unlikely to be successful*. Throughout the examination process RBC have argued against the adequacy of natural regeneration as the sole mitigation measure due the risk that habitats will not regenerate, the length of time taken for habitats to regenerate to a mature shrub community, and the loss of at least 9ha of breeding habitat in the short and medium term. The council have advocated the need to provide additional safeguards for regeneration such as heather harvesting and additional heathland habitat creation, however the applicant has consistently refused to contemplate any other method of mitigation with no failsafe if the heathland seed stock does not survive the process of trenching.

2.2 Works within the SANG Network

- 2.2.1 It would appear that Natural England have limited experience of works within SANGS as they only deal with SANGS in close proximity to an SPA sites. This situation is likely to be quite rare as generally SANGS are sited away from the SPA, to deflect people to an alternative location. Within their response Natural England state that:

"In most cases where Natural England has been involved in consultation over works on SANGs this has been over works within a small area of the site and over a short duration, such as clearance of vegetation under power lines, which would normally take only a few days. Such works are routinely timed to take place during the winter when, even if there were to be some displacement of visitors it is outside the bird breeding season and therefore there is unlikely to be a risk of impacts on Annex 1 birds."

As these works are minor in nature and only last for a short duration, they are unlikely to cause impact to the SPA breeding birds and therefore would not be expected to provide either alternative SANG or other mitigation. Regardless of this, the works referred to do

ensure that they work within the winter months when working within the SANGS, something that the applicant has refused to agree, but has been one of the mitigation measures recommended by RBC to ensure no impact on the SPA. The projects described cannot be in any way compared to the disruption to be caused by this major infrastructure project, over two years.

- 2.2.2 In respect of Edenbrook Country Park the removal of the pylons and undergrounding of the installation of a buried cable could be seen as a positive development within the SANG as the works would improve the landscape value of the site and thus enhance the visitor experience. RBC throughout the examination process has been advocating that, due to the damage caused this project should also provide habitat mitigation to ensure no net loss and enhance the visitor experience in the longer term. RBC is now talking constructively with ESSO regarding habitat creation both within the Country Park and along the Cove Brook, our continued view is that these projects need to be secured within a s106 agreement, as part of the DCO, rather than as EIP projects outside the planning system as advocated by the applicant.
- 2.2.3 Irrespective of the gains at Edenbrook, this site was not a SANG at the time the works were undertaken but was still in construction. The undergrounding was in fact part of the works to enhance the Country Park to make it more attractive to visitors. RBC has received the following account from the Countryside Manager at Hart District Council in relation to the works on site:
- “The works were done while the park was still in the ownership of the developer and there was no compensation directly involved with the pylon. This is mainly as it was not considered to be an impact as the SANGs was still in construction and going through a major redesign anyway. It was also seen as a visual enhancement of the SANGs at a time when the site was reduced in size to accommodate the new Leisure Centre. “*
- 2.2.4 RBC also notes that within 1b Natural England do not provide information regarding the length of time that the works took within Edenbrook Country Park. A row of pylons were removed within Rowhill Nature Reserve. This work was completed within three days, although no undergrounding was undertaken.
- 2.2.5 In conclusion in respect of Direct Habitat loss, whereas the works within Swinley Forest provided significant new breeding and foraging habitats for the SPA birds through inhospitable conifer in the medium term, with “failsafe’s” built into the permission to ensure that if natural regeneration did not work further methods would be used to establish habitat, this application will remove at least 9ha of prime breeding habitat, with no new habitats created and natural regeneration alone relied on. Due to the significant gains occasioned by the Swinley Forest example compared to the significant losses occasioned by these proposals, RBC does not feel that Swinley Forest provides an appropriate comparison.
- 2.2.6 In respect of deflection of visitors onto the SPA as a result of works within the SANG network, RBC does not feel that small localised projects, of short duration, carried out within the winter months can be in any way compared to the significant impacts of this project to five SANGS within the local SANG network. In respect of Edenbrook there were significant

landscape gains associated with the works and the Country Park was not at the time a SANG and multiple SANGS were not being disturbed at the same time. Therefore there was no risk of deflection of visitors onto the SPA. It is the council's view is that the Natural England response to the ExA question does not provide any useful clarity as to the need to ensure that impacts on the SPA, due to deflection of visitors are minimised and that resilient avoidance and compensation measures are provided as recommended within our Deadline 6 response for:-

- Autumn working
- Phased working
- Delivery of Cove Brook Greenways temporary SANG

2.2.7 RBC has costed a project to be delivered in partnership with the EA and the Canal and Rivers Trust to enhance Cove Brook Greenways so the river corridor can be used as a temporary SANG. This would include naturalisation of the brook, management of the banks, ecological enhancement of the surrounding corridor and community activities such as pond dipping, wildflower planting and habitat management. This will provide additional space for people displaced from the Country Park. It is RBC's view that this project should be required as part of the DCO with a s106 agreement negotiated to ensure its delivery. *(for the costed plan see Appendix 1)*

2.2.8 For the above reasons the council would urge the Secretary of State to scope in direct habitat loss, recreational impact due to visitors displaced from the SANG network and the in-combination impacts of both these issues and undertake a full assessment of impact within the Appropriate Assessment.

2.3 Mitigation Measures

2. In NE's response to questions BIO.2.22, BIO.2.23, BIO.2.27 and BIO.2.28 [REP4-063], and in confirming agreement with the Applicant's Habitats Regulation Assessment (HRA) in the signed Statement of Common Ground (SoCG) [REP1-005], NE refer to measures they understand the Applicant is proposing, to conclude no likely significant effects and/or no adverse effects on the integrity of the Thames Basin Heaths SPA and Thursley, Ash, Pirbright and Chobham Special Area of Conservation (SAC). Could NE confirm specifically what they understand these measures to be?

2.3.1 RBC welcomes the avoidance measures that have been included within the application, as without these measures the impact to the Thames Basin Heaths SPA would be still greater. However it remains the council's position that even with these measures between 9ha and 36ha of SPA habitat will be lost, or disturbed with 46 sites used for breeding within the order limits. RBC is of the view that the above losses are likely to cause a significant impact on the ground nesting bird population for which the SPA is designated as well as leading to the loss of 7.61ha of heathland within the Thursley, Ash, Pirbright and Chobham Special Conservation Area (SAC).

4. Applicant's Comments on Responses submitted at Deadline 6

- 4.1.1 RBC understands that the applicant does not agree with our position on impacts within the SPA, however the council would like to make clear that as integral member of the Thames Basin Heaths Joint Strategic Partnership from its inception in 2008, signatory to the Thames Basin Heaths Special Protection Area Delivery Framework and one of the determining authorities for the majority of the applications that affect the Thames Basin Heaths SPA we strongly object to the applicants assertion that the council is not responsible for the SPA, we protect this site on a daily basis both within the planning system and by the administration of the SANG network.
- 4.1.2 The development of the SANG network has been a major task for local planning authorities including RBC. RBC has published its own Thames Basin Heaths Avoidance and Mitigation Strategy 2018 and work hard on a daily basis to ensure that the appropriate mitigation is provided for impacts on the SPA. The Thames Basin Heaths Joint Strategic Partnership share responsibility for protecting the SPA, through well-established approaches agreed with NE. RBC is aware that we are not the only affected authority to have concerns about this issue, but that this concern is shared by Surrey Heath, Runnymede and Spelthorne Borough Councils and that we have only taken the lead on this issue through the examination as we have the in-house ecological expertise.
- 4.1.3 In response to the applicant's comments within labeled Para 2 to Para 4, as stated in written submissions and at the relevant ISHs, RBC's position is that the proposed development in the manner it is presently proposed to be carried out would undermine the conservation objectives for the SPA.
- 4.1.4 **The extent and distribution of the habitats of the qualifying features** - the habitat in which the ground nesting birds nest and forage will be changed with 9 – 36 ha being made unavailable to the birds for a significant period of time, with natural regeneration to a stage of maturity for nesting taking a further 15 years at least. This means that this area could be lost to nesting birds for 17 – 22 years. Both the applicant and Natural England rely on the fact that the habitat affected is only a small part of the SPA. However in relation to recreational pressure from other development within 5.6km of the SPA, even the increase of one house, or 2.4 people needs to be mitigated. This is a tiny impact compared with trenching across the SPA and RBC, although supportive of the mitigation strategy for recreational pressure, would be concerned if such a large direct impact of loss of 9ha SPA habitat were to go unmitigated, whilst the indirect impact of one house is expected to be fully mitigated with a costly package. Throughout the examination the applicant has presented the habitat loss as minimal, however 9ha is a large area to lose and will mean that there is more competition for breeding sites within the three SSSIs affected. Due to the concerns regarding the serious decline of all three designated species RBC cannot understand why Natural England feel this development will not have an impact on the breeding bird population when one house within the 5.6ha buffer would.
- 4.1.5 **The structure and function of the habitats of the qualifying features** – At present the habitat functions as breeding and foraging habitat. For the 2 years of the project this

function will be totally lost and for the next 15-25 years the breeding habitat within the areas affected will be extremely compromised.

- 4.1.6 **The population of each of the qualifying features** – Due to the loss of habitat there will be fewer habitats in which the birds can breed and therefore fecundity could be affected for 17 years.
- 4.1.7 **The distribution of the qualifying features within the site.** – The distribution of the habitats within both the SPA and the SAC will be altered with 9ha of breeding and foraging habitat replaced by bare ground or pioneer and building heather in the latter years. There is no strategy to use other methods if natural regeneration is unsuccessful and we can find no commitment to monitoring to ensure the habitat is returning.

5. HRA Habitat Loss Assessment

5.1 Introduction

- 5.1.1 This section provides an assessment of the impacts of habitat loss. The applicant states that only 0.4% of the overall SPA will be effected, and claims habitat will only be temporarily lost with all habitat restored on completion of work. This claim however shows a lack of understanding of the conservation objectives laid out above. The objectives do not state that some of the habitats of the qualifying species can be lost, providing it is not too much, but state that there should be no change to the extent and distribution or the structure and function of the qualifying habitats.

5.2 Qualifying species potentially exposed to risk

- 5.2.1 Within this section information is provided regarding the habitat preferences and population numbers for all three qualifying species. Throughout the examination process RBC have stated that all three species require mature heather and gorse in which to breed, with the applicant arguing that loss will be temporary with pioneer heather forming within 5 years. The information shows that in fact the birds preference is for mature habitat with Dartford Warbler nesting habitat described as *Extensive unbroken dwarf shrub heath of mature heather interspersed with low to medium height gorse represents optimum breeding habitat*, nightjar described as *nesting within gaps in deep heather on dry heath, often at the edge of woodland or heathland* and woodlark preferring *Tussocky vegetation ...for nesting*

5.3 Stage 2 Appropriate Assessment

- 5.3.1 Despite the embedded measures section 4.1 still evidences that 7.96ha of breeding habitat would be lost across the three sites. The applicant states this is only 0.1% of the overall SPA but this shows a lack of understanding regarding the distribution of habitats within the SPA. The Thames Basin Heaths is not a continuous site as many SPA's are, but rather comprises 13 sites over three counties. The heathland complex has become fragmented over time leading to individual birds often using only a small part of the SPA. Due to the fragmentation of the heathland habitat all SPA habitat is unlikely to be available to individual breeding pairs and RBC feel that an assessment should be undertaken on the proportion of the three individual SSSI sites that will be lost rather than the entire SPA.

5.4 Habitat Regeneration

5.4.1 The HRA alludes to the habitat being restored on completion of the pipeline project, however RBC's understanding of restoration is that like for like habitats are provided in place of those impacted. In this case however bare ground only will remain at completion of construction, with the mature habitats needed by the birds not being regenerating for 15 years. Although topsoils and subsoils are to be stored there is no guarantee that heather and gorse will reseed after such disturbance and there is no mechanism such as seed collection to provide additional mitigation if natural regeneration is not successful.

5.5 Bird Territories

5.5.1 Within para 4.3.2 the applicant states that not all of a territory will be impacted. However these birds are extremely shy and prone to disturbance and thus the removal of dense vegetation from their territories will make them much more prone to disturbance and predation than if the territory were surrounded by dense scrub. Ultimately 46 breeding territories will be impacted which could lead to the loss of 46 broods. Due to the rarity of these species it is RBC's view that such impact could lead to significant impacts on the local population and thus on the overall population of the SPA. RBC would dispute that cleared habitat would provide nesting opportunities for SPA species as their their habitat breeding preferences are for heavily vegetated area.

5.6 Summary

5.6.1 RBC so not feel that the evidence of loss of supporting habitat and nesting sites across the order limits substantiates the conclusions drawn that *This habitat modification would not lead to adverse effects on the integrity of the SPA or its ecological functions as defined by the Conservation Objectives.*

5.7 In-combination Assessment

5.7.1 RBC cannot agree that there would be no in-combination impact with visitor deflection from the SANG network. The loss of breeding territory, coupled with a loss of fecundity due to disturbance, is likely to lead to both a lowering of breeding success and mortality in chicks over two seasons. The applicant dismisses this as a short term impact, but due to the problems these species have in breeding successfully, a loss of 46 breeding sites in combination with an increase in visitors could have a significant impact on local populations within the three SSSIs.

6. Conclusion

6.1.1 RBC is grateful for the summary of the competing positions in the REIS.

6.1.2 RBC has carefully considered NE and the Applicant's comments at Deadline 6 and 6a but maintains that the Secretary of State should not be satisfied that an adverse effect on site integrity can be excluded. Accordingly, the appropriate assessment should conclude that there will be an adverse effect on integrity of the SPA due to both direct habitat loss and increased recreational pressure through disruption to the SANGs network.

6.1.3 RBC has reviewed the HRA assessment prepared in relation to direct habitat loss and feels that the information presented indicates that the project will have a significant impact on the SPA population within the local SPA sites, contravening the site conservation objectives. Increases in visitor numbers from the SANGs will exacerbate this impact and could lead to a serious dip in breeding success and chick survival.

Appendix 1 Cove Brook Greenways Enhancement Project

To mitigate impacts of Esso SLP on Southwood Country Park SAMG due to visitor displacement RBC propose the following alternative SANG mitigation within the Cove Brook corridor. This will provide a high quality alternative green space for visitors to access.

| Works | Cost |
|---|----------------|
| Project Management | £12,100 |
| Extended Phase 1 Habitat Survey and botanical survey along Cove Brook including invasive species between April - June on a monthly basis | £3.500 |
| Tree removal in selected areas to let more light in to watercourse. This will provide wood for in-stream enhancements. | £5.000 |
| Simple in-stream habitat enhancements on the Cove brook. Mixture of large wood, woody/brash berms, gravel <i>etc.</i> to improve in-stream habitat throughout Cove Brook. Approx. 2.5km SU8575055875 to SU8613157811. | £10.000 |
| Backwater creation at Blunden Hall – approx. location SU8575856416. For fish spawning and pond dipping | £10,000 |
| Wildflower Corridor creation throughout Cove Brook Greenways | £5.000 |
| Bramble removal and management for 5 years | £5.000 |
| 3 signs | £12.000 |
| Community consultation and involvement | £5.000 |
| TOTAL | £67.600 |