

Meeting Note

File reference	RSPB Meeting Note
Status	Final
Author	Will Spencer, Simon Butler

Meeting with	Royal Society for the Protection of Birds (RSPB)
Meeting date	13 October 2011
Attendees (IPC)	Simon Butler (SB) Ian Gambles (IG) Helen Adlard (HA) Will Spencer (WS)
Attendees (non IPC)	Kate Jennings (RSPB) (KJ) Penny Simpson (DLA Piper) (PS)
Location	IPC Offices, Temple Quay House, Bristol

Meeting purpose	Liaison Meeting
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Summary of outcomes	<p>Introduction</p> <p>SB explained the IPC 'openness' policy and that a record of the meeting would be published on the IPC website.</p> <p>The purpose of the meeting was to discuss issues in respect of the IPC's Habitats Regulations Assessment (HRA) procedures (as set out in the IPC's Guidance Notes and Advice Notes) that had been observed by RSPB. The IPC can comment on the relevant procedures, however the merits of any such application would not be discussed at the meeting.</p> <p>RSPB Comments</p> <p>KJ provided an overview of the roles/responsibilities of the RSPB with regard to its nature conservation objectives, particularly in seeking to ensure that development is 'least damaging' to nature.</p> <p>The group discussed the IPC Guidance Note in respect of the Habitats Regulations Assessment (HRA) process. The RSPB expressed concerns about current processes in relation to Development Consent Order (DCO) applications.</p> <p>RSPB expressed concerns that there is no statutory</p>
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requirement for applicants to consult specifically on HRA issues with relevant environmental bodies at the pre-application stages. In this context, the RSPB were disappointed that (i) the previous Guidance Note 2 has been withdrawn; and (ii) that the original Guidance Note 1 had been amended so as to remove from it guidance with regard to the HRA process. These guidance notes in their original form had encouraged applicants to engage early with statutory environmental bodies on HRA issues. The RSPB sought clarification on why this removal / amendment was necessary.

RSPB queried how the IPC would be able to make an informed decision on whether the information provided within an application i.e. the HRA Report is sufficient to enable the Commission to make an Appropriate Assessment of the implications for the site, if required. The RPSB pointed out that under s55(3)(b) PA 2008, together with reg 5(2)(g) APFP Regulations 2009, the application must be accompanied by such sufficient information in order for it to be accepted by the Commission.

The RSPB have reviewed IPC Advice Note 10 and provided an annotated version including comments and suggested amendments to the IPC at the meeting for consideration. In particular the RSPB commented that Advice Note 10 should make clear, as had been made clear in the first draft of Guidance Note 1 (para 13), that where the application is not accompanied by "sufficient" information it cannot (under s55(3)) be accepted by the Commission.

IPC Response

The IPC explained that the extent of pre-application consultation with statutory environmental bodies is the responsibility and at the risk of the applicant. The IPC explained that there is a significant amount of published guidance on appropriate pre-application procedures and that the following measures are already in place to address the concerns of the RSPB:

- Pre-application advice provided by the IPC to applicants under Section 51 of the Planning Act. This includes routine advice which encourages applicants to engage with stakeholders at the pre-application stage.
- The publication of the IPC's Advice Note 10: HRA which describes the way applicants should engage with relevant stakeholders throughout the IPC process.
- Scoping Opinions provided by the IPC to applicants under Regulation 8 of the EIA Regulations 2009 (prepared following consultation with statutory consultation bodies, with responses included within an

appendix and/or subsequently forwarded to the applicant).

- The ability of the IPC to request applicants to provide copies of consultation responses at the Acceptance stage.
- The role of the local planning authority in providing a statement on the 'adequacy of consultation' undertaken by the applicant at Acceptance.
- The opportunity for any non-statutory environmental bodies to register as Interested Parties, and all statutory parties to be involved in the Examination process following the acceptance of any application.

Based on experience, these approaches are proving to be effective, with applicants choosing to undertake extensive pre-application consultation with environmental bodies such as Natural England on HRA issues. The IPC therefore advises the RSPB to work directly with applicants and the relevant statutory environmental bodies to address their concerns.

The RSPB were referred to Table 2 in the IPC Advice Note (10) on HRA which summarises the relationship between DCO applications and the HRA process. From experience it appears that applicants are following this process. Guidance Note 2 was issued in the early stages of the IPC's existence and this later Advice Note provides more detailed/practical advice.

The RSPB were referred to relevant procedures already established through European legislation in respect of the need for applicants to provide sufficient information for Appropriate Assessments to be undertaken, if required. The IPC does not consider it must make a detailed appraisal within the 28 day Acceptance period and come to a definitive ruling on whether the information contained within the application is 'sufficient' (and need not be supplemented) to enable an appropriate assessment to be carried out. The IPC must act as a reasonable authority and taking into account the evidence presented to it determine whether it is reasonable to conclude an appropriate assessment could be concluded prior to making a decision to grant consent.

IPC stated that the word 'sufficient' in the APFP Regulations 2009 does not imply interrogation of the information at the acceptance stage of the PA 2008 process. It is not possible to definitively know whether sufficient information has been provided until carrying out the Appropriate Assessment. If applicants state that they have provided sufficient information it is therefore their risk should this be proved not to be the case during

	<p>Examination.</p> <p>The IPC welcome comments on the wording of its Advice Notes and look forward to receiving the RSPB's annotated comments on Advice Note 10. The comments will be considered by the IPC when preparing future revisions to the Advice Note.</p>
Record of any advice given	N/A
Specific decisions/follow up required?	None
Circulation List	All attendees