

A428 Black Cat to Caxton Gibbet improvements

TR010044

Volume 9

9.98 Applicant's comments on the Report on the Implications for
European Sites

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Rule 8(1)(k)

Infrastructure Planning (Examination Procedure) Rules
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**The Infrastructure Planning
(Examination Procedure) Rules 2010**

**A428 Black Cat to Caxton Gibbet
improvements
Development Consent Order 202[]**

**9.98 Applicant's comments on the
Report on the Implications for European Sites**

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1 Introduction

1.1 Background

- 1.1.1 The Development Consent Order (DCO) application for the A428 Black Cat to Caxton Gibbet improvements scheme (the Scheme) was submitted by National Highways (formerly Highways England) (the Applicant) to the Secretary of State for Transport via the Planning Inspectorate on 26 February 2021 and accepted for Examination on 23 March 2021.
- 1.1.2 This document presents the Applicant's comments on the "Report on the Implications for European Sites" **[PD-013]** (RIES) prepared by the Examining Authority (ExA) and published on 17 December 2021.
- 1.1.3 The RIES **[PD-013]** compiles, documents and signposts information provided within the DCO application, and the information submitted throughout the Examination by both the Applicant and interested parties up to Deadline 6 of the Examination, in relation to potential effects to European sites¹. The findings and conclusions on nature conservation issues reported by the ExA in the RIES **[PD-013]** will assist the Secretary of State for Transport in performing their duties under *The Conservation of Habitats and Species Regulations 2017* [REF 1].

1.2 Structure of the responses

- 1.2.1 Responses have been prepared by the Applicant against each section of the RIES **[PD-013]**, and information supporting these responses is presented within Appendix A.
- 1.2.2 The following acronyms are used in this document:
- a. SPA = Special Protection Area.
 - b. SAC = Special Area of Conservation.
 - c. NSER = No Significant Effects Report.
 - d. ISH = Issue Specific Hearing.
 - e. LSE = Likely Significant Effects.
 - f. SNCB = Statutory Nature Conservation Body.
 - g. AA = Appropriate Assessment.
 - h. NE = Natural England.

¹ The term European sites includes Sites of Community Importance (SCIs), Special Areas of Conservation (SACs) and candidate SACs, Special Protection Areas (SPAs), possible SACs, potential SPAs, Ramsar sites, proposed Ramsar sites, and any sites identified as compensatory measures for adverse effects on any of the above.

2 Applicant's response to Section 1 of the RIES

2.1 Sub-section 1.1

2.1.1 No response is required by the Applicant on the background information presented in sub-section 1.1 of the RIES [PD-013].

2.2 Sub-section 1.2

2.2.1 The Applicant has reviewed the content of sub-section 1.2 of the RIES [PD-013] and is satisfied that the vast majority of background information, documentation and evidence pertaining to the potential effects of the Scheme on European sites have been identified by the ExA.

2.2.2 The Applicant wishes to highlight to the ExA that the following additional documentation (presented by deadline) also makes reference to the above matters.

Deadline 1

- a. Deadline 1 Submission - 8.14 Statement of Commonality for Statements of Common Ground - Rev 1 [REP1-020].
- b. Natural England - Deadline 1 Submission - Responses to the ExA's First Written Questions (WQ1) [REP1-088].

Deadline 3

- a. Deadline 3 (D3) Submission - 9.33 Applicant response to actions arising from Issue Specific Hearing 3 [REP3-020].
- b. Deadline 3 Submission - Comments on any other information and submissions received by D1 and D2 [REP3-038].

Deadline 4

- a. Deadline 4 Submission - 8.14 Statement of Commonality for Statements of Common Ground [REP4-025].

Deadline 6

- a. Deadline 6 Submission - 8.14 Statement of Commonality for Statements of Common Ground [REP6-015].
- b. Deadline 6 Submission - 8.6 Draft Statement of Common Ground with Cambridgeshire County Council, South Cambridgeshire District Council and Huntingdonshire District Council [REP6-020].

2.3 Sub-section 1.3

2.3.1 No response is required by the Applicant on the report structure presented in sub-section 1.3 of the RIES [PD-013].

3 Applicant's response to Section 2 of the RIES

Table 3-1: Applicant's response to matters raised in Section 2 of the RIES

Paragraph or Table No.	Summary or extract of RIES content	National Highways Response
Table 2.1: Sites Screened into the HRA by Applicant	<p>Table 2.1 of the RIES [PD-013] confirms that the Applicant's Habitats Regulations Assessment: No Significant Effects Report [APP-233] identified, amongst others, the following four features (bird species) for inclusion within the Stage 1 screening assessment in relation to the Ouse Washes SPA:</p> <ol style="list-style-type: none"> Eurasian Teal <i>Anas crecca</i> (Non-breeding). Eurasian Wigeon <i>Anas penelope</i> (Non-breeding). Pintail <i>Anas acuta</i> (Non-breeding). Shoveler <i>Anas clypeata</i> (Non-breeding). 	<p>Paragraph 2.1.5 of the RIES [PD-013] states that the Ouse Washes SPA citation [REF 2] does not include these four bird species as qualifying features; however, this is incorrect as it does identify these species within the following extracted text (emphasis added in bold by the Applicant for the corresponding species and their characteristics):</p> <p><i>"The site further qualifies under Article 4.2 as a wetland of international importance by virtue of regularly supporting over 20,000 waterfowl, with an average peak count of 60,950 birds recorded in the five winter period 1986/7 to 1990/91. This total included internationally or nationally important wintering populations of the following migratory waterfowl (figures given are average peak counts for the five winter period 1986/87 - 1990/91): 270 cormorant <i>Phalacrocorax carbo</i> (296 of the British wintering population); 490 mute swan <i>Cygnus olor</i> (3% of British); 38,000 wigeon <i>Arias penelope</i> (5% of the north-west European population. 15% of British); 320 gadwall <i>Anas strepera</i> (5% of British); 4,100 teal <i>A. crecca</i> (1% of NW European, 4% of British); 1,450 pintail <i>Anas acuta</i> (2% NW European, 6% of British); 750 shoveler <i>Anas cyvpeata</i> (2% of NW European, 8% of British); 2,100 pochard <i>Aythya ferina</i> (4% of British); 860 tufted duck <i>Aythya fuligula</i> (1% of British); and 2,320 coot <i>Fulica atra</i> (1% of British)."</i></p>
Paragraph 2.1.5	<p>The NSER [APP-233 Appendix F] references a citation report for the Ouse Washes SPA dated June 1992 and lists the features of the SPA. At Deadline 6 in response to ISH4 Action 3 [EV-091], the Applicant submitted the citations for the Ouse Washes SPA and Ramsar site [REP6-030 Appendix A]. Again, the citation for the Ouse Washes SPA is dated 1992. The citation provided does not include the four features marked with an asterisk (*) in this table (Table 2.1) as migratory qualifying features, which are identified in the NE Ouse Washes SPA Conservation Objectives Supplementary Advice (2019) [REF 2]. The same features are not addressed in Table 3.1 in terms of LSE/effects on integrity and the position of the SNCB/Interested Parties.</p>	<p>The Applicant notes that the latin nomenclature presented for Wigeon (<i>Anas penelope</i>) and Shoveler (<i>Anas clypeata</i>) species within the Ouse Washes SPA citation [REF 2] are incorrect.</p> <p>Accordingly, the Applicant disagrees with the ExA's statement that these four features are not included within the Ouse Washes SPA citation [REF 2].</p>

4 Applicant's response to Section 3 of the REIS

Table 4-1: Applicant's response to matters raised in Section 3 of the REIS

Paragraph or Table No.	Summary or extract of RIES content	National Highways Response
Table 3.1: The Applicant's screening exercise and degree of agreement with Interested Parties	<p>In relation to the four bird species identified as features within the Ouse Washes SPA, Table 3.1 of the RIES [PD-013] states that it is unclear from the evidence submitted if:</p> <p>a. the Scheme (either alone or in combination with other plans and projects) will result in LSE on these features, and whether agreement has been reached on this matter with the SNCB and other relevant parties; and</p> <p>an assessment of effects on integrity is required, and whether agreement has been reached on this matter with the SNCB and other relevant parties.</p>	<p>The Applicant can confirm that Table 2a within Appendix B of <i>Applicant response to actions arising from Issue Specific Hearing 4 [REP6-030]</i>, and Table 2 of the Habitats Regulations Assessment: No Significant Effects Report [APP-233] did consider the potential for LSE on these four bird species as part of the screening exercise. These particular features were included within the table row titled 'SPA Migratory Species'.</p> <p>The Applicant accepts that the consideration of these features was not entirely clear within the screening matrices, and therefore has prepared a further updated screening matrix (see Appendix A) which clearly distinguishes between breeding and non-breeding species and assesses the potential for LSE on each.</p> <p>Within Appendix A, the four bird species (i.e. Eurasian Teal, Eurasian Wigeon, Pintail and Shoveler) have been categorised and screened under table entry "<i>SPA Qualifying individual non-breeding species listed under Annex I (Ref 1-15) (Article 4.2)</i>"</p> <p>This updated screening matrix replaces Table 2 of the Habitats Regulations Assessment: No Significant Effects Report [APP-233] and Table 2a within Appendix B of <i>Applicant response to actions arising from Issue Specific Hearing 4 [REP6-030]</i>.</p>

Paragraph or Table No.	Summary or extract of RIES content	National Highways Response
Paragraph 3.2.1	<p>NE disputed the conclusion of no LSE for Eversden and Wimpole Woods SAC and its qualifying feature Barbastelle bat (<i>Barbastella barbastellus</i>) (Table 3.1) and discussions are ongoing as to whether this feature should be progressed to Stage 2 AA.</p>	<p>Bat surveys as requested by and agreed with Natural England were completed in December 2021 and, following analysis of the findings, the Applicant has compiled further evidence to demonstrate that the Scheme will not result in LSE, or therefore an Adverse Effect on Integrity, for Barbastelle, the qualifying feature of the Eversden and Wimpole Woods SAC.</p> <p>As requested by Natural England, and without prejudice to the Applicant's position that the evidence has demonstrated that LSE can be ruled out, the Applicant has submitted a Stage 2 Habitats Regulations Assessment report (see <i>Habitats Regulations Assessment: Report to inform Appropriate Assessment [TR010044/EXAM/9.99]</i>) at Deadline 8 of the Examination confirming that the Scheme will have no Adverse Effect on the Integrity of Eversden and Wimpole Woods SAC (should this be required by the Secretary of State for Transport).</p>

5 References

- REF 1 The Conservation of Habitats and Species Regulations 2017. His/Her Majesty's Stationary Office (2017).
- REF 2 EC Directive 79/409 on the Conservation of Wild Birds: Special Protection Area Ouse Washes (Cambridgeshire, Norfolk). DAS/HTR (1992).
- REF 3 European Site Conservation Objectives: Supplementary Advice on conserving and restoring site features Ouse Washes Special Protection. Ouse Washes Special Protection Area (SPA) – Site Code: UK9008041. Natural England (2019).

Appendix A: Updated Screening Matrix for Ouse Washes SPA

The following screening matrix replaces Table 2a: Screening Matrix for Ouse Washes SPA presented in Appendix B of *Applicant response to actions arising from Issue Specific Hearing 4 [REP6-030]* and includes amendments which improve the clarity of reporting for the outcomes of the screening assessment on the following features of the Ouse Washes SPA (non-breeding migratory bird species):

- a. Eurasian Teal (*Anas crecca*).
- b. Eurasian Wigeon (*Anas penelope*).
- c. Pintail (*Anas acuta*).
- d. Shoveler (*Anas clypeata*).

Within the updated Table 2a below, these four features have been categorised and screened under table entry "SPA Qualifying individual non-breeding species listed under Annex I (Ref 1-15) (Article 4.2)"

The footnotes² to Table 2a, Table 2b and Table 2c presented in Appendix B of *Applicant response to actions arising from Issue Specific Hearing 4 [REP6-030]* remain valid following the amendments to Table 2a (below); however, for ease of reference these have been reproduced beneath the table.

² References to "**Table 4-2**" within the table footnotes cross-refer to "Table 4-2: Screening matrix – Ouse Washes SAC, SPA and Ramsar" presented in the Applicant's *Habitats Regulations Assessment: No Significant Effects Report [APP-233]*.

Table 2a: Screening Matrix for Ouse Washes SPA

Name of European Site and designation: Ouse Washes SPA																
EU Code: SPA UK9008041																
Distance to Nationally Significant Infrastructure Project: 16.01km (9.45 miles) direct and 43.2 km (26.8 miles) along the River Great Ouse																
European Site Features		Likely effects of Nationally Significant Infrastructure Project														
Effect		Habitat loss			Pollution			Climate change			Species displacement			In-combination effects		
Stage of development		C	O	D	C	O	D	C	O	D	C	O	D	C	O	D
SPA Qualifying individual breeding species listed under Annex I (Ref 1-15) (Article 4.1)		x a	x b	x c	x d	x e	x c	x f	x g	x c	x h	x i	x c	x j	x k	x c
SPA Qualifying individual non-breeding species listed under Annex I (Ref 1-15) (Article 4.2)		x a	x b	x c	x d	x e	x c	x f	x g	x c	x h	x i	x c	x j	x k	x c
SPA Qualifying individual breeding species (Article 4.2)		x a	x b	x c	x d	x e	x c	x f	x g	x c	x h	x i	x c	x j	x k	x c
SPA Qualifying individual non-breeding species (Article 4.2)		x a	x b	x c	x d	x e	x c	x f	x g	x c	x h	x i	x c	x j	x k	x c
SPA Qualifying assemblage of non-breeding waterfowl of more than 20,000 birds		x a	x b	x c	x d	x e	x c	x f	x g	x c	x h	x i	x c	x j	x k	x c

Name of European Site and designation: Ouse Washes SPA															
SPA Qualifying assemblage of breeding waders and wildfowl associated with lowland damp grassland	x a	x b	x c	x d	x e	x c	x f	x g	x c	x h	x i	x c	x j	x k	x c

Footnotes to Tables 1, 2a, 2b and 2c

- a. Construction phase activities including routes for the movement of construction vehicles, traffic management diversions, road closures and temporary land take, would not occur within or in proximity to the SAC, SPA and Ramsar site. Consequently, no habitats within the site would be lost, fragmented or reduced as a result of Scheme construction. Refer to **Table 4-2** for detailed evidence to support this conclusion.
- b. The Scheme would not require permanent land take from the SAC, SPA and Ramsar site; therefore, no habitats within the site would be lost, fragmented or reduced as a result of Scheme operation (and maintenance). Refer to **Table 4-2** for detailed evidence to support this conclusion.
- c. This scenario does not apply as the Scheme has no planned obsolescence (and would therefore not be subject to any decommissioning); therefore, no impacts would occur on the SAC, SPA and Ramsar site. Refer to **Table 4-2** for detailed evidence to support this conclusion.
- d. Due to the distance between the Scheme and the SAC, SPA and Ramsar site, emissions to air from construction vehicles, plant, equipment and machinery would not reach the site. Although the SAC, SPA and Ramsar site are linked to the Scheme hydrologically via the River Great Ouse, the distance of this hydrological link from the proposed river crossing to site (along the river) is 43.2km (26.8 miles). Standard best practice measures would be implemented during construction to reduce any risk of pollution incidents, contamination of watercourses or increase in suspended sediment occurring during this phase of the works. Accordingly, no impacts on air quality and water quality would occur as a result of the Scheme's construction emissions. Refer to **Table 4-2** for detailed evidence to support this conclusion.

- e. The SAC, SPA and Ramsar site do not coincide with the affected road network; therefore, emissions to air from traffic would not reach the site. Although the Scheme design includes a new discharge and outfall point into the River Great Ouse for road runoff, prior to discharge into the river this would pass through an attenuation basin which, in addition to providing attenuation, would function to settle out and filter any sediments, hydrocarbons, dissolved metals and contaminants that may be contained in the water. Given the hydrological distance between the proposed outfall and the SAC, SPA and Ramsar site, in the unlikely event of a failure of the attenuation and filtration measures, any pollution released into the river would be diluted beyond identification at this distance. Accordingly, no impacts on air quality and water quality would occur as a result of emissions associated with operation and maintenance of the Scheme. Refer to **Table 4-2** for detailed evidence to support this conclusion.
- f. Although the Scheme is expected to generate temporary emissions from construction vehicles, plant, equipment and machinery, this is expected to be a very limited contributor to climate change. Accordingly, no impact on climate change is predicted on the SAC, SPA and Ramsar site from Scheme construction. Refer to **Table 4-2** for detailed evidence to support this conclusion.
- g. Although the Scheme would result in changes to traffic volumes during its operation and maintenance phases, which would result in increases in greenhouse gas emissions (which are contributors to climate change), it would reduce congestion and enable more consistent traffic speeds and smoother journey conditions to be achieved, thereby reducing pollution levels and facilitating their dispersion. The Scheme also incorporates flood compensation measures and has been designed to accommodate future climate change predictions. Accordingly, no impact on climate change is predicted on the SAC and SPA from Scheme operation and maintenance. Refer to **Table 4-2** for detailed evidence to support this conclusion.
- h. As the SAC, SPA and Ramsar site are located at distance from the Scheme, there would be no disturbance to, or displacement of, key species during construction of the Scheme from temporary noise, lighting and visual changes. Accordingly, no impacts would occur on the site from these sources during construction. Refer to **Table 4-2** for detailed evidence to support this conclusion.
- i. As the SAC, SPA and Ramsar site are located at distance from the Scheme, there would be no disturbance to, or displacement of, key species during operation and maintenance of the Scheme from noise, lighting and visual changes. Accordingly, no impacts would occur on the site from these sources during the operational and maintenance phases. Refer to **Table 4-2** for detailed evidence to support this conclusion.

- j. As construction of the Scheme would not result in any impacts on the SAC, SPA and Ramsar site, the assessment concluded there is no potential for in-combination effects to occur as a result of the Scheme interacting with other plans and projects. Refer to **Table 4-2** for detailed evidence to support this conclusion.
- k. As operation and maintenance of the Scheme would not result in any impacts on the SAC, SPA and Ramsar site, the assessment concluded there to be no potential for in-combination effects to occur as a result of the Scheme interacting with other plans and projects. Refer to **Table 4-2** for detailed evidence to support this conclusion.