

The Sizewell C Project, Ref. EN010012

Issue Specific Hearing 7 (15 & 16 July 2021) – (ISH7) Biodiversity and Ecology

Post Hearing Submissions including written summary of Suffolk County Council's Oral Case

Suffolk County Council Registration ID Number: 20026012

Deadline 5

23 July 2021

Issue Specific Hearing 7 (15 July 2021) - (ISH7) Biodiversity and Ecology
Post Hearing Submissions including written summary of Suffolk County Council's Oral Case

Note: These Post Hearing Submissions include a written summary of the Oral Case presented by Suffolk County Council (SCC). They also include SCC's submissions on all relevant Agenda Items, not all of which were rehearsed orally at the ISH due to the need to keep oral presentations succinct. The structure of the Submissions follows the order of the Agenda Items but within each Agenda Item, the Submissions begin by identifying the main points of concern to SCC and then turn to more detailed matters.

Examining Authority's Agenda Item / Question	Suffolk County Council's Response	References
Agenda Item 1 – Welcome, introductions and arrangements for these Issue Specific Hearings		
Agenda Item 2 - Terrestrial ecology		
a. Duties under ss.28G and 28I of the Wildlife and Countryside Act 1981 and the effects of s.28P	<p>The 28G duty is to take reasonable steps, consistent with the proper exercise of the authority's functions, to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which the site is of special scientific interest.</p> <p>SCC is a 28G authority, as is the SoS.</p> <p>28I places requirements on 28G authority before permission for operations can be given.</p> <p>28P Offences arise from failure to comply with 28G requirements</p> <p>SCC notes the response of the Applicant to ExQ Bio 1.5-1.7 in REP2-109.</p>	<p>Table 2: Examining authority's general questions arising from the draft Development Consent Order (DCO) http://planninginspectorate.gov.uk Bio 1.5-1.7</p> <p>EN010012-004695-D2 - Sizewell C Project - Responses to the ExA's Written Questions (ExQ1) 9.pdf http://planninginspectorate.gov.uk Applicants response Appendix 7B REP2-109</p>
The Sizewell Marshes SSSI		
b. The Sizewell Marshes SSSI		

<p>i. the SSSI crossing,</p>	<p>SCC has a preference for a three-span bridge rather than a causeway in first instance. The national policy position for impact on SSSIs is that impacts should be minimised.</p> <p>EN-1, at paragraph 4.4.2, sets out that the policy for consideration of alternatives is provided in section 5.3. Paragraph 5.3.7 sets out the general principle that significant harm to biodiversity should be avoided through mitigation and consideration of reasonable alternatives. Paragraph 5.3.11 sets out a presumption of refusal with regard to proposals with adverse impacts on SSSIs, while providing an exception for cases where the benefits clearly outweigh impacts on special features.</p> <p>Further, EN-6 volume II paragraph C.8.65 makes clear that the balance of impact on the SSSI is a matter for project-level assessment while paragraph C.8.63 requires the applicant to develop an ecological mitigation and management plan to minimise impacts.</p> <p>In its oral submissions at ISH7 the Applicant suggested (in response to questions from the ExA) that the SSSI crossing could not be constructed at any earlier stage in order to offset the 6-12 month time difference between construction of the Applicant's causeway/culvert option and the three-span bridge option preferred by SCC (and NE and others). The Applicant proposed to put in a note at D6 to explain its position on whether the crossing could be constructed 'at risk' once a DCO had been made, and SCC will comment when such a note becomes available.</p> <p>The applicant has represented in its comments to our written representations [REP3-042] that there would be a very small difference in permanent land take between the current proposal and a three span bridge. At our oral submission we asked</p>	
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	<p>whether the applicant could demonstrate this by providing a comparative plan which overlays the two proposals and shows the boundaries of the SSSI. We also asked for clarification as to whether the temporary construction land take utilised additional land within the SSSI and asked for this to be identified.</p> <p>We note that during the Stage 2 consultation process, as shown in [APP-072], the difference between the SSSI land take of the two options (i.e. option one and option three) in the construction phase is much larger at around one third of a hectare (see Tables 7.2 and 7.3 and Figures 7.21 to 7.24). Noting that option one has been superseded by the present causeway proposal, we would like the applicant to provide a similar comparison between option three and the present causeway.</p> <p>A fair comparison should also show the improvements to the present causeway design applied to the three-span bridge such as the removal of a 15-meter wide strip of the crossing deck.</p> <p>SCC notes from the Applicants response to ExQ Bio 1.47 the Applicant's intention to reduce the width of the bridge to approximately 15m once the power station has been built and their intention to submit updated indicative plans and further details at Deadline 5. SCC will review this once it has been provided by the Applicant to consider the extent to which it addresses the concerns that we raised on the proposed SSSI crossing design in our Local Impact Report at [REP1-045]. Whilst a reduction in the width of the permanent crossing is – on the face of it – a welcome positive step, we remain concerned about the impact of the much wider proposed temporary crossing on the SSSI and ecological connectivity whilst it is in place.</p>	
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	<p>While the construction period is temporary, we are concerned that because it is so long that the relevant species and communities may have difficulty recovering in the long term. This could amount to a permanent deterioration of quality for the SSSI, even for a temporary direct impact.</p> <p>Requirement 12C Main Development Site: SSSI crossing Notwithstanding the debate about the nature of the SSSI crossing, SCC was concerned that, through Requirement 13 in the submitted dDCO, there was no means of controlling any element of the crossing save the height of the crossing (Zone 1E in Table 2.3 of Chapter 2 of the Environmental Statement Volume 2 (APP-180)). Therefore, SCC welcomes the greater clarification of the means by which the form of the crossing may be established in the revisions included in Revision 4 of the dDCO by the addition of Requirement 12C. Owing to the fact that the Applicant is due to provide updated plans, the Council anticipates that the exact wording may need to change to reflect the contents of those plans. On a detailed matter, though, R12C has been “carved out” from R13 but the terms of the text for R13 still purports to cover Work 1A(I), the SSSI crossing.</p>	
ii. fen meadow replacement, mitigation, monitoring and fallback	<p>The Applicant has submitted baseline study to date for the proposed compensation sites at D3.</p> <p>With its role in discharging the requirement for Pakenham Fen Meadow R14a(1)(ii), SCC has the following concern over the lack of detail in the proposals for its development:</p> <p>Under Requirement 14A of the dDCO (Revision 4), SCC is to discharge the fen meadow plan for Work No.18 (fen meadow</p>	REP3-051 REP3-052

	<p>habitat, Pakenham). This has to be in general accordance with the Fen Meadow Strategy. As we understand it, this is currently shown as Appendix 2.9D of the Environmental Statement Addendum Chapter 2 Vol 3 Appendices 2.9 (AS-209). In addition, the plan is required to show landscape and planting details, water management measures and an implementation timetable. In the Local Impact Report (REP1-045), SCC raised a number of issues that required clarification on the question of the Pakenham proposals (paras 8.166 – 8.169). In addition, other Interested Parties have raised issues. We note that the ExA has brought these together in Annex B of the Rule 8(3) letter of 18 June 2021. This states:</p> <p>“The issues arising are the same as for the Initial Assessment of Principal Issues (IAPIs) originally raised [PD-007] but specifically applied to the additional land. Furthermore, the following new issues arise in relation to the additional land at Pakenham (Change 11):</p> <ul style="list-style-type: none">• The need for the land as compensatory fen meadow.• The likelihood of successful creation of fen meadow in this location.• Whether the extent of the land sought to be compulsorily acquired for that purpose would be excessive.• The hydrological and flood risk implications of the proposed use of this land as fen meadow including in relation to neighbouring properties and existing ecology with particular regard to the nearby SSSI and CWS.• Whether the fen meadow proposals would have any adverse impact upon the historic interest of the Grade II* listed building at Pakenham Watermill.• Public rights of way over any new fen meadow created.• Traffic and highway safety implications for users of the local roads in and around Pakenham.	
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	<ul style="list-style-type: none"> • Construction noise impact upon neighbouring residential properties.” <p>As it stands at the present, the Fen Meadow Strategy does not provide the information to test most or all of the points raised in that list and SCC is not aware of any other documentation from the Applicant that would provide such information. Therefore the issues raised by SCC and others remain to be tested.</p> <p>The definition of SCC as LLFA is not necessary and indeed unhelpful in this respect.</p>	
iii. wet woodland and other flora and fauna by reason of which it is of special interest	Wet woodland is a Suffolk Priority Habitat because it provides diverse conditions which support a wide range of plants, invertebrates, birds and mammals (e.g. Bats) and is threatened by a wide range of factors such as straightforward loss, restoration to other land uses, poor management, water pollution and water abstraction. It should be noted that 3.06 Ha of Wet Woodland habitat will be lost, to be compensated for by 0.7 Ha on the EDF Energy Estate and 2.36 Ha on the Fen Meadow Compensation sites. This is equivalent to the amount lost and SCC would expect at least a threefold increase in Ha to compensate.	REP1-020
iv. Water level monitoring	SCC defers to EA/ NE on this	
Minsmere		
c. Minsmere – the marsh harrier, including the proposed HRA	SCC defers to NE regarding this species (but we do note that there has been comprehensive provision proposed for this species which can be found hunting across a wide area and range of landscape types, which SCC welcomes).	
Compensatory Measures for the marsh harrier qualifying feature of the Minsmere-Walberswick SPA/Ramsar	SCC defers to NE and repeats the comments above.	

Discussion of the proposed CM at Upper Abbey Farm (including proposed wetland habitat as detailed in REP2-119 and proposed management and monitoring measures) together with the Westleton compensatory habitat.	SCC defers to NE regarding this point but are always keen that the maximum practical amount of land is made available for the purposes of conservation management (for all species).	
HRA		
d. HRA		
i. To understand the differences between Interested Parties (IPs) and the Applicant on the Applicant's conclusion of no adverse effects on integrity (as presented in the Shadow HRA Report and addendums) for the following matters: Disturbance/displacement effects on breeding and non-breeding waterbirds using functionally-linked land to Minsmere Walberswick SPA/Ramsar due to noise and visual disturbance	SCC defers to Natural England on these matters	
ii. To understand the differences between IPs and the Applicant on the effects of recreational pressure on European sites and to discuss the monitoring, mitigation and management proposed to conclude no adverse effects on integrity	SCC defers to Natural England on these matters	
iii. Progress on written agreement to maintain access for the RSPB to the southern side of Minsmere Reserve.	Not a matter for SCC	
iv. - 'collision risk' -concerns raised by NE re lack of collision risk assessment for new pylons	SCC defers to Natural England on these matters	
v. Position update on air quality effects due to NOx and acid deposition'	SCC defers to ESC (Environmental Health, feeding in to ESC Ecology) in this matter.	
Protected species & other designated sites		
e. Protected species	ESC are leading on Bats and SCC support them; generally, however, most mitigation strategies proposed for most species	

	<p>(for both MDS and ADs) look sensible and proportionate but would like to make the following points:</p> <ul style="list-style-type: none">• Mitigation strategies variously refer to retaining existing vegetation “<i>wherever practical and appropriate</i>”, but the emphasis must be that vegetation is cut back or removed only where absolutely essential to deliver the project. It is the first principle of the Ecological Mitigation Hierarchy: Avoid harm.• Although it is welcome that reference is made to the Institute of Lighting Professionals’ Guidelines, again it is phrased “<i>as far as possible</i>” whereas we should expect strict adherence to those ILP Guidelines in order to mitigate disturbance to, e.g., commuting and foraging Bats.• Reliance is placed on “<i>bat hop overs</i>” to mitigate the impact of severing ecological corridors in, e.g., the Sizewell Link Road design principles but it could take many years for trees and shrubs to reach the height and structure necessary to deliver this, almost certainly far longer than the lifespan of a bat in the wild (e.g., a Pipistrelle in the wild has a life expectancy of 4-5 years).• Reference is made to the “<i>temporary loss</i>” of habitat but, referring to the point above, the time necessary for mitigation planting to mature sufficiently is likely to be	
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	<p>for many years, far longer than the lifespan of the affected animal species.</p> <ul style="list-style-type: none"> • Many of the sites surveyed for ADs (e.g., the P&R sites) have recorded farmland bird assemblages feeding, potentially breeding and otherwise using those sites but there is no specific mitigation for these groups (e.g., we would expect Skylark plots). • Mitigation and compensation for the loss of the old pits either side of Bridleway 19 has not been included in any mitigation strategies. These are important habitats for songbirds and other arable farmland birds (potentially Schedule 1 species such as Barn Owl as well as foraging Bats). <p>SCC considers that a clear message needs to be given that, although the mitigation strategies are likely to prove beneficial to the long-term conservation of biodiversity, this is very much in the medium (at best) and long term. We are concerned that there will be a substantial loss of habitat for many years while new habitat matures and existing habitat is subject to noise, light and human disturbance during the construction phase.</p> <p>SCC would like to see more thought given to interim conservation and mitigation measures (such as hurdles to replicate hedgerows) and would welcome the Applicant's proposals in this regard.</p>	
f. Other designated sites	Loss of the Suffolk Shingle Beaches CWS with the associated flora (not only through the temporary stockpiling but, once reinstated,	

	<p>to the increased risk of loss through coastal processes, accelerated by the SZC coastal defences).</p> <p>SCC also wishes to have further information about what happens with the Suffolk Shingle CWS in context of revised proposals for HCDF and SCDF. Some more detail on this issue is provided in our deadline 5 submission on the Applicant's response to the LIR.</p>	
Ancient woodland and veteran trees		
g. Ancient woodland, veteran trees and the route of the Two-Village Bypass		
Sizewell Link Road		
h. The Sizewell Link Road – mitigation for loss of watercourses, mammal and invertebrate surveys	<p>The survey work appears satisfactory, but it is essential that appropriate monitoring takes place throughout the construction period and into the commencement of use of the SLR so that further or alternative mitigation strategies can be implemented. It is proposed that watercourse crossings are dealt with by way of portal culverts but these are unlikely to be acceptable to EA (bridges are preferred) and, again, monitoring (which is acted upon) is essential to ensure that the ecological corridors are not permanently severed. However, note the points being made under ISH 5 for the issues around the oLEMP, which cover ecology as well as landscape.</p>	
Duties under ss. 40 and 41 Natural Environment and Rural Communities Act 2006		
i. Duties under ss. 40 and 41 Natural Environment and Rural Communities Act 2006	<p>The Section 40 duty to “<i>have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity</i>” is evidenced by the contributions to this PI process.</p> <p>The Section 41 duty to “<i>list of the living organisms and types of habitat which in the Secretary of State's opinion are of principal</i></p>	

	<i>importance for the purpose of conserving biodiversity.” is evidenced by SCC in the publishing of the lists of Suffolk Priority Species and Habitats and, in addressing S.41 (3)(a) requirement to “...further the conservation...” of those species and habitats and (b) to ...“promote the taking by others of such steps...” is also evidenced by SCC’s engagement in this process and by acknowledging and supporting NE’s critical responsibility for headline species and habitats, ESC’s position regarding, e.g., European Protected Species (such as Bats) and by SCC drawing attention to, e.g., farmland bird assemblages.</i>	
Letters of no impediment.		
j. The position in relation to Letters of no impediment and any Environment Agency comfort letters		
a. HRA, European and other designated sites		
i. Marine Mammals		
ii. Fish, including migratory fish		
iii. Birds - Disturbance/displacement of the red-throated diver qualifying feature of the Outer Thames Estuary SPA due to vessel movements/traffic		
iv. Birds – collision risk		
b. Cooling water system, acoustic fish deterrents,		

c. The securing mechanisms to control impacts on marine water quality		
d. Progress update on status of the Water Industry National Environment Programme (WINEP) study being undertaken by Essex and Suffolk Water		
e. Fisheries, fish stocks, equivalent adult values, sabellaria spinosa;		