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Applicant
Royal Society for the Protection of Birds
Natural England
Cheshire West and Chester Council

Your Ref:

Our Ref: EN010153

Date: 31 March 2026

Dear Sir / Madam

The Infrastructure Planning (Examination Procedure) Rules 2010 – rule 17 (request for further information)

Application by Frodsham Solar Limited for an order granting development consent for the Frodsham Solar project

Rule 17 - Request for further information

We are writing under rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010.

Habitats Regulations Assessment

Background

The Examining Authority (ExA) notes, with some concern, the impasse that has occurred regarding the Non-Breeding Bird Mitigation Area (NBBMA). By way of summary, at Deadline (DL) 5:

- Natural England – whilst stating an adverse effect on integrity (AEoI) would not occur, the position may have to be revisited if the Royal Society for the Protection of Birds (RSPB) withdrew as the nature conservation body responsible for long-term management of the NBBMA, since there would be a risk to the deliverability of the NBBMA and thus the project overall.
- RSPB – if the project stays as it is currently proposed, excluding cell 2 from the NBBMA, then the RSPB consider an adverse effect on integrity (AEoI) would occur and the RSPB would likely pull out from any negotiations to become the appointed nature conservation body.
- Cheshire West and Chester Council (CWCC) AND the Cheshire Wildlife Trust (CWT) – believe the area for the NBBMA needs to be enlarged. The increased size

mitigates effects on the affected bird species. Cell 2, amongst other suggestions, should be free of solar panels to provide this mitigation alongside the NBBMA.

Solution

The ExA notes that Natural England is content that the wording of the Non-Breeding Bird Mitigation Strategy (NBBMS) would secure the position regarding the NBBMA. A nature conservation body must be appointed to take on the future of the NBBMA and, without this being secured, the NBBMA cannot be delivered. If the NBBMA is not delivered, the project cannot commence construction. To that end, the risk falls squarely at the applicant's table to manage and resolve if it wants to deliver the project. A recommendation could be made on that basis.

However, if there is an allegation of an AEoI occurring, this cannot be overlooked or deferred to later down the line. The ExA needs to make a recommendation to the Secretary of State whom, as the competent authority, will need to be satisfied that the Conservation of Habitats and Species Regulations 2010 (as amended), (the Habitats Regulations) are complied with.

The ExA welcomes the applicant's recognition of the situation in response to ExQ2.2.9 and the presentation of the two options for resolving this matter through inclusion of cell 2 into the NBBMA. Of these, given the importance and relevance of this matter, the second option (without prejudice plans) is preferred to secure fully the position that an AEoI can be ruled out. The ExA agrees, assuming that no additional or new land or land interests are required, that this would not constitute a material change request. If the plans are provided at Deadline (DL) 6, interested parties and affected persons would have the opportunity to comment on the amended application by DL7. The applicant is therefore requested to submit these plans and make any necessary adjustments to the dDCO.

If the above is not followed, whilst the ExA notes the applicant's suggestions for amended wording to the dDCO (in response to ExQ2.2.9), the ExA considers that a stronger and more explicit clause needs to be present. The ExA suggests, without prejudice, that the dDCO could be amended to include the following new requirement: *"No infrastructure of any type shall be installed within the area identified as cell 2 of the Manchester Ship Canal dredgings. Cell 2, for the purposes of the authorised development listed in Schedule 1, shall be incorporated into Work No 6C and retained as such in accordance with the Non-Breeding Bird Mitigation Strategy."* The applicant's views and alterations to the dDCO are welcomed.

Further Information

Natural England – in your DL5 response, you welcomed the ExA seeking clarity on the RSPB's position, which was previously not understood. That clarity has now been received. Do you maintain your position regarding AEoI, the NBBMA and cell 2? If so, why?

RSPB – in your DL5, you state: *"Our position (we believe) shared by Natural England is that full inclusion of cell 2 is essential to adequately mitigate any adverse effect on the integrity of the SPA. Partial inclusion would not deliver the level of ecological resilience required, per our response to 2.2.9."* Correspondence from Natural England to the

examination to date shows the organisation does not share your position on the need for inclusion of cell 2. What do you say about this?

Applicant, Natural England, RSPB – the ExA is concerned that, at this late stage of the examination, the correspondence received so far appears to suggest a lack of joined-up thinking and co-ordination. The ExA is well aware of the duties under the Habitats Regulations and the gravitas those matters have in the decision-making process. The ExA look forward to a more collaborative and unified response at DL6 to assist the Secretary of State in reaching a decision. Hopefully, the applicant's proposed solutions will aid in reaching that consensus.

Biodiversity Net Gain (BNG)

Natural England - The ExA notes CWCC's and CWT's continued positions at DL5 that the way the applicant has classified reedbed and applied the Rule 4, invalidates the BNG calculations the applicant has made using the Defra metric. It is important that the examination ensures any commitments the applicant makes at this stage are realistic and enforceable. Is Natural England confident that the applicant's commitment to at least 10% BNG is realistic, viable, enforceable and would adhere to the Defra metric, given that the trading rules within the Defra metric would not be met and the concerns CWCC raise regarding the circumstances under which Rule 4 has been applied?

Natural England and CWCC - The ExA understands that many recent DCOs include a BNG requirement that states a BNG strategy must be approved by the Local Planning Authority (LPA) in consultation with the relevant Statutory Nature Conservation Body (SNCB). It appears in this situation that the LPA, in this case CWCC, strongly disagrees with the SNCB (Natural England). The ExA is concerned that unless this disagreement is resolved, the approval of a BNG strategy for the proposed development at the post-consent stage may not be possible. The ExA requests that Natural England and CWCC respond to this concern from the ExA.

Applicant – Can the applicant respond in detail to CWCC's and CWT's ongoing concerns stated in their DL5 submissions regarding the applicant's approach to BNG.

Responses should be submitted at the latest by **DL6 (22 April 2026)**, though the ExA would not preclude any earlier-made submissions on any of the above issues.

Other interested parties may also wish to respond to this request.

Yours faithfully

David Wallis

Lead member of the panel of Examining Inspectors

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