

Date: 22 April 2026  
Our ref: 545014  
Your ref: EN010153



Mr David Wallis  
National Infrastructure Planning  
Temple Quay House  
2 The Square  
Bristol  
BS1 6PN

Customer Services  
Hornbeam House  
Crewe Business Park  
Electra Way  
Crewe  
Cheshire  
CW1 6GJ

T 0300 060 3900

**BY EMAIL ONLY**

Dear Mr Wallis

**NSIP Reference Name / Code: EN010153**

**User Code: FF7113D45**

**Natural England response to Rule 17 Request for further information and Report on the Implications for European Sites (RIES)**

**Submission deadline 6 dated 22 April 2026**

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

This letter details Natural England's responses to the Examining Authority's Rule 17 request for further information dated 31 March 2026 and our comments on the questions that have been raised within the RIES dated 25 March 2026.

**Rule 17 - Request for further information**

Please find the below responses to questions addressed to Natural England.

**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 AEol, the NBBMA and cell 2? If so, why?**

Natural England has reviewed the submission of RSPB's advice and notes the clarity provided regarding their position at DL5.

In view of the additional clarity provided by RSPB, we have reviewed our previous advice and reconsidered our position regarding AEoI. Further to this we have held discussions with the applicant and RSPB and considered the two options the applicant has proposed regarding the inclusion of Cell 2 and so provide our advice on those two options below.

RSPB's advice is that they do not consider that the NBBMA can be successful without the addition of Cell 2 to support both from an operational and ecological point of view. Natural England's advice regarding our acceptance of the applicant's proposals has always been firmly linked to a requirement for high-level long-term management as the required habitats within the NBBMA needed to support as many birds as possible throughout the non-breeding bird period to enable sufficient suitable mitigation for the loss of functionally linked land to the solar development. We consider that based on RSPB's position that the required level of management of the NBBMA cannot be achieved with the NBBMA alone, as originally proposed by the applicant. To achieve operational success the RSPB (and therefore we consider any conservation management body) will require the addition of Cell 2 to meet the requirements set out within the outline NBBMS. We are therefore in agreement with RSPB's advice with regards to AEoI.

Natural England notes that RSPB also stated ecological reasoning for the inclusion of Cell 2, stating that it will provide an immediate ecological headstart and more resilient long-term outcome on account of the ability to provide continuity of feeding resource (earthworms) in the short to medium term for a number of SPA species. Natural England acknowledges RSPB's advice and agrees that having Cell 2 as a stable area for SPA birds to utilise during both construction and operation of the solar farm would ensure the required certainty of the mitigation package overall.

In view of this and the applicants recently proposed options we consider Scenario 1 does not give the sufficient required certainty to be able to reach a conclusion of no AEoI. However, Scenario 2 which includes Cell 2 from the outset and has been supported by RSPB does provide the required level of certainty to support a conclusion of no AEoI.

In this case we support Scenario 2 being taken forward by the applicant and we understand from the applicant that this is the Scenario they intend to now proceed with.

**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.**

Natural England has worked with the applicant and RSPB to agree a joint AEoI Position Paper which clearly sets out Natural England's updated position and where agreement has been confirmed with both the applicant and RSPB.

**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 is not able to provide detailed advice on this question. We support the approach taken by CWCC to ensure that use of the Defra metric meets the trading rules and so provides an appropriate method of evaluating the applicant's commitments regarding BNG.

We consider that where the applicant cannot meet the requirements of the Defra metric that alternative methods may be considered and we understand that further discussions are taking place between the applicant and CWCC regarding this.

**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.**

Natural England has discussed this issue with CWCC and understands the concerns that have been raised by CWCC regarding BNG. As noted above Natural England is not able to provide detailed advice on BNG, we do however continue to encourage the applicant to provide a biodiversity net gain.

Natural England supports the LPA in leading on the assessment of the BNG metric and confirm that where the BNG metric is being used that the basic metric rules including trading rules should be satisfied.

We note that CWCC would support a BNG strategy as a requirement in the DCO and have suggested wording for securing this, Natural England supports this position.

### **Report on the Implications for European Sites (REIS)**

Natural England's response to Table 3.1 (Issues raised in the examination to date by the ExA and IPs in relation to the applicant's assessment of effects on integrity (alone and in-combination)) is within the attached Annex A. We have provided our advice on the questions raised and added additional commentary on those observations where Natural England's position prior to this letter is noted.

For any further advice on this consultation please contact me on the details below and copy to [consultations@naturalengland.org.uk](mailto:consultations@naturalengland.org.uk) .

Yours sincerely

██████████  
Senior Officer for Coastal Planning Casework  
Cheshire to Lancashire Area Team

██████████ [@naturalengland.org.uk](mailto:██████████@naturalengland.org.uk)

**Annex A. Natural England responses to ExA observation or questions within the REIS**

| ID    | Potential impact pathway   | Details of issue   | ExA observation or question   | NE response   |
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| 3.1.3 | Potential loss of FLL – assessment methodology, data presentation and survey coverage – construction and operation | NE [RR-012] noted that table 4.2 of the HRA Report [APP-125] incorrectly compared peak numbers to national and international thresholds and advised that the assessment must assess the impact on the integrity of the SPA population, not the national population. NE [RR012] also requested clearer presentation of survey data to identify species requiring further assessment and potential mitigation. CWCC [REP1-048] and CWT [REP1-068] raised that the non-breeding bird survey data was not suitably robust due to gaps in site coverage, missing months, and methodological flaws. CWCC [REP1-048] stated that, as a result, impacts are underestimated and the NBBMS is inadequate. The ExA (ExQ1 Q5.0.1 [PD-009]) requested the applicant to justify why the surveys were considered robust and sufficient for the purposes of HRA. The applicant [REP2-003] stated that survey coverage was adjusted between years to ensure all relevant areas were surveyed within the programme, and that the core non-breeding period (October–March) was consistently surveyed over three years, exceeding NE guidance. The HRA Report [PD2-009] was updated to address NE’s comments and include additional analysis. CWCC [REP3-046] maintained that early autumn and late spring were not covered each year, meaning full passage seasons were not surveyed. The applicant’s D4 submission [REP4-052] further justified the survey effort and provided a revised HRA Report [REP4-012] with additional bird data analysis, including the latest WeBS counts and coverage of the autumn passage season. NE’s D4 [REP4-069] submission confirmed the issue was resolved. CWCC’s concerns remain unresolved at D4 [REP4-068]. | RQ2: Can NE and CWCC provide an update on their positions on this matter in light of the applicant’s D4 submissions [REP4- 012] [REP4-052]? | Natural England is satisfied with the level of survey effort and coverage of the site. Although not all areas of the site were surveyed in each of the three years, we are satisfied that there is sufficient coverage overall to undertake a robust assessment supplemented by the additional desktop study and up to date WeBS data for the area. |

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| 3.1.4 | Potential loss of FLL – reliance on land outside of the Order limits – construction and decommissioning | <p>CWCC [RR-037] raised concerns that the western solar array extends across the existing FWF area, its mitigation area and up to the boundary of the existing non-breeding bird mitigation area in Cell 3. CWCC [RR037] stated that risks reducing available FLL for qualifying species, disrupting connectivity across remaining FLL, and increasing reliance on a smaller mitigation area. In response [PD2-027], the applicant stated that connectivity is maintained between the NBBMA, the estuary, and supporting parcels such as Cell 6. The applicant [PD2-027] stated that Mersey Estuary SPA and Ramsar site bird species operate at the estuary scale, routinely moving between multiple supporting areas, and that there is no evidence that solar arrays prevent birds from flying over them. The applicant [PD2-027] added that mitigation covers the full loss of SPA species habitat across the Order limits. CWCC [REP3-046] accepted that qualifying species operate at the estuary scale but rejected reliance on areas outside the Order limits to justify reduced functionality within the site. CWCC [REP3-046] reiterated its position in its comments on the D1 and D2 submissions. The applicant [REP4-052] stated that it does not rely on off-site habitats for mitigation, and references to external areas are only to explain how SPA birds use the wider estuary system. The applicant [REP4-052] stated that excluding wider estuary habitat use would misrepresent impacts on the Mersey Estuary population. CWCC’s concerns remain unresolved at D4 [REP4-068]</p> | RQ4: Can NE provide comments on the applicant’s approach of considering land outside of the Order limits, to inform its conclusions of functionality within the site? | <p>The applicant’s HRA includes an assessment of temporary habitat loss as a result of construction works within the NBBMA, as part of this the applicant has considered the areas of undisturbed land (both within and outside of the order limits) available for use by birds. We welcome the inclusion of this detail to support the assessment of how much of an impact the temporary loss of habitats within the NBBMA during construction may have on SPA birds.</p> <p>The applicant has demonstrated that there will be sufficient suitable alternative habitats available in close proximity to the SPA and has also confirmed that no other construction works are to take place within the SADA whilst works are ongoing within the NBBMA.</p> <p>Natural England is therefore satisfied that there will be sufficient suitable habitat available close by to</p> |
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|       |  |   |   | accommodate any displaced of birds on a temporary basis during construction of the NBBMA and so we are satisfied with the applicant's conclusions within the HRA. |
| 3.1.5 | Potential loss of FLL – species coverage in assessment and basis for mitigation – construction and operation | <p>NE [RR-012] requested that the HRA Report and mitigation plans consider all relevant SPA bird species, not just lapwing, curlew, and golden plover. The applicant's response [PD2-027] stated that the NBBMA follows the FWF precedent focused on these species, but that the proposed habitat mosaic would also provide suitable foraging and roosting opportunities for all SPA qualifying assemblage species recorded within the SADA. Table 8.2 of the HRA Report [PD2-009] was updated with further detail on how mitigation would benefit all affected SPA species.</p> <p>The applicant also stated [PD2-027] that habitat creation within the NBBMA represents an expansion of suitable habitat for most SPA species, and that formal mitigation is only required for a small subset of species, with the remainder benefiting from the scheme. CWCC [REP3-046] disagreed that mitigation is considered only necessary for a small number of SPA species as the Cleeve Hill calculation methodology that was used to inform the area of NBBMA, does not include all SPA species. In response to ExQ1 Q4.4.2 [PD-009], CWCC [REP2-005] rejected the applicant's approach and stated that to progress the issue, the applicant should amend the proposed layout releasing back the existing mitigation areas to enable a less risky approach. Mr Smith's D2 submission [REP2-014] and the RSPB's D4 submission [REP4-067] also proposed that the NBBMA should incorporate the entirety of Cell 2. The applicant's response [REP3-041] explained why it does not consider layout amendments necessary. NE's D4 submission</p> | ExQ2 Q.2.2.9 [PD-016] seeks comments on the potential of incorporating Cell 2 into the NBBMA. | As stated above in our response to the Rule 17 request, Natural England has now updated our position with regards to incorporating Cell 2.                        |

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|        |  | confirmed the issue was resolved. CWCC's concerns remain unresolved at D4 [REP4-068].  |  |  |
| 3.1.17 | Potential loss of FLL – management of the NBBMA – all phases | <p>During the course of the examination NE [RR-012], CWCC [RR-037] and RSPB [REP4-067] each set out requirements for the long-term management of the NBBMA. The HRA Report [APP-125] proposes a dynamic AMP for the NBBMA but does not specify who would manage the area in the long term. NE [RR-012] stated that a suitably qualified conservation management body is essential to deliver habitat modification, screening, and access controls. Without confirmation of such a body, NE could not agree with the HRA's conclusions. NE requested that the HRA define the mitigation criteria and monitoring requirements. CWCC [RR-037] agreed that long-term specialist management is essential to protect the integrity of the designated site but noted that no commitment had yet been secured. The applicant [PD2-027] stated it was in discussion with RSPB to manage the NBBMA and provided a letter (appendix D, EN010153/DR/8.5) confirming RSPB's intent. NE [REP1-056] welcomed this progress and stated that without a conservation body the mitigation package would be unsupported. NE also welcomed the AMP and recommended that the detailed AMP form part of the detailed NBBMS.</p> <p>The applicant updated the oNBBMS [PD2-023] to specify that a nature conservation organisation would manage the NBBMA, secured via Requirement 9(j) of the dDCO, with the AMP to be prepared in consultation with NE, CWCC and RSPB. CWCC [REP3-046] and CWT [REP4-075] stated that an agreement with a conservation body must be evidenced now, given the NBBMA's importance. They recommended measurable functionality targets and stated that monitoring bird surveys should underpin assessments of NBBMA success. The applicant [REP4-052] stated that the updated NBBMS now includes regular monitoring of bird use, including SPA species. At D4, NE [REP4-069] welcomed updates to the HRA Report and oNBBMS and was satisfied that</p> | ExQ2 [PD-016] seeks CWCC, CWT, RSPB and NE's views on this matter. | As stated above in our response to the Rule 17 request, Natural England has now updated our position with regards to incorporating Cell 2. |

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|        |  | <p>they provide sufficient certainty of securing an appropriate conservation body, even if discussions with RSPB do not progress. NE records this issue as resolved. The ExA issued a Rule 17 request to RSPB [PD-014] seeking clarity on negotiations, RSPB's position on the NBBMA and oNBBMS, and evidence of suitability. RSPB [REP4-067] confirmed willingness to take on the management role subject to an appropriate agreement and funding package. It stated that formal agreement cannot be reached until final proposals are secured through planning. RSPB [REP4-067] broadly supported the NBBMA as a significant enhancement, however set out additional requirements, including:</p> <ul style="list-style-type: none"> <li>• AMP agreed with RSPB, fully funded and enforceable;</li> <li>• clear habitat objectives, water-level management, disturbance-reduction measures;</li> <li>• permanent predator exclusion fencing;</li> <li>increased wet features in line with best practice, assurance of sufficient freshwater availability; and</li> <li>• incorporation of all of Cell 2 into an expanded NBBMA.</li> </ul> <p>RSPB [REP4-067] stated that, subject to these requirements, an enlarged NBBMA could support the applicant's conclusion of no AEol on the SPA and provided examples of successful RSPB managed mitigation sites. Matters raised by CWCC, CWT and RSPB remain unresolved at D4 [REP4-068].</p> |   |   |
| 3.1.19 | Potential loss of FLL - whether the proposed mitigation areas should be considered compensation areas and the need for a without | <p>Due to a lack of agreement on the HRA's conclusions of AEol on Integrity of the Mersey Estuary SPA and Ramsar Site between the applicant, NE, CWCC and CWT, the ExA included at D3 (28 January 2026) the option for the applicant to submit a without prejudice derogations case. The applicant [REP3-031] referenced agreement with NE of no AEol on the Mersey Estuary SPA and Ramsar Site as rationale for not providing a derogations case. CWCC [REP3A-001] provided comments on the need for a without prejudice derogations case and stated that not all the matters raised by NE which were contingent on the conclusions of no AEol had been resolved. CWCC [REP3-046 and REP3A-001] raised that it</p>  | <p>ExQ2 Q.2.5.7 and Q.2.5.8 [PD-016] seeks responses from NE, CWCC, CWT, RSPB and the applicant on this matter.</p> | <p>As stated above in our response to the Rule 17 request, Natural England has now updated our position with regards to incorporating Cell 2.</p> <p>We are also aware that the applicant is planning to take forward the inclusion of Cell 2 within the NBBMA. In this case Natural England advises that a</p> |

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|  | prejudice derogations case – all phases | <p>considers that the NBBMS represents a strategy of compensation rather than mitigation. CWCC stated that it has not been demonstrated that the NBBMA in its current form would be adequate to compensate for the loss of FLL and the qualifying bird species associated with it, and therefore, it cannot be demonstrated that there would be no AEoI. CWCC requested further explanation from NE on the acceptability of the applicant’s approach in providing adequate mitigation without an accepted methodology for doing so. In respect of the NBBMS comprising compensation rather than mitigation, CWCC stated: ‘this is demonstrated by the proposal for the wholesale loss and reinstatement of the existing NBBMA, as well as loss of functionally linked land in Cells 1, 2 and 5 (including existing FWF “mitigation” cells). Where adverse effects on the integrity of one or more of the internationally important sites cannot be avoided or mitigated, a successful derogation case will be necessary for the development to proceed. This includes satisfying the following legal tests: • there are no feasible alternative solutions that would be less damaging or avoid damage to the site(s); the proposal needs to be carried out for imperative reasons of overriding public interest; and • the necessary compensation measures can be secured.’ CWT [REP3A-002] also considered the applicant should submit a without prejudice derogations case on the basis of a lack of evidence to support the conclusions of no AEoI on the Mersey Estuary SPA and Ramsar site. CWT further stated that as the NBBMA will be fully reengineered and Cells 1, 2, and 5 will be lost, it considers the works to be compensation rather than mitigation and a without prejudice derogations case should therefore be provided. The issue of whether the NBBMA proposal should be classified as mitigation or compensation according to the HRA was discussed at ISH2 and the applicant subsequently provided case law examples at D4 outlining the applicant’s rationale for the NBBMA to comprise mitigation, rather than compensation. ExQ2</p> |  | <p>conclusion of no AEoSI can be reached and as such there would be no requirement for a without prejudice derogations case to be submitted.</p> |
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|  |  | Q.2.5.7 and Q.2.5.8 [PD-016] seeks responses from NE, CWCC, CWT and RSPB on this matter in light of the further information provided at D4 [REP4-055]. ExQ2 Q.2.5.4 [PD-016] requested that if agreement between NE, RSPB, CWCC and CWT cannot be reached on the potential for AEoI to the Mersey Estuary SPA and Ramsar site, the applicant should submit a without prejudice derogations case to the examination by D6 (22 April 2026). |  |  |
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