



SEAS D6 RESPONSE to APPLICANTS SUBMISSIONS

SINCE D5, ISH3, Action Points and ExQ3

ECOLOGY

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Introduction and Overview

1. SEAS continues to argue that the Sea Link proposal relies on inadequate ecological surveys, including insufficient assessment of reptiles, barbastelle bats, habitats, and SPA bird species, which undermines the validity of the impact assessments and the Habitats Regulations Assessment.
2. SEAS Council Mr. James Burton attended the Issue Specific Hearings (ISH3) on January 25, 26 and 27 March and introduced Ecology expert Dr Matthew Denny on 27 March to speak on behalf of SEAS.
3. SEAS supports the Examining Authority's current position that it is not yet satisfied that all residual impacts have been demonstrated to be unavoidable. In our view, this goes to the heart of policy compliance under National Policy Statement EN-1 and the proper application of the mitigation hierarchy. Dr Denny's evidence directly addresses these concerns, identifying clear gaps in survey effort, assessment, and the premature reliance on mitigation and compensation in circumstances where avoidance and reduction have not been adequately explored.
4. His response should be read as reinforcing a central point for the Examination: that without a robust and evidence-led application of the mitigation hierarchy, the project cannot rely on the policy presumption associated with Critical National Priority infrastructure.
5. Please find Dr Denny's written evidence below:

Issue Specific Hearing 3 (“ISH3”)

Agenda Item 2. Matters arising from the Examining Authorities (“ExA”) third written questions (ExQ3)

1. SEAS supports the ExA’s opening statement at ISH3 stating that “currently the Examining Authority is not convinced that the Applicant has demonstrated that all residual impacts are those that cannot be avoided, reduced, or mitigated.”
2. We agree with this statement as it reflects a core concern that the Applicant has not adequately applied the Mitigation Hierarchy.
3. As set out in National Policy Statement EN-1, the policy presumption in favour of granting consent for Critical National Priority (“CNP”) infrastructure is contingent upon the proper and effective application of the Mitigation Hierarchy, requiring avoidance in the first instance, then reduction, then mitigation, with compensation only as a last resort. Where this process has not been robustly followed, reliance on CNP policy is not justified.
4. SEAS agrees with the ExA’s current position that it has not been demonstrated that all residual impacts are genuinely unavoidable, including in some ecological areas, where the Applicant has, in our view, moved prematurely to mitigation or compensation without fully exploring opportunities for avoidance or reduction. This undermines the integrity of the Mitigation Hierarchy and, by extension, the applicability of the CNP policy.
5. An example of this is the proposed substation at Kiln Lane. The applicant’s own surveys and assessment acknowledge there is likely to be a barbastelle bat roost near to the proposed substation, yet they did not utilise the standard tracking surveys to find the location and status of this roost. Instead, they have largely ignored this issue. Nearby hedgerow sections, which could form important dispersal corridors for the roost, are to be removed. Barbastelles are rare, and any disruption to a maternity roost would be an impact at the National, or possibly, international level. The improvised mitigation currently proposed - introducing fake hedge lines to fill gaps created during the works – is an obvious breach of the mitigation hierarchy, where such a potentially important ecological resource, should be avoided or reduced. The Applicant has not taken forward options that would either avoid the impact entirely or meaningfully reduce the risk (such as finding alternative cabling routes). In our view, this approach is not consistent with the Mitigation Hierarchy, as reasonable opportunities to avoid or reduce harm have not been adequately pursued.

6. This example illustrates a broader pattern within the application, where impacts have not been minimised to the fullest extent possible. SEAS supports the ExA's current position and considers that, unless and until the Applicant can clearly demonstrate that the Mitigation Hierarchy has been properly applied, the project should not be afforded the policy benefit of CNP.

Agenda Item 12. Ornithology

7. SEAS supports the ExA's concerns regarding the potential impacts of the project on the Outer Thames Estuary SPA and its internationally important population of red-throated diver. The SPA supports 16% of the European wintering population. In particular, we share the ExA's position on the significant evidence gap relating to emergency cable repair scenarios and the absence of clearly defined mitigation or contingency measures. Emergency repair works during the overwintering period, have the potential to cause significant disturbance to red-throated divers and therefore result in an adverse effect on the integrity of the SPA. Without this evidence and mitigation, a precautionary approach needs to be taken. We note the ExA's clear indication that, in the absence of adequate information on emergency repair scenarios and their potential impacts, it may be necessary to recommend refusal of the DCO. SEAS fully supports this position. Without this critical information, the Examination cannot conclude beyond reasonable scientific doubt that the project will not adversely affect the integrity of the SPA, and as such, the scheme should not be consented. Alternatively, the Applicant should apply for a Derogation Order, leading to the requirement of passing the derogation tests of the Habitats Regulations, including Test 1 – the exploration for alternatives with lower or no European Site impacts. SEAS maintains that the test for alternatives has not been adequately undertaken and should then be revisited.
8. SEAS maintains that there have been insufficient terrestrial bird surveys. There have been no dedicated marsh harrier surveys. The Order Limits have suitable foraging habitat for the species, well within their foraging home range from two SPAs for which marsh harrier is a qualifying species. The species also nests in the SSSI within the Order Limits. I believe the applicant is likely to have overlooked functionally linked land for marsh harrier in their HRA.
9. The Applicant has not undertaken the most appropriate surveys for nightjars, with no acoustic recorder surveys carried out. Since a paper published over 10 years ago (Zwart et al 2013), it has been demonstrated that acoustic surveys are much more effective than traditional observer surveys, and I believe the surveys are therefore insufficient, given nightjar is a key Qualifying species of the adjacent Sandlings SPA, and are known to forage on grassland habitats across a wider area.

Agenda Item 13. Biodiversity & Ecology

10. SEAS has significant procedural concerns, given the insufficient survey effort undertaken, particularly given the limited time remaining before the close of Examination.

11. Under the Conservation of Habitats and Species Regulations 2017 (the “Habitats Regulations”), there is a clear legal requirement for competent authorities to ascertain, beyond reasonable scientific doubt, that a project will not adversely affect the integrity of European designated sites. The lack of survey effort for marsh harriers, nightjar and barbastelle bats means that this evidential threshold has not been met.
12. This concern is particularly acute in relation to bats, and specifically Barbastelle bats are an Annex II European Protected Species. |As detailed above, there is a high probability that a roost is present close to the Kiln Lane substation, but this has not been determined, as not ‘advanced technique’ surveys have been undertaken. SEAS considers that advanced survey techniques, including bat trapping and radio-tracking, should have been undertaken. These methods would have enabled confirmation of presence or likely absence, identification of roost locations, and mapping of key commuting and foraging routes so that these areas could be avoided from direct impacts and therefore align with the Mitigation Hierarchy.
13. Contrary to the Applicant’s assertions, radio-tracking is not an exceptional or disproportionate method in this context. The Bat Conservation Trust (BCT 2024) guidelines explicitly state that trapping, tagging, and radio-tracking should be considered for NSIPs and for developments with potential high impacts on rare or Annex II species. The guidance is clear that landscape-scale projects affecting rare bat species or SSSI features require more detailed and comprehensive datasets. Given the scale of this project and the potential presence of a rare Annex II species possibly an internationally significant breeding roost, the absence of such survey effort represents a significant deficiency in the evidence base. The Applicant’s suggestion that this method has welfare issues, is not a sufficient justification for avoiding this level of survey effort. Level 4 bat licensees who can undertake such surveys, are very highly trained. Further surveys for this Annex II species must be undertaken, as they were for other nearby NSIP projects, LionLink and Sizewell C.
14. Despite nine species of bats being recorded and amassing 22 points in the standard species assemblage evaluation methods, which correlates to National importance for species assemblage, the applicant has downgraded this value to Regional, citing the relatively low bat encounter rates. But this assessment method should not incorporate encounter rates, only the number of species recorded. Therefore, this downgrading is flawed.
15. There are still no adequate baseline surveys for the Pegwell Bay hoverport. Without knowing what cracks and fissures and vegetation are present, there is no way of assessing or addressing potential impacts on legally protected reptile and invertebrate species.

16. We continue to have concerns about the lack cumulative effect assessment, with treatment of this being cursory, and omitting key HRA/European site in-combination issues.

17. In conclusion, the applicant needs to acknowledge the limitations of their ecological surveys, assessments and proposed mitigation. It is clear an underprepared, insufficient DCO application has been submitted, and we urge the Examiners to recognise this and continue to press the applicant on the above points.

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