

Date: 30 January 2020



Planning Inspectorate

BY EMAIL ONLY

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

T 0300 060 3900

Dear Planning Inspectorate,

Application by Esso Petroleum Company, Limited for the Southampton to London Pipeline Project

**The Examining Authority's written questions and requests for information (ExQ2)
Issued on Monday 13 January 2020**

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.

Please find below Natural England's response to a number of Examiners written questions and requests for information.

BIO 2.3 ii) In response to ExA WQ BIO.1.13 [PD-008] the Applicant confirmed that Biodiversity Net Gain is not necessary but instead is negotiating voluntary agreements under the EIP. This approach is described as being consistent with the approach of Natural England (NE) to seek voluntary agreements. Explain why voluntary agreements are sought.

Biodiversity Net Gain is currently not a mandatory requirement. It is something that government is aspiring towards, but as Natural England understand it, it could take up to two years before it is mandatory. This is a matter for the government themselves to take forward. Natural England have been working with a number of developers on a number of schemes to attempt to embed this early. As it is an approach we strongly support. In all cases however it is voluntary.

It is therefore considered appropriate by Natural England that voluntary agreement is sought with developers over suitable provision on a case-by-case basis. Natural England has provided advice to the applicant on measures that might be considered appropriate to deliver net gain for biodiversity, such as restoration of open heathland through clearance of woodland or management to reduce habitat fragmentation. Such measures would of course have to be clearly over and above any routine or planned works in existing site management plans or legal agreements to be considered net gain. Our response to question C1 from the Examiners questions of the 13th December 2019 also cover this point.

BIO 2.13 Confirm whether the trees on the northern side of the M3 are a priority habitat [REP3-045, para 2.1] and if it is a priority habitat are you satisfied that the use of a trenchless crossing in this location would not affect its integrity.

Natural England considers that this question is better directed to the applicant. We have no specific knowledge of the habitat in this location.

BIO 2.18 Rushmoor Borough Council have made legal submissions on the validity of the HRA [REP3-040]. It states that “*the HRA does not give a legally compliant basis for carrying out the Appropriate Assessment. The Applicant should be required to provide further information to justify its conclusions on these principal issues*”.

The ExA notes the Applicant’s responses at D3 [REP3-016] to Rushmoor Borough Council’s WR and responses to the ExA’s WQs [REP2-080] and [REP2-081] which states that it has worked with NE who have confirmed its satisfaction with the project’s HRA. In addition, the ExA notes that NE have not raised any issue with the HRA Report and that a SoCG with NE has been completed and signed.

Provide a detailed response to the above and advise whether or not the SoS has sufficient evidence and information to undertake an Appropriate Assessment of the Proposed Development.

The applicant has engaged with Natural England in a constructive manner from the early stages of development of this project and we are satisfied that our advice has been incorporated in the proposal. Natural England is satisfied with the scope of the HRA and its conclusions. It is acknowledged that some aspects of working methods will only become clear at the detailed design stage. However, Natural England remains confident, using our expert judgement, that the risk of significant impacts on the integrity of TBH SPA and TAPC SAC can be avoided, based on the information presented.

In respect to the specific risk of possible risk of visitor displacement from SANGs to parts of TBH SPA through activities at specific locations, Natural England is satisfied with the applicant’s general approach in considering this aspect, and the conclusions in the HRA. The assessment of possible risk of visitor displacement and prediction of where people might go, is clearly very challenging. Natural England is aware that concerns remain over this aspect at St Catherine’s Road SANG as a result of use of this site. We have raised this concern with the applicant and sought assurance that the risk is being properly considered. We believe that it should be possible to minimise or avoid this risk through agreement over working methods and scheme design. This could be achieved through specific measures in a CEMP. Natural England is happy to assist the relevant parties over such aspects.

When considering the issue of displacement, the key unit of measurement is displacement of visits onto the SPA. That is what the TBH SPA project and SANG relies upon, for alternative sites to draw SPA visits away. In terms of St Catherine’s Road SANG it is Natural England’s view that if visitors were discouraged from using the site by construction activities or the presence of a works compound they are most likely to take advantage of the adjoining MoD land in Frimley, which has a public right of way running from St Catherine’s Road. This land is not part of TBH and so there is no risk of recreational disturbance impacts.

The Secretary of State should give consideration to this residual risk when assessing the HRA and whether sufficient controls are, or can, be put in place to ensure the integrity of TBH SPA. However, Natural England is satisfied that this risk is de minimus.

BIO 2.20 In its WR [AS-030], NE concluded that the Application should be able to continue without harm to any key designations or species. Provide the evidence to justify this view.

Natural England’s conclusion on this aspect is based on professional judgement, detailed knowledge of the statutory designated sites of nature conservation importance, our understanding of the ecology of habitats and species involved and the information available. Natural England staff have a high level of understanding and knowledge of the SSSIs involved through our work with land managers providing advice on appropriate management for the features of special interest, through review of data provided annually on breeding birds for all parts of TBH SPA, and our own monitoring of the condition of the sites. Natural England also has access to a large body of experience and in-house expertise on subjects such as the effects of different heathland management techniques, and visitor use of the various component parts of TBH SPA. This knowledge and body of information was used in our consideration of potential impacts and in our advice to the applicant.

It is important to note that our assessment 'that the Application should be able to continue without harm to any key designations or species' is based on an assumption that all appropriate safeguards and measures to avoid or minimise risk of harm proposed by the applicant are included as control measures in the DCO, or subsequently secured through other means such as a CEMP or protected species licences.

BIO 2.21 In its SoCG with the Applicant [REP1-005], NE supported the conclusion of no adverse effects on the integrity of European sites after implementation of appropriate mitigation and good practice measures. It also confirmed agreement with the assessment and conclusions in the HRA [REP2-074]. A number of local authorities have expressed concerns about the HRA, particularly in relation to habitat loss during construction (screened out as not significant on the basis that effects would be small scale and temporary) and the displacement of users from SANGs to the TBH SPA thereby having a potential impact on the integrity of the TBH SPA (ruled out at appropriate assessment stage). Provide further explanation/justification for their conclusions in relation to these matters. In addition, notwithstanding NE's position, the Applicant is asked to clarify whether or not there would be any direct habitat loss and/or indirect impacts on the TBH SPA and supporting habitat. If, so, how would the impacts be mitigated.

Natural England would take this opportunity to refer the Examiner to our response to question BIO 2.22 below, which we feel answers both BIO 2.21 and BIO 2.22. When talking about habitat loss for this particular application, there is not permanent or long term loss. The losses are small in scale of the total size of TBH SPA, and are only of a temporary nature. All of the areas will continue to be available to Annex 1 birds throughout the period of habitat recovery immediately after works are completed. Thus we are able to confirm the applicants conclusions of no likely significant effect upon the integrity of the TBH SPA.

BIO 2.22 NE in its response to the ExA's WQs BIO.1.38, BIO.1.41, BIO.1.42 and BIO.1.56 [REP2-074] has provided the same response namely "*Natural England confirm agreement with the assessment and conclusions in the Habitat Regulations Assessment*". NE is requested to review these ExA's WQ again and provide reasoning/justification as to why it is in agreement with the assessment and conclusions with particular reference to the specific questions asked.

BIO.1.38 - Natural England is in agreement with the applicant's conclusion in relation to risk of disturbance of Annex 1 birds. This is based on the agreement by the applicant that all works in areas of open habitat which have the potential to support nesting Annex 1 birds will be carried out between 1 October and 31 January except where specifically agreed with Natural England. The risk of disturbance of ground nesting birds was our greatest concern and this was raised with the applicant at an early stage. The agreement over timing of operations is welcomed and avoids risk of direct disturbance of nesting nightjar, woodlark and Dartford warbler.

Natural England is in agreement that the works can be described as small in scale. We have worked with the applicant to agree working methods in areas of open heathland to minimise loss, damage and disturbance of important habitat within TBH SPA and TAPC SAC. It is to be welcomed that the applicant proposes to work to minimum working width in many areas where there is sensitive open heath present. Natural England is also reassured to see that the applicant has sought to avoid direct impacts on heathland by using existing tracks for installation and trenchless methods in wetland areas, as well as other methods such as use of ground protection matting. There is also good evidence that the applicant has selected a route which avoids direct loss of areas which currently have high suitability to support nesting Dartford warbler, i.e. areas of dense, mature gorse. So our conclusion is that the applicant has taken reasonable steps to avoid direct impacts on habitats of European interest and habitats supporting Annex 1 birds and that residual impacts are sufficiently small in scale to be considered insignificant.

The description of the potential impacts of works on heathland as 'temporary' is viewed as appropriate by Natural England. There is a large body of evidence available which demonstrates

that dry heathland habitat is capable of recovering within 5 to 10 years given suitable treatment after removal of vegetation. In situations where heathland vegetation is removed and there is sensitive treatment of soils there is usually rapid re-colonisation by heather and other typical heathland plants through natural processes. Intervention such as spreading heather seed is not usually required. During the period of natural development of a full vegetation cover such areas can provide valuable habitat diversity and suitable conditions for specialised invertebrates of bare sand, and provide habitat for specialised plants, basking reptiles and feeding woodlark. We have recent experience such as in Swinley Forest, Berkshire where other pipeline works resulted in Annex 1 birds appearing on site within a matter of weeks following clearance and bare ground being incorporated. Such areas can also assist in providing additional resilience against risk of spread of uncontrolled wildfires. That is not to say that damage to heathland is acceptable, but works on heathland can have beneficial effects for wildlife if carefully planned and executed. Natural England is satisfied that the applicant has identified ways of working and other measures which seek to ensure that any impacts on heathland are indeed temporary in nature.

BIO.1.41 + 1.42 - See response above regarding the Natural England view on the description of the works as 'small scale and temporary'.

Natural England is satisfied that the habitats of European importance at TAPC SAC and on habitats supporting Annex 1 birds at TBH SPA are unlikely to be affected in any measurable way as a result of construction generated dust or emissions. The applicant has stated that the works on open heathland will be carried out outside the bird nesting season, so will be during autumn and winter when the risk of dust generation is generally lower, as the ground will tend to be wet. We therefore do not anticipate that there is a significant risk of adverse impacts arising from dust deposition.

Heathland is sensitive to nutrient deposition. This can have long-term damaging impacts on vegetation composition, such as through promotion of grass growth and gradual loss of heather. Where such effects are evident the habitat is generally subject to continuous deposition of raised nutrient levels over a long period. Measurable effects would be unlikely to occur as a result of short-term works, even where background levels are already high. In this case, Natural England is satisfied that the likely contribution of nutrient deposition on areas of habitat in the proximity of the works will be so small in relation to background levels that they can be considered insignificant and that measurable effects are extremely unlikely.

BIO.1.56 - Natural England is satisfied that the proposal has appropriate safeguards and avoidance measures to ensure that there is very low risk of adverse effects on the integrity of TAPC SAC. The selected route has been chosen so as to avoid works completely in particularly sensitive wetland features such as Folly Bog at Colony Bog and Bagshot Heath, wet heath at Bourley and Long Valley and mires at Chobham Common. There is also the specific safeguard that trenchless working will be carried out in areas of wet heath so as to avoid damage to this type of habitat and to avoid impacts on hydrology. (Wet heath is more vulnerable to damage and will generally take longer to recover than dry heath.) Natural England welcomes the proposal by the applicant to use minimum working width in particularly sensitive areas of open heath, and the avoidance of use of areas of open habitat within the SAC as work compound. Natural England has worked with the applicant to ensure that they are aware of particular site sensitivities at each of the component parts of the SAC affected. We are satisfied that our advice in this respect has been adopted by the applicant. Our conclusion, based on the information before us, is that appropriate measures are proposed to ensure there is no direct loss or damage to habitats of European importance, and there are safeguards in place to protect hydrology so that wetland features such as mires and wet heath are protected. It may be appropriate to ensure that all such safeguards are clearly set out as environmental controls in a CEMP or similar document.

BIO 2.23 In line with the requirement within the Conservation of Habitats and Species Regulations 63(5), provide details as to how they were able to conclude there would be no significant impacts on the integrity of the TBH SPA “*beyond reasonable scientific doubt*” when the application confirms that within Colony Bog and Bagshot Heath SSSI, Chobham Common SSSI, and at Bourley and Long Valley SSSI breeding territories for Dartford warblers, nightjars and woodlarks will be lost.

Natural England does not recognise the statement ‘breeding territories for Dartford warblers, nightjars and woodlarks will be lost’. The proposal will not result in the permanent loss of habitat capable of supporting Annex 1 birds in any part of TBH SPA. The proposed timing of operations within areas of open heath to avoid completely the bird breeding season means that there is no risk of birds being displaced by works. The proposed method of working seeks to ensure that direct impacts on heathland habitat are minimised as far as practicable. Measures are proposed to ensure that restoration of heathland habitats is promoted in areas where vegetation is removed, and that this process will be overseen by ecologists. The areas affected by the works will continue to be available to Annex 1 birds after installation is complete, for foraging and nesting, and these areas will continue to contribute towards the overall habitat mosaic providing the invertebrate food upon which the Annex 1 birds depend. There may be direct beneficial impacts for woodlark arising from this process of vegetation removal and habitat restoration as this species favours areas of bare ground and very short vegetation for foraging and nesting. With the proposed range of protective measures in place Natural England is satisfied that there are unlikely to be significant impacts on integrity, there is no loss of suitable nesting habitat, and there is no impact on the overall extent of supporting habitat.

In case it is not clear from the information provided by the applicant, it is important to note that the location of breeding territories of Annex 1 birds will change from year to year. Nightjar, woodlark and Dartford warbler all have different habitat preferences when selecting nesting sites, and so a key objective for land managers is to seek to maintain a diversity of habitat structures on heathland suitable for nesting Annex 1 birds. From the information available, Natural England is confident that the proposed works do not compromise the ability of site managers to continue to provide this habitat diversity capable of supporting nesting (and feeding) Annex 1 birds.

BIO 2.25 Confirm the mitigation strategy that has been agreed to ensure no loss of bird breeding territories within the TBH SPA in the short and medium term, 15 -25 years, whilst the European dry heaths regenerate and reach maturity.

Natural England has engaged with the applicant to seek to minimise the risk of direct or indirect impacts on the supporting habitat of Annex 1 birds throughout the TBH SPA. Natural England is satisfied that the selected route poses very low risk of significant adverse effects on the integrity of the SPA. The HRA documentation forms the basis of a strategy which allows this to occur.

BIO 2.26 In line with the requirement within the Conservation of Habitats and Species Regulations 63(2), detail the baseline studies that were used to assess the level of impact on the TBH SPA and the Thursley, Ash, Pirbright and Chobham Special Area of Conservation (SAC) and explain how this is deemed to be adequate.

In relation to baseline studies Natural England directed the applicant to the primary source of information on the recorded location and numbers of breeding territories available for Annex 1 birds throughout TBH SPA. This data is collected annually by volunteer bird recorders working across the SPA to consistent methodology and is considered by Natural England to be the best available information on this aspect. This data identifies where Annex 1 birds have nested on the SPA and hence, to an extent, will assist in the identification of areas of habitat favoured by Annex 1 birds. However, heathlands are highly dynamic and the distribution of nesting birds will change from year-to-year depending on factors such as site management and natural vegetation growth. Nevertheless, assumptions can be made about the potential for utilisation of heathland habitats by Annex 1 birds based on observation of vegetation structure. Through our discussions and site meetings with the applicant Natural England provided advice in this respect, for example by highlighting areas likely to be of high value as nesting habitat for Dartford warbler which would be

difficult to replace in a short timescale. We also advised on particular sensitivities, such as the location of wet heath which would be more vulnerable to disturbance and damage in comparison with dry heath, and the location of reptile populations where this is known, in relation to potential impacts on TAPC SAC. Natural England has a high degree of confidence that this advice has been taken into consideration by the applicant.

BIO 2.27 With reference to the Conservation of Habitats and Species Regulations 63(6), in respect of the Thursley, Ash, Pirbright and Chobham SAC, explain how there would be no significant impacts on the SAC when 7.61 ha of European dry heaths are within the Order limits, open trenching is to be used and only natural regeneration is relied on for mitigation.

The figure of '7.61 ha of European dry heath' includes features such as heavily used, unvegetated tracks where, although located in a lowland heathland context, there will be minimal, if any, direct impact on habitat of European interest. Where the works are located on heathland the direct impacts are temporary in nature and, in many cases, will have the same effect as routine management operations which seek to provide areas of bare ground and early succession-stage vegetation.

Natural England provided advice to the applicant regarding restoration of heathland habitat. We have been clear that sensitive management of existing vegetation, careful management of soils and use of techniques to promote natural regeneration are the preferred option where the work affects heathland. There is a large body of experience available that demonstrates that this can result in recovery of good quality habitat within a relatively short period of time, in many cases within 5-10 years.

BIO 2.28 With reference to the Conservation of Habitats and Species Regulations 63(6), provide details as to what mitigation would be provided to ensure no net loss of qualifying mature and semi mature European dry heath during the regeneration of the heathland.

Natural England is satisfied that sufficient safeguards and measures are proposed to ensure that there is no net loss of dry heath habitat. Where removal of vegetation and soils is required in order to undertake installation the measures proposed to promote habitat restoration are in line with Natural England advice and good practice. These measures are designed to ensure that the areas affected provide benefits for wildlife during the regeneration phase, such as by providing areas of bare sandy ground of potential value to burrowing invertebrates. The rotational management of dry heathland to create this type of feature and to ensure that there is a diversity of age ranges of heather is carried out as routine practice by land managers in order to maintain the feature in good condition. This practice also has the additional benefit of increasing resilience against uncontrolled fires by reducing the availability of fuel. So the creation of areas of bare ground and short vegetation through the works would not be considered habitat loss by Natural England where this is carried out with a view to encouraging habitat recovery afterwards.

TH2.1 Provide a response to the corporate position and comments made by Surrey Heath Borough Council in its response at D3 [REP3-048] regarding the route options at Turf Hill, with particular reference to the preference for route F1a as opposed to F1c.

Natural England cover the issue of Turf Hill and the relative merits of route options F1a versus F1c in our response to Examiners Questions from the 12th December 2019. Namely questions A2 – A4 inclusive. We would refer you to those answers.

SANG2.7 Provide a response to Surrey Heath Borough Council's D3 response [REP3-049] regarding St Catherines Road SANG and the effects on the TBH SPA with specific reference to the 5 questions posed by the Council in Paragraph 38.

Natural England was contacted by Surrey Heath Borough Council raising concerns about potential risk of displacement of recreational disturbance effects at St Catherine's Road SANG. We subsequently contacted Jacobs to seek assurance that these concerns were being properly considered. Assurance was provided that the issues were under investigation and discussions were

planned to take place between Jacobs and Surrey Heath Borough Council, to seek a satisfactory resolution which avoids or minimises risk of displacement of visitors away from the SANG. Natural England provided advice to Surrey Heath Borough Council on suggested means of avoiding or minimising risk of visitor displacement to discuss directly with the applicant. The specific suggestions were:

- Provision of clear, user-friendly information at access points in advance of works so that regular visitors are aware of what is going on, and which makes clear that the site will remain open;
- Provision of information whilst work is taking place which makes clear that people are still welcome;
- Having people on site whilst work is taking place who can interact with visitors and provide a friendly interface;
- Planning works so as to avoid obstruction of main access routes;
- Minimising temporary land take for storage of vehicles, materials, etc.
- Positioning 'stringing out' area so that it avoids obstructing access routes;
- Keep working width to minimum;
- Maintain screen of vegetation alongside access routes where this might help maintain low visibility of works area;

With measures such as these in place Natural England has a high degree of confidence that the risk of visitor displacement and hence risk of increased recreational disturbance at Thames Basin Heaths SPA can be avoided. These measures can be secured through a CEMP or similar constraints applied to the DCO, should the application be approved.

Yours sincerely,

Marc Turner
Senior Planning Adviser
Thames Solent Team