

To all Interested Parties,
By Email

26 January 2012

Dear Sir/Madam

**KENTISH FLATS WIND FARM EXTENSION – NOTICE OF PRELIMINARY MEETING
& AVAILABLE RELEVANT REPRESENTATIONS**

Planning Act 2008 (PA 2008) and the Infrastructure Planning (Examination Procedure) Rules 2010 - Notice of availability of relevant representations¹ and of the Preliminary Meeting² regarding an application for development consent for Kentish Flats Wind Farm Extension, Kent (up to maximum of 51 MW extension capacity)

IPC Reference Number: EN010036

I am writing to you following my appointment by the Chair of the IPC as the Single Commissioner Examining Authority to examine this application for a Development Consent Order (DCO).

1. *Confirmation of your status as an 'Interested Party'*

I can confirm that you are now regarded as an Interested Party and will therefore receive notifications from the Commission about the examination throughout the process³. Your unique reference number is provided at the head of this letter. All relevant representations submitted are available for you to access on the Commission's website or to inspect at various locations. The details of where and when the representations and application documents can be inspected are provided in **Annex A** to this letter.

2. *Invitation to the Preliminary Meeting*

I am also writing to inform you of the date, time and place of the Preliminary Meeting and to invite you to attend that meeting⁴.

The Preliminary Meeting will take place on 22 February 2012. Registration will start at 9:30 am and the meeting is scheduled to start at 10:15 am in the Mallandain Room at Whitstable Castle, Tower Hill, Whitstable, Kent, CT5 2BW⁵.

¹ Rule 21 of the Infrastructure Planning (Examination Procedure) Rules 2010

² Planning Act 2008 (PA2008) S88 and Rule 6

³ S102 PA2008

⁴ S88(3) PA2008 and Rule 6

If you wish to attend the Preliminary Meeting please write or email to the Case Leader (Simone Wilding) at the address on the front of this letter by 15 February 2012. It would help us manage the meeting in an efficient way if you are able to:

- confirm your attendance; and
- inform us whether you wish to speak at the meeting and to note the agenda items you wish to speak to, listing points you wish to make.

3. *The purpose of the Preliminary Meeting*

The purpose of the meeting is to enable views to be expressed about matters set out in the agenda (**Annex B**) and in particular to hear representations about the way in which the application is to be examined.

It is important to recognise that the Preliminary Meeting is about procedure, **not** the merits of the application. The merits will be considered when the examination of the application takes place, through the written representations and the programmed hearings. Further information about Preliminary Meetings is given in IPC Advice Note 8.4 which has been enclosed with this letter and is also available on the IPC website (<http://infrastructure.independent.gov.uk/wp-content/uploads/2011/02/Advice-note-8.4-web.pdf>).

After the Preliminary Meeting the Examining Authority must decide how the application is to be examined⁶. You will find my initial view regarding the way in which the examination will be run at **Annex C**; this sets a timetable giving proposed deadlines for information to be submitted to the examination and dates for hearings⁷.

The agenda for the meeting has been set following my initial assessment of the Principal Issues arising on the application. These are set out in the Statement of Principal Issues at **Annex D**. These are the Principal Issues that I as Examining Authority have so far identified; I wish to hear from Interested Parties particularly where they consider issues may need to be examined in a different way from that set out in **Annex C**.

A number of the relevant representations submitted in respect of this application relate to the Habitats Regulations Assessment (document 3.4), in particular raising concern about the clarity and adequacy of the data on which the Appropriate Assessment has been based. I will be asking for a Statement of Common Ground on this issue, as outlined in **Annex E**, and encourage the applicant and relevant Interested Parties to collaborate on these matters as soon as possible. I will wish to hear at the Preliminary Meeting what progress has been made.

4. *Arrangements for the Preliminary Meeting*

Please bring this letter with you to the Preliminary Meeting as proof of your identity and status as an Interested Party. On arrival at the venue you will be asked to register your name and unique identity number with IPC staff; you will then be directed to the Mallandain Room in which the Preliminary Meeting is to take place.

⁵ Rule 6 of the Infrastructure Planning (Examination Procedure) Rules 2010. In the event that further time is required to complete the business of the Preliminary Meeting the Preliminary Meeting will resume at the same venue at 10am on Thursday 23rd February 2012 and on each subsequent day until the business is concluded.

⁶ S89(1) PA 2008

⁷ Rule 8

Priority will be given to those registered as Interested Parties before any seating is allocated to other members of the public.

My aim is to run an efficient and effective Preliminary Meeting and therefore strongly encourage one representative only to speak on behalf of groups of individuals with procedural concerns, and only then if others such as a local authority or statutory consultee have not already made the point.

If you wish to make any submissions on matters not set out in the agenda and which would enhance the discussion at the Preliminary Meeting, I ask that you write to the Case Leader setting out the submissions that you wish to make at least 7 days before the Preliminary Meeting. I will endeavour to accommodate reasonable requests and will alter the agenda on opening the Preliminary Meeting if I consider this will assist the discussion regarding the procedure to be applied to the examination of the application.

A note will be taken of the Preliminary Meeting and circulated to you as soon as practicable⁸ after the meeting. You will also receive a copy of the procedural decision I make about how the application is to be examined⁹ as soon as practicable after the meeting.

Please note that you are not required to attend the meeting and you will still be able to make written representations on the application by the deadline set for such representations, whether or not you attend the Preliminary Meeting.

Yours sincerely

Glyn Roberts

Commissioner – Examining Authority

For and on behalf of the Infrastructure Planning Commission

The IPC gives advice about applying for an order granting development consent or making representations about an application (or a proposed application). The IPC takes care to ensure that the advice we provide is accurate. This communication does not however constitute legal advice upon which you can rely and you should note that IPC lawyers are not covered by the compulsory professional indemnity insurance scheme. You should obtain your own legal advice and professional advice as required.

We are required by law to publish on our website a record of the advice we provide and to record on our website the name of the person or organisation who asked for the advice. We will however protect the privacy of any other personal information which you choose to share with us and we will not hold the information any longer than is necessary.

Before sending information to the IPC, please consider our Openness Policy, which can be viewed on our website or a copy will be provided free of charge on request

⁸ Rule 7 (2)

⁹ S89 PA 2008 and Rule 9

Annex A

Availability of relevant representations and application documents

On the Commission's website at www.independent.gov.uk/infrastructure following the links: *Projects – South West – Kentish Flats Extension – View Representations*.

For inspection and copying at:

- Whitstable Harbour Office
Whitstable
Kent
CT5 1AB

Copying Charges: 10p per A4 sheet (black and white) 20p per A3 sheet (black and white).

Opening Hours: 09:00 to 13:00 Monday to Friday.

- Canterbury City Council Offices
Herne Bay
Herne Bay
CT6 5NX.

Copying Charges: 10p per A4 sheet (black and white) 20p per A3 sheet (black and white).

Opening Hours: 09:00 to 15:00 Monday to Friday.

- Canterbury City Council Offices
Canterbury
Military Road
Canterbury
CT1 1YW.

Copying Charges: 10p per A4 sheet (black and white - 25 sheets and over) 20p per A3 sheet (black and white).

Opening Hours: 09:00 to 15:00 Monday to Friday.

- Medway Council
Dock Road
Chatham
Kent
ME4 4T

Copying Charges: 80p per A4 sheet (black and white) and £1.60 per A3.

Opening Hours: 09:00 to 15:00 Monday to Friday.

- Swale Borough Council
Swale House
Sittingbourne
Kent
ME103H

Copying Charges: 20p per A4 sheet (black and white) plans and drawings at A3 £3 and A4 £2.

Opening Hours: 09:00 to 15:00 Monday to Friday.

- Thanet District Council
Cecil Street
Margate
Kent
CT9 1X

Copying Charges: 10p per A4 sheet and 20p per A3 sheet

Opening Hours: 09:00 to 15:00 Monday to Friday.

- Rochford District Council
3-19 South Street
Rochford
Essex
SS41B

Copying Charges: 10p per A4 sheet and 50p per A3 sheet.

Opening Hours: 09:00 to 15:00 Monday to Friday.

- Southend-on-Sea Borough Council
12th Fl, Civic Centre
Victoria Avenue
Southend-on-Sea
SS2 6ER

Copying Charges: up to 100 pages – Free; over 100 pages – 10p per A4 sheet.

Opening Hours: 09:00 to 15:00 Monday to Friday.

- Castle Point Borough Council
Kiln Road
Benfleet
Essex
SS7 1TF

Opening Hours: 09:00 to 15:00 Monday to Friday.

- Infrastructure Planning Commission
Temple Quay House
Bristol
BS1 6PN

Copying Charges: 10p per A4 sheet (black and white) other sizes at additional cost.

Opening Hours: 10:00 to 16:00 Monday to Friday

(Copying charges quoted are indicative costs as at March 2011.)

Annex B

Agenda for the Preliminary Meeting

Date: 22 February 2012

Time: 10:00 am

Venue: Mallandain Room, Whitstable Castle, Tower Hill, Whitstable, Kent, CT5 2BW

9:30	Registration and Orientation
10:15	Welcome and Introductions
10:30	Principal Issues, Statements of Common Ground and other matters to be examined – see Annex D and E
11:30	Methods of Examination, including the need for hearings
12:30	Break
13:30	Timetable for the Examination – see Annex C
	Deadline for submissions: <ul style="list-style-type: none">• Comments on Relevant Representations• Written Representations• Local Impact Report• Responses to the Examining Authority's written questions• Comments on Written Representations• Comments on Local Impact Report• Comments on Responses to the Examining Authority's written questions• Statements of Common Ground• Notifications relating to hearings

Hearings and Accompanied Site Visit:

- Time period reserved for accompanied site visit to application site and surrounding area
- Time period reserved for Open-Floor Hearing
- Time period reserved for Issue-Specific Hearing regarding Biological Environment, Ecology & Fishing
- Time period reserved for Issue-Specific Hearing into other specified issues – Visual Effects, Marine Archaeological Effects, Radar Effects, Damage to Property near Cable Landfall and location of Development Consent Order boundary
- Time period reserved for Issue-Specific Hearing relating to Development Consent Order (including deemed marine licence, requirements etc) and related Local Impact Report matters
- Time period reserved for any additional hearings (if required)

Annex C

Draft Timetable for Examination of the Application

The Examining Authority is under a duty to **complete** the examination of the application by the end of the period of 6 months beginning with the day after the start day (s98 PA 2008).

Item	Matters	Due Dates
1	<p>Preliminary Meeting and start day of the Examination</p> <p>If the Preliminary Meeting is held on two or more days the start day is the later or latest of those days</p>	Tuesday 22nd February 2012
2	<p>Issue of:</p> <ul style="list-style-type: none"><input type="checkbox"/> Procedural timetable¹⁰<input type="checkbox"/> Examining Authority's written questions¹¹	Tuesday 29th February 2012
3	<p>Deadline for receipt by the Examining Authority of:</p> <ul style="list-style-type: none"><input type="checkbox"/> Responses to the Examining Authority's written questions¹²<input type="checkbox"/> Comments on relevant representations¹³<input type="checkbox"/> Written Representations (including summaries of any Written Representations of more than 1500 words)¹⁴<input type="checkbox"/> Local Impact Report (LIR) from relevant local authorities¹⁵<input type="checkbox"/> Statements of Common Ground¹⁶<input type="checkbox"/> Notification of wish to be heard at an Open-Floor Hearing by Interested Parties¹⁷<input type="checkbox"/> Notification by Interested Parties of wish to make oral representations at any Issue-Specific Hearings¹⁸	Thursday 22nd March 2012

¹⁰ Rule 8(1) and(2)

¹¹ Rule 8(1)(b)(i) and(iii)

¹² Rule 8 (1)(b)

¹³ Rule 8(1)(c)(i) and (d)(i) and Rule 3(2)(b)

¹⁴ Rule 8(1)(a) and Rule 10(1) and (2)

¹⁵ Rule 8(1)(j)

4	<p>Notification by Examining Authority of date time and place for:</p> <p><input type="checkbox"/> Open-Floor Hearing¹⁹ if required</p> <p><input type="checkbox"/> Issue-Specific Hearing(s)²⁰</p> <p><input type="checkbox"/> Accompanied site visit²¹</p>	Thursday 5th April 2012
5	<p>Deadline for receipt by the Examining Authority of any written comments that any Interested Party wishes to make on:</p> <p><input type="checkbox"/> Responses to the Examining Authority's written questions²²</p> <p><input type="checkbox"/> Written Representations²³</p> <p><input type="checkbox"/> Statements of Common Ground²⁴</p> <p><input type="checkbox"/> Local Impact Reports²⁵</p> <p><input type="checkbox"/> Responses to comments on relevant representations²⁶</p>	Wednesday 18th April 2012
6	Examining Authority's site inspection in the company of Interested Parties ²⁷	14:00 on Tuesday 1st May 2012
7	Open-Floor Hearing ²⁸ (if required – venue to be confirmed)	10:00 am on Wednesday 2nd May 2012
8	Issue-Specific Hearing regarding identified issues including visual effects, radar effects, marine archaeology and damage to property around cable landfall and transition pit (venue to be confirmed)	11:45 am on Wednesday 2nd May 2012
9	Issue-Specific Hearing regarding biological environment, ecology and fishing (venue to	14:15 on Wednesday 2nd May 2012

¹⁶ Rule 8(1)(e)

¹⁷ S93(1)PA 2008 Rule 8(1)(f) and Rule 13(1)

¹⁸ S91 PA 2008 and Rule 8(1)(k)

¹⁹ S93 PA 2008 and Rule 13(3)(a)

²⁰ S91 PA 2008, Rule 13(3)(a) and Rule 8(1)(h)

²¹ Rule 16(3)

²² Rule 8(c)(ii) and (d)(ii)

²³ Rule 8(1)(c)(i) and (d)(i) and Rule 3(2)(b)

²⁴ Rule 8(b)(k)

²⁵ Rule 8(b)(j)

²⁶ Rule 8(1)(c) and (d)

²⁷ Rule 16(3)

²⁸ Rule 13(3)(a)

	be confirmed)	
10	Issue-Specific Hearing regarding Development Consent Order (including deemed marine licence, requirements etc) and related Local Impact Report matters (venue to be confirmed)	10:00 am on Thursday 3rd May 2012
11	Reserve session for any additional hearing required (venue to be confirmed)	14:00 on Thursday 3rd May 2012
12	Deadline for receipt by the Examining Authority of: <input type="checkbox"/> Written summaries of any case put at any Hearing ²⁹	Wednesday 9th of May 2012
13	Deadline by which the Examining Authority will: <input type="checkbox"/> Issue a final draft Development Consent Order (including deemed marine licence, requirements etc) for comment ³⁰³¹	Tuesday 15th May 2012
14	Deadline for receipt by the Examining Authority of: <input type="checkbox"/> Any written comments on the final draft Development Consent Order (including deemed marine licence, requirements etc) that any Interested Party wishes to make ³²	Tuesday 29th May 2012

²⁹ Rule 8(1)(k)

³⁰ Rules 17 and 8(1)(k)

³¹ The issue of a final draft Development Consent Order should not be taken to indicate that the Examining Authority has concluded that consent should be granted. The Examining Authority's recommendation to the Secretary of State will depend upon the outcome of the examination. The issue of a final draft Development Consent Order is simply to ensure that a fully considered Development Consent Order is available in the event that the Secretary of State decides that consent should be given, having regard to the Examining Authority's report and recommendation and all the circumstances of the case.

³² Rules 17 and 8(1)(k)

Annex D

Initial Assessment of Principal Issues

This is the initial assessment of the Principal Issues arising from consideration by the Examining Authority of the application documents and relevant representations received concerning the Kentish Flats Wind Farm Extension. It is not a comprehensive or exclusive list of all relevant matters; regard will be had to all important and relevant matters in reaching a decision after the examination is concluded.

Glyn Roberts

Examining Authority
25 January 2012

The identified Principal Issues are set out under headings organised in alphabetical order, as follows:

1. Biological Environment & Ecology

- 1.1 Can it be demonstrated that none of the potential effects on the Biological Environment and Ecology³³ are so significant and adverse as to warrant rejection of the application (when considered in isolation or in combination with the effects of other relevant built, under-construction or planned developments)?
- 1.2 The applicant's Habitats Regulations Assessment report (document 3.4) acknowledges that the project is likely to have a significant effect on the population of the Red Throated Diver. Can it be demonstrated beyond reasonable doubt that the effect of the project (either alone or in combination) on the Red Throated Diver is not so significant as to adversely affect the integrity of the Outer Thames Estuary SPA?
- 1.3 Would there be any harm to protected species (including the Red-Throated Diver) or designated areas (including the Outer Thames Estuary SPA) and/or any positive effects?
- 1.4 If so is mitigation of negative effects practicable and does the application provide sufficiently for it?

2. Commercial Fisheries and Fishing

- 2.1 Is it likely that as a result of the proposed development there would be any significant adverse effects on the biological environment, ecology and fishing and would any harm to commercial fisheries arising from the proposed development (when considered in isolation or in combination with other relevant built, under-construction or planned developments) be so great as to warrant refusal of the Development Consent Order (including deemed marine licence, requirements etc)?
- 2.2 If not, has adequate provision been made within the draft Development Consent Order (including deemed marine licence, requirements etc) for mitigation and any identified significant adverse effects?

³³ including designated species and sites, offshore ornithology, benthic and inter-tidal ecology, marine mammals and natural fish and shellfish

3. Damage around Landfall Point and Development Consent Order (including deemed marine licence, requirements etc)

- 3.1 Is there potential for any significant damage close to the landfall point and cable transition pit?
- 3.2 If so, is there adequate justification for the approach adopted (including the scope and content of the proposals and the Development Consent Order, the deemed marine licence, requirements etc) and is any proposed mitigation sufficient?

4. Marine Archaeology

- 4.1 Is there any potential for significant adverse effects on Marine Archaeology and does the submitted Development Consent Order wording (including deemed marine licence, requirements etc) provide satisfactory safeguards and/or provision for mitigation?

5. Noise and Vibration

- 5.1 Could any potential Noise and Vibration impacts relating to the proposed development give rise to concern during the construction, operational or decommissioning phases?
- 5.2 If so, does the draft Development Consent Order (including deemed marine licence, requirements etc) ensure that adequate mitigation would be put in place or are any amendments needed?

6. Other Consents

- 6.1 Is the wording of the submitted draft Development Consent Order (including deemed marine licence, requirements etc) satisfactory in relation to other consents sought by the applicant?
- 6.2 Should any additional consents be sought by the applicant and included within the Development Consent Order (including deemed marine licence, requirements etc)?
- 6.3 Does the wording of the submitted draft Order create any undesirable overlaps that could create confusion regarding implementation or enforcement?
- 6.4 Are there any gaps in coverage to which the applicant's attention should be drawn?

7. Radar, Navigation and Search & Rescue Operations

- 7.1 The site of the proposed development is on or close to the flight path for Manston and Southend Airports and adjoins the main shipping channel into the Port of London, including important anchorage and holding areas in the Thames Estuary. Is the proposed development likely to create any significant adverse effects on Radar, Navigation and Search and Rescue operations and if so does the application provide for adequate mitigation?

8. Socio-Economic Effects

- 8.1 What are the likely socio-economic effects that could arise from the Kentish Flats Wind Farm Extension proposal?
- 8.2 Are any of them likely to be significant?
- 8.3 If so are they likely to be positive or negative?
- 8.4 What scales and types of socio-economic impact are anticipated, including any implications for local fishermen and tourism?
- 8.5 What mitigation can be applied to any significant adverse effects and does the submitted draft Development Consent Order (including deemed marine licence, requirements etc) make adequate provision for it?

9. Visual Effects

- 9.1 Are the potential Visual Effects of the proposed Kentish Flats Extension on the seascapes and landscape of the area significant when considered in isolation or in combination with the effects of other built, under-construction or planned developments?
- 9.2 Are any of the identified effects so significant and adverse as to justify refusal of the application?
- 9.3 What mitigation of significant identified effects (if any) would be practicable and does the submitted draft Development Consent Order (including deemed marine licence, requirements etc) provide adequately for it?

Annex E

Statements of Common Ground

In relation to some of the Principal Issues identified in Annex D, the Examining Authority will be assisted by the preparation of Statements of Common Ground (SOCGs) between the applicant and Interested Parties. The draft timetable for the examination therefore provides a period for the preparation and submission of SOCGs.

The aim of a SOCG is to agree factual information and to inform the Examining Authority and all other parties by identifying where there is agreement and where the differences lie at an early stage of the examination process. It should provide a focus and save time by identifying matters which need not be in dispute or the subject of further evidence. It can also usefully state where and why there may be disagreement about the interpretation and relevance of the information. For example, the parties might agree that a certain measurement is relevant and is a key part of the case and also agree what is the difference in the measurements (X for the applicant and Y for the interested party). The reasons for the differences and the interpretation of the implications of a difference can then be expanded in the evidence.

Unless otherwise stated or agreed, the SOCG should be agreed between the applicant and the other relevant interested party(ies), and submitted by the applicant.

At this stage it has been identified that a SOCG will be required in relation to the following issue (it may be that the desirability of SOCGs for other issues emerges at the Preliminary Meeting):

Issue - The applicant's Habitats Regulations Assessment report (document 3.4) acknowledges that the project is likely to have a significant effect on the population of the Red Throated Diver. Can it be demonstrated beyond reasonable doubt that the effect of the project (either alone or in combination) on the Red Throated Diver is not so significant as to adversely affect the integrity of the Outer Thames Estuary SPA?

Relevant Interested Parties identified to date:

Applicant
Natural England
RSPB,
London Array Limited,
Marine Management Organisation,
Kent Wildlife Trust

IPC's Advice Note 10 explains the obligations placed on both the developer and the decision maker under the Habitats Directive and the 2010 Habitats Regulations³⁴. The advice note states:

"the strict timetable for examination of applications means that if insufficient assessment work has been done at the pre-application stage there may not be enough time during the examination to carry out any additional surveys or commission detailed technical analysis at this stage to support the appropriate assessment."

³⁴ Conservation of Habitats and Species Regulations 2010 (as amended)

I aim to obtain all the information I need to complete any shadow assessment that may be necessary by the conclusion of the examination. If I am unable to do so, I would be required to advise the Secretary of State for Energy and Climate Change as competent authority under the Habitats Regulations that I was unable to confirm that the integrity of the SPA would not be adversely affected; and that consent should be refused unless it were demonstrated that there are no alternatives and there were imperative reasons of overriding public interest to grant it.

The draft timetable attached at Annex C assumes that the data issues raised during the relevant representations period can be resolved promptly. At or soon after the Preliminary Meeting I will need to come to a view as to how much time will be required to resolve the remaining issues around the data for the Appropriate Assessment.

The applicant's Habitats Regulations Assessment Report (HRA Report - document 3.4) concludes that *"the Kentish Flats Extension, either alone or in combination, will have no likely significant effect and no effect on the integrity of the Outer Thames Estuary SPA"*). It comes to this conclusion notwithstanding the unavailability of final figures with regard to London Array displacement and disturbance impacts on Red Throated Diver. Other interested parties take a different view.

Bearing the above in mind, the SOCG should therefore cover – at a minimum :

- Whether and to what extent the data and analysis in the HRA Report is clearly expressed so as to lead to that conclusion;
- Whether (and if so what) additional data, clarification or further interpretation or analysis is required to enable a robust Appropriate Assessment to be concluded in response to the requirements of the Habitats Regulations.
- Whether (and if so what) areas of disagreement remain and suggestions as to how these could be resolved.

To all Interested Parties

IPC Reference: EN010036

26 January 2012

Dear Sir/Madam,

**Notice of Appointment of Examining Authority
Application for a Development Consent Order by Vattenfall Ltd for development
consent for Kentish Flats Wind Farm Extension, Kent (up to maximum of 51 MW
extension capacity)**

I am writing to notify you that I have appointed a *single Commissioner* to hold the examination of this application. The Commissioner ("the Examining authority") is as follows.

- Glyn Roberts

Further information about the Commissioner can be found on the IPC website. The Commissioner, Glyn Roberts, is writing to you separately with details of the forthcoming Preliminary Meeting and providing details of the Examining authority's initial assessment of the issues for this application.

Yours sincerely



Sir Michael Pitt
Chair

Switchboard: 0303 444 5000

Email: Kentishflatsext@infrastructure.gsi.gov.uk

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