

Application for Kentish Flats Wind Farm Extension – Planning Act 2008 and Infrastructure Planning (Examination Procedure) Rules 2010.

IPC Reference: EN010036

Unique reference number: [REDACTED]

Response of the Royal Society for the Protection of Birds to questions R17-27; R17-28 and R17-29 as listed in the Examining Authority's Requests for Further Information and Written Comments under Rule 17.

R17 – 27: To RSPB and other parties – Piling restrictions

At paragraph 3.3 of its written representation RSPB requests *'that piling is not carried out during November to January and the first thirteen days of February'*. The latter part of this timescale seems very specific when applied to what is presumably variable bird behaviour. On what basis has the specified period been identified? Do any other parties wish to comment on the timescale for wind farm construction piling activity suggested by the RSPB?

RSPB response: The period noted in our written representations is based on a precautionary approach given the presence of the divers in the Outer Thames Estuary SPA from late autumn through to late winter. The key issues are clearly the increase, peak and then decline of diver numbers over the wintering period, the period of moult when the birds are essentially flightless, and how these factors relate to the frequency and intensity of piling operations.

The "first thirteen days of February" was given so as to sit alongside the existing piling restrictions for herring spawning as set out in the draft DCO such that the whole of February would be excluded.

The piling issue was discussed at the Vattenfall/Natural England/Kent Wildlife Trust/RSPB workshop on 26th April, and we have considered further scientific advice on the likely disturbance effects on the divers in this case. We trust the following will assist the Examination.

Red-throated divers moult from late September to December, with October and November being the peak months for moulting, hence the potential for increased vulnerability at this time. Overall diver *numbers* generally peak in the Thames Estuary after December, thus the potential for impact on the *most* birds occurs in the latter part of the winter, prior to the birds spring departure.

Based on the above, whilst we cannot rule out the possibility of disturbance occurring, we acknowledge that given the geographical scope, frequency and intensity of the piling, it seems less rather than more likely that a restriction on piling could be justified *in this case*.

R17 – 28: To RSPB – Clarification of references

The ExA would welcome clarification of the references to mitigation and monitoring measures and to amendments to the Development Consent Order in the RSPB submission paragraph 5.1. Precisely what mitigation measures does the RSPB consider important and why? Similarly precisely what monitoring measures and what specific amendments to the DCO wording are considered relevant and necessary and

for what reasons?

RSPB response: As set out in the Statement of Common Ground with Vattenfall, Natural England and the Kent Wildlife Trust, the mitigation measures include:

- Restrictions on the timing of cable installation to avoid disturbance to wintering waders on the Thanet Coast and Sandwich Bay SPA. This has been acknowledged by Vattenfall in their first response, the revised DCO and deemed Marine Licence amended accordingly and is resolved.
- Piling restrictions. Please see response to R17-27 above.
- Monitoring measures. Please see response to R17-29 below

R17 – 29: To RSPB - Monitoring

At para 5.16 of its written submission RSPB *‘strongly recommends that a rigorous and thorough monitoring methodology be attached to the MMO licence (HRA Report, appendix 2) with associated necessary conditions to ensure that the monitoring requirements are legally enforceable.’* To enable this to occur before the end of the Examining Period, the RSPB also recommends: *‘that the intended consultation with MMO, Cefas and Natural England needs to take place and the monitoring plan concluded, to ensure that the Examining Authority has all needed information to enable him to complete his report to the Secretary of State.’*

The ExA appreciates the need for establishment of appropriate monitoring arrangements and will consider this matter further as the examination proceeds. But how would conclusion of a monitoring plan assist in providing the ExA with information for preparation of the shadow appropriate assessment - and to support the Competent Authority’s final appropriate assessment - given the statutory timescale for examination and reporting set out in the Planning Act 2008 as amended?

It would be necessary for any monitoring plan to be implemented over time in order to generate monitoring data. Would the timescale necessary for adequate monitoring enable account to be taken of any output data within the timetable necessary to complete the shadow or final AA for this project application within the statutory deadlines within which the examination, reporting and Secretary of State’s decision must be concluded?

By making its submission at Para 5.16 is the RSPB suggesting that there is insufficient information for an appropriate assessment to be completed for the Kentish Flats Extension project? If so can RSPB explain in detail what information is missing or otherwise inadequate to enable the assessment to be completed?

RSPB response: The RSPB’s original comment and concerns are based on our experience to date that post-construction monitoring, albeit included in consent and/or licence conditions, is not necessarily delivered in practice or rigorously enforced. Whilst we acknowledge that a monitoring plan *per se* is not relevant to the appropriate assessment or that information at present is lacking for that appropriate assessment, our concerns remain on the rigour and enforcement of the monitoring regime if and when any scheme is consented.

These matters were discussed at the Vattenfall/NE/KWT/RSPB workshop on the 26th April, and we have subsequently had sight of the applicant’s “Timetable of monitoring

requirements in response to ExA's question R17-26" as attached to the draft Statement of Common Ground at Appendix 1.

We welcome the applicant's commitments in that document at sections 2(e) under Baseline Monitoring, 10 and 11 (e) under Post Construction Monitoring to ornithological monitoring, and acknowledge that this provides an appropriate level of certainty *at this stage* that necessary measures will be put in place in consultation with the MMO, CEFAS and Natural England. The RSPB would welcome the opportunity to contribute to discussions on the design and analysis of that ornithological monitoring at that time, and a number of the RSPB's concerns could be covered through its involvement in that process and therefore remove the need for them to be considered further at this stage of the Examining Authority's process.

With respect to questions R17-22, R17-23, R17-24, R17-25, R17-26

The RSPB is hopeful that the final Statement of Common Ground (submitted as a draft on 11th May 2012) will answer the above questions.