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Dear Sir/ Madam

The Infrastructure Planning (Examination Procedure) Rules 2010 (as amended)

Application by DS Smith Paper Ltd for an Order Granting Development Consent for The Kemsley Mill K4 Combined Heat and Power Generating Station

Examining Authority's Agenda for Issue Specific Hearing 3 (ISH3) into the draft Development Consent Order

Further to the procedural decision and timetable enclosed with my Rule 8 letter of 24 July 2018, notifying you of the times, dates and locations associated with the Examination of this application, I am now providing my agenda for Issue Specific Hearing 3 (ISH3) to be held at the Coniston Hotel (Holiday Inn), from 10.00am on Friday 14 September 2018. The agenda included at **Annex A**, identifies the Applicant (DS Smith Paper Ltd) and other Interested Parties (IPs) that I have invited to attend the ISH3. Any IPs who wish to be heard on the subject matters set out in my agenda for ISH3 may also participate in the hearing.

Any IPs that wish to participate in the ISH3 should notify the Planning Inspectorate indicating the issues that they wish to speak about no later than **midday on 10 September 2018** using the contact details above.

It would help with the management of the hearing if by the same date you can let the Case Manager know:

- whether you wish to speak at the hearing and on which agenda items, listing points you wish to make; and
- of any special needs you may have (e.g. disabled access, hearing loop).

Please ensure that you include your IP reference number in your correspondence.

Planning Inspectorate staff will be available at the venue for half an hour before the hearing commences. It is helpful if intending participants make themselves known to staff during this time. The ISH3 will be open to the public and anyone wishing to attend to observe may do so.

Hearings will finish as soon as the Examining Authority (ExA) deems that all those present have had their say and all necessary issues have been covered. Every effort will be made to ensure that the items in the agenda at **Annex A** and the issues in the 'ExA's Issues and Questions relating to ISH3' at **Table 1** will be discussed on the day.

Depending on the number of parties wishing to speak, it may be necessary to limit the time allocated to each speaker.

The ExA reserves the right to rearrange the agenda for this hearing on the day. If discussion of an issue takes longer than anticipated, it may have to be completed at a later date or responded to by the relevant deadline date within the Examination timetable.

The Examination timetable provides for the possible holding of further hearings on 6 and 7 November 2018. If I decide to proceed with these further hearings, I will write to you separately to provide formal notice. Agendas for any further hearings that I might hold would be provided for, at least 1 week in advance of such hearings and published on the project page for the Kemsley Mill K4 Combined Heat and Power Generating Station of the National Infrastructure website, which can be accessed via the following link:

<https://infrastructure.planninginspectorate.gov.uk/projects/south-east/kemsley-paper-mill-k4-chp-plant/?ipcsection=overview>

If you have any further queries, please do not hesitate to contact the case team using the above address, email address or telephone number.

Yours faithfully

Kevin Gleeson

Examining Authority

Annex A Agenda for Issue Specific Hearing 3 (ISH3)
Table 1 ExA's Issues and Questions relating to ISH3

This communication does not constitute legal advice.

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Kemsley Mill K4 Combined Heat and Power Generating Station - Issue Specific Hearing 3 (ISH3) into the draft Development Consent Order

This document sets out the agenda for Issue Specific Hearing 3 (ISH3) into the draft Development Consent Order (dDCO), which I notified all Interested Parties (IPs) of in my Rule 8 letter of 24 July 2018 in **Annex C**.

Date: 14 September 2018
Time: 10.00am, room opens from 9.30am
Venue: **The Coniston Hotel (Holiday Inn)**,
70 London Road,
Sittingbourne
ME10 1NT

Access and Parking: Free parking available on site

Purpose of Issue Specific Hearing 3 (ISH3)

ISH3 is being held for the following purposes:

- To enable the ExA to inquire into the Applicant's ongoing development of and changes to the dDCO.
- To enable the ExA to understand changes proposed to the dDCO since the first Issue Specific Hearing into the DCO (ISH1).
- To enable IPs to raise any specific concerns that they might have about the provisions of the dDCO, arising from the application documents, the Applicant's Written Statement of Case following ISH1 [REP1-004], their representations or responses to ExQ1.

ExA Table of Issues and Questions for ISH3

The ExA has prepared a table of issues and questions for ISH3, which has been published to the project page for the Kemsley Mill K4 Combined Heat and Power Generating Station of the National Infrastructure website. A copy of this table can be found below.

Issues and questions from the Applicant and IPs that arise from this table will also be heard.

Participation, conduct and management of hearing

This is the third ISH and second hearing into the dDCO to be held in this Examination.

Provision has been made for a further ISH (ISH5) into the dDCO to be held on 7 November 2018. Please note that ISH5 will only proceed if it is required. If all necessary oral investigations are completed before that time, ISH5 will not proceed. If ISH5 does proceed, it is likely to enable only supplementary questions to be asked by the ExA. It will not re-examine IP's objections to elements of the dDCO. For these reasons, it is important that any IP with outstanding objections to provisions in the dDCO who wishes to be heard should attend this hearing.

The Applicant and any IPs with outstanding objections that relate to matters on this agenda are invited to attend the hearing.

The business of an ISH is limited to the matters identified in the agenda. Oral submissions on other subject matters or from persons who are not IPs may only be heard at the discretion of the ExA. It is strongly preferable that any such issues arising from IPs are brought to the Open Floor Hearing (OFH)¹, scheduled for the evening of 12 September 2018 where there is no subject matter agenda and IPs may raise any relevant and important matter.

Participation is subject to the ExA's power to control the hearing.

Invited Participants

The ExA requests that the following bodies attend and participate in ISH3:

- **DS Smith Paper Ltd (the Applicant)** - including representatives of the Applicant who are in a position to discuss the matters on the agenda;
- **Kent County Council (KCC)**;
- **Swale Borough Council (SBC)**;
- **Environment Agency (EA)**;
- **Natural England (NE)**;
- **Any other IPs** – with an interest in the drafting of the DCO, the implementation or discharge of proposed articles, requirements or other provisions.

The ExA requests that invited participants who wish to make oral representations attend at the appointed start time of 10.00am.

Hearing Guidance

Participants may be legally represented if they wish, but the hearing will be conducted to ensure that legal representation is not required.

Guidance under the Planning Act 2008 (PA 2008) and the Infrastructure Planning (Examination Procedure) Rules 2010 provide that it is the ExA that will probe, test and assess the evidence through direct questioning of persons making oral representations at hearings. Questioning at the hearing will be led by the ExA.

Cross-questioning of the person giving evidence by another person will only be permitted if the ExA decides it is necessary to ensure representations are adequately tested or that a person has had a fair chance to put their case.

The hearing will run until all IPs have made their representations and responded to the ExA's exploration of the matters in accordance with the agenda set. The following agenda is indicative and may be amended by the ExA at the start of the hearing session. Furthermore, the ExA may wish to raise other matters arising from submissions, and pursue lines of inquiry in the course of the discussion which are not on the agenda.

¹ [Agenda for Open Floor Hearing](#)

**Agenda for Issue Specific Hearing 3 (ISH3)
into the draft Development Consent Order**

1. Welcome, introductions and arrangements for Issue Specific Hearing 3 (ISH3)

2. Progress Report by the Applicant: Changes to the dDCO since ISH1

The ExA will ask the Applicant to present and justify changes to the dDCO since ISH1.

The ExA will invite submissions from Interested Parties (IPs) who wish to raise matters in relation to proposed changes.

The Applicant will be provided with a right of reply.

3. Interested Parties' Issues

The ExA will seek submissions from IPs in attendance to identify whether any further changes to dDCO drafting are sought and the justification for any changes sought by IP's.

The ExA may ask questions of IPs and the Applicant about matters arising from written and oral submissions.

The Applicant will be provided with a right of reply.

4. ExA's Issues and Questions for ISH3

A schedule of issues and questions is attached to this agenda (see **Table 1**).

The ExA will review the issues raised in the table.

Responses from the Applicant will be sought on all questions.

Any IP in attendance and wishing to speak in relation to matters arising from the published table will be invited to put oral submissions to the ExA.

The Applicant will be provided with a right of reply.

5. Review of issues and actions arising

The ExA will review how and by when any actions placed on the Applicant or other IPs are to be met.

6. Next steps

7. Closure of the hearing

Application by DS Smith Paper Limited for The Kemsley Mill K4 Combined Heat and Power Generating Station

Table of Examining Authority Issues and Questions relating to the draft Development Consent Order

The issues and questions set out below expand on the Examining Authority's (ExA's) further identification of matters for examination in the draft Development Consent Order (dDCO) as submitted [APP-005]. They will be referred to in the third issue specific hearing (ISH3) into the dDCO on **Friday 14 September 2018**. The issues follow on from the matters addressed in the first ISH into the dDCO (ISH1) and the Applicant's subsequent Written Statement of Case [REP1-004] from which references are taken. They are principally addressed to the Applicant but observations from other interested parties (IPs) attending the hearing are welcome.

Abbreviations Used

PA2008	<i>The Planning Act 2008 as amended</i>	MP	<i>Model Provision (in the MP Order)</i>
Art	<i>Article</i>	MP Order	<i>The Infrastructure Planning (Model Provisions)(England & Wales) Order 2009</i>
dDCO	<i>Draft DCO [APP-005]</i>	NPS	<i>National Policy Statement</i>
EM	<i>Explanatory Memorandum [APP-006]</i>	NSIP	<i>Nationally Significant Infrastructure Project</i>
ES	<i>Environmental Statement [APP-008-036]</i>	R	<i>Requirement</i>
ExA	<i>Examining authority</i>	RR	<i>Relevant Representation</i>
LIR	<i>Local Impact Report</i>	SI	<i>Statutory Instrument</i>
LPA	<i>Local planning authority</i>	SoS	<i>Secretary of State</i>

The Examination Library

References in these questions set out in square brackets (eg [APP-010]) are to documents catalogued in the Examination Library. The Examination Library can be obtained from the following link which will be updated as the examination progresses:

<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010090/EN010090-000344-K4%20Internal%20Examination%20Library%20-%20PDF%20Version.pdf>

Citation of Questions

Questions in this table should be cited as follows:

Hearing reference: question number, eg **ISH3:1** – refers to question 1 in this table.

Q No.	Part of DCO	Drafting example (where relevant)	Question
ISH3:1	General: drafting approach to ancillary, further and associated development		See ISH1: 1. Recognising that the terms "further development", "ancillary development" and "associated development" are not intended to be of any statutory significance, the Applicant is asked to consider how Art. 1 and Schedule 1 would be presented without the use of such terms.
ISH3:2	Art 2(1)	<i>"the 1991 Act" means the New Roads and Street Works Act 1991</i>	See ISH1: 7. As this definition only appears to be used once would it be appropriate to remove it and amend the definition for "apparatus" as follows: "has the same meaning as in section 105(1) of the New Roads and Street Works Act 1991"?
ISH3:3	Art 2(1)	<i>"commence" means beginning to carry out any material operation (as defined in section 56(4) of the 1990 Act)...</i>	See ISH1: 10. Notwithstanding that "operation" is not defined in PA2008 and that the definition of "commence" has been accepted by various SoS on previous DCOs, as the most recent energy DCO (Wrexham) uses the PA2008 definition would that be more appropriate here?
ISH3:4	Art 2(1)	<i>"commence" means ...other than operations consisting of archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of</i>	See ISH1: 11. Further clarification is sought on the reasons for the proposed exceptions and why it is considered that these matters should not be addressed in a separate requirement relating to preliminary works. Does this definition create a potential conflict with R12 and R13? R13 prevents commencement until a scheme of investigation has been agreed but "archaeological

Q No.	Part of DCO	Drafting example (where relevant)	Question
		<i>enclosure, and the temporary display of site notices or advertisements</i>	<p>investigations” will not constitute commencement and so can be carried out before the scheme is agreed. Similarly contaminated land remediation could be carried out before approval has been given for the piling risk assessment for which the EA has argued. In such a scenario could contaminated land remediation be carried out before the archaeological scheme has been agreed?</p> <p>The Applicant is asked to give further consideration to the proposed exclusions.</p>
ISH3:5	Art 2(1)	<i>“maintain” includes...reconstruct or replace <u>in relation to</u> the authorised development...</i>	<p>See ISH1:13.</p> <p>Recognising the Applicant wishes to have the ability to inspect the whole of the authorised development, would a distinction between activities such as “includes inspect, repair, adjust or alter the authorised development, and remove, reconstruct or replace any part but not the whole of, the authorised development” be appropriate?</p>
ISH3:6	Art 8(1)	<i>“...nuisance falling within paragraph (a), (c), (d), (fb) or (g) of section 79(1) (statutory nuisances and inspections therefor)...”</i>	<p>Article 8: Defence to proceedings in respect of statutory nuisance</p> <p>See ISH1:26.</p> <p>The Applicant has stated that this article is seeking to fill in a legislative loophole by extending the effect of s158. On what basis is it assumed that this is a loophole and was not an intention of legislators?</p> <p>Moreover, as the statutory protection afforded by s158 is not absolute and can be removed in a DCO, on what basis is it appropriate for such statutory protection to be provided? Further clarification is therefore sought in relation to the scope of Art 8.</p>

Q No.	Part of DCO	Drafting example (where relevant)	Question
			<p>Whilst lighting would be covered by the DCO through R9 on what basis is it appropriate to rely on the statutory defence for the nuisances listed which do not appear to be covered by the DCO such as noise, fumes, gases etc.? On what basis would the identified potential nuisances result from the authorised development?</p>
<p>ISH3:7</p>			<p>Protective Provisions</p> <p>As noted in ISH1: 34 discussions have taken place with Southern Gas Networks in relation to a gas main to the north of the site which is proposed to be dealt with by the inclusion of an additional requirement in Schedule 2. Can the Applicant please provide an update in relation to this matter?</p> <p>The Applicant is also asked to provide an update in relation to the discussions with Network Rail’s in respect of the request in their RR for a protective provision.</p>
<p>ISH3:8</p>	<p>Schedule 1</p>	<p><i>“Work No. 1 —”</i></p>	<p>See ISH1: 37.</p> <p>The Applicant is asked to provide an update with regard to the timescale for confirming a final design for Work Nos 1(e) and 1(g).</p>
<p>ISH3:9</p>	<p>Schedule 1</p>		<p>See ISH1: 43.</p> <p>The Applicant has stated that it does not consider that there is any scope for materially new or materially different environmental effects to arise as a result of the carrying out of Works (a) to (f). Nevertheless, in the event that there are possible environmental impacts which have not been assessed would the following qualification be appropriate: <i>“authorised</i></p>

Q No.	Part of DCO	Drafting example (where relevant)	Question
			<i>development, but only insofar as they do not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement”?</i>
ISH3:10	Schedule 2, R11(2)	<i>“... must include the plans and strategies referred to in table 9-17 of the environmental statements”</i>	Has the Applicant confirmed that the Internal Drainage Board is content that the scope of these items is appropriate?
ISH3:11	Schedule 2, R13		R13: Archaeology See ISH3: 4.
ISH3:12			The dDCO makes no provision for decommissioning when the generating station for which consent is being sought, has ceased operation. During ISH1 the Applicant indicated that further consideration was being given to this issue. Please provide an update.