



Cleve Hill Solar Park

DCO Application Reference EN010085

Deadline 7 Submission

Response to the Examination Authorities Rule 17 Request for Further Information

from

Kent Wildlife Trust

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R17.2.3

At the Environmental Matters ISH (ISH6), the likelihood of marsh harriers using the habitat 'corridors' between array fields was discussed. The conservation interests thought that monitoring surveys, triggers and remedial measures were still needed to determine firstly if marsh harrier use is as predicted by the Applicant, and secondly to respond positively to a shortfall in predicted use, should it arise. (E.g. small mammal/ prey species monitoring as well as behavioural observations.) These points were reiterated in Natural England and Kent Wildlife Trust's Deadline 5 submissions [REP5-050] and [REP5-048].

The Applicant's Deadline 6 version of the outline LBMP [REP6-005] includes behavioural monitoring/ flight surveys and small mammal sampling surveys (in relation to marsh harrier prey availability) to inform triggers and remedial actions. Do these updated proposals satisfy Natural England's and Kent Wildlife Trust's concerns in this respect?

Detail of the monitoring, including commitment to small mammal surveys (to establish prey availability for marsh harrier) and more detail of survey methods (e.g. to overcome constraints from solar panels on observation), previously committed to (i.e. at ISH 4 and 6) and now included within the LBMP, are welcome. The remedial measures to address failure of habitat creation are also welcome and necessary. However, there are still no remedial measures to deal with the potential displacement of marsh harrier by the solar panels (i.e. the habitat is suitable and potential prey is present but the marsh harriers do not use it). In this respect nothing has changed since the previous versions.

R17.2.4

Using the context of the marsh harrier foraging habitat currently available within the Swale SPA designation together with the recognised functionally linked foraging habitat available to the Swale SPA population, can the Applicant provide two estimates of the proportion of the total foraging habitat that would be lost or affected to such an extent that it would effectively become unavailable as a result of the Proposed Development?

The first estimate should assume that the Applicant's conclusion that the corridors of reedbed and grassland habitat between the solar array fields will be used post-construction by marsh harriers is correct. The second estimate should assume that marsh harriers do not use the corridors of reedbed and grassland habitat between the solar array fields post-construction for behavioural reasons, as postulated by some IPs.

Assumptions made regarding the suitability of the existing arable land that will be lost to the Proposed Development as favoured foraging habitat for marsh harrier should be clearly described and justified. Any assumptions about the current and predicted future use of the reedbeds and wetland habitats immediately to the south of the existing coastal defences by foraging marsh harriers should also be clear and justified.

Please can these estimates be communicated to Natural England and Kent Wildlife Trust sufficiently in advance of Deadline 7 to allow them to provide the ExA with a response to the following question (R17.2.5)?

R17.2.5

Based on the Applicant's answer to question R17.2.4 above, can Natural England and Kent Wildlife Trust provide an opinion on the robustness of the estimates provided, and explain whether they consider each to represent such a high percentage loss or change in overall availability of foraging habitat that it could lead to a finding of AEoI relating to the marsh harrier population associated with the Swale SPA?

Also, in each case, should you consider the estimated change to be small but the judged effect on integrity nevertheless adverse, would the Applicant's proposals to improve the remaining foraging habitats and foraging resource and to monitor and respond to any shortfall of use by marsh harriers combine to address any remaining uncertainties, such that the mitigated situation can be judged to be one of no AEol?

As of the morning of Monday 11th November, we have still not received the Applicant's answer to R17.2.4. We have received a statement from them that *"...we have been discussing further with Natural England to agree a position in a SoCG prior to issuing the agreed documentation to KWT for comment."* We are not sure why that this needs to happen before the information is provided to us, and see no good reason why both organisations could not have been consulted at the same time. We are aware of the weight given to Natural England's position by the ExA, but this is the ExA's to give and the approach by the Applicant has only served to disadvantage us, or delay proceedings if this is to be avoided. In the absence of the Applicant's information sufficiently in advance of the deadline, we can only provide a limited response on this question at this time. We have based our response on the use of the site by marsh harriers as it is currently understood, as a proxy for forage availability.

There is no up-to-date population measure for Marsh Harriers within the Swale SPA of which we are aware. Natural England's document *'What do we know about the birds and habitats of the North Kent Marshes?'* (NECR082, 2011¹) mentions the results of the 2005 national survey stating 35 on Sheppey and 7 in south Swale. The most recent estimate appears to be within the Kent Bird Atlas², which gives an estimate of 80-100 breeding females in Kent for 2008-13, with about 50% of these on Sheppey (other 50% just 'Rest of Kent'), stating that there is some evidence of a reduction in numbers breeding on Sheppey in recent years. It seems likely therefore that a single breeding female constitutes greater than 1% of the Swale SPA population, and is probably closer to 2%. We know from the Ornithology Chapter of the ES (APP-039) that:

"Up to three marsh harriers were frequently recorded at any one time foraging within the Core Survey Area and adjacent grazing marsh, particularly along the ditches and KWT South Swale nature reserve."

"Marsh harrier, the primary target of the surveys, was the most frequently recorded target species during the FAS [Flight Activity Survey] with a total of 239 flights. Birds were frequently observed hunting within the Core Survey Area throughout the year. Marsh harriers were observed in flight for 17.9% of survey observation time in the non-breeding season and 10.5% of survey observation time in the breeding season."

"Marsh harriers have nested in most years between 2004 and 2017 (information from confidential KWT reports) within the Development site, almost always within the KWT reserve and occasionally in reedy ditches or crops close to the reserve. Breeding density was much higher between 2004 and 2012, with breeding attempts by three to eight pairs each year. However, since 2013, there has only been one nesting attempt each year. The baseline survey in 2016 covered a larger geographical area and it was thought that a pair attempted nesting in The Swale SSSI/SPA/Ramsar site to the south-west of the site."

The Conservation Objectives for The Swale Special Protection Area of relevance are: *"Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to*

¹ <http://publications.naturalengland.org.uk/publication/40020>

² Clements, R., Orchard, M., McCanch, N. and Wood, S. (2015). Kent Breeding Bird Atlas 2008-13. Kent Ornithological Society

achieving the aims of the Wild Birds Directive, by maintaining or restoring;...the populations of each of the qualifying features and; the distribution of qualifying features within the site.”

Owing to the importance of the Site for marsh harrier, particularly the ditches for foraging a breeding (though we point out that marsh harriers have bred within the crops in previous years, as stated in the ES), it is clear there will be an Adverse Effect on Integrity assuming that marsh harriers do not use the corridors of reedbed and grassland habitat between the solar array fields post-construction for behavioural reasons (i.e. to answer the question regarding the second estimate).

Trying to answer whether or not there will be an Adverse Effect on Integrity if the marsh harrier do use the mitigation (the first estimate) is the crux of the disagreement between parties at present. The question is not a binary one however, as there will be a point between total failure and complete success where AEoI occurs (the Applicant has accepted that some birds will be displaced, but has supposed that these will be replaced by others). Kent Wildlife Trust maintains that, given what we know about the species' habitat preferences, and the absence of any robust evidence that marsh harriers will continue to use the site (rather, a couple of anecdotes that we have previously stated are exceptions, given the tiny proportion of nesting location that these represent), that there is still reasonable scientific doubt regarding whether or not there will be an AEoI.

UPDATE: Kent Wildlife Trust has received the information from the Applicant, attached as an appendix to a SoCG with Natural England, dated October 2019 (sent on the 12th November, received on the 13th). We do not consider this sufficient time to provide a proper response to it for DL7, but we have picked up some points from it below.

Paragraph 18 of the additional submission on marsh harrier states that the 55.5ha Arable Reversion Habitat Management Area (AR HMA), alongside other grassland areas, “...will provide more suitable grassland habitat for foraging than in the current arable baseline...” This contradicts information provided by the applicant in the Carrying Capacity Report for Small Mammals [REP4-022] which stated “*Grazed pasture and arable farmland is also typically sub-optimal for small mammals. In intensively grazed grassland, there is little cover for small mammals such as voles and mice, leaving them more susceptible to predation, and also creating a habitat which is less suitable for shelter. In addition, there are reduced food sources with a low sward height (reduced vegetation and insects) and increased competition with large herbivores such as sheep for the remaining food resources.*” As set out in the Outline Landscape and Biodiversity Management Plan (REP6-005), “*Grazing within the AR HMA will take place during the summer months (April to September)*”. While there is some flexibility in the management plan (i.e. an autumn cut), the LBMP will not provide suitable habitat for marsh harrier for the reasons set out in the Carrying Capacity Report for Small Mammals. The ditches and ditch edges within the AR HMA could provide suitable habitat, subject to the measures within the LBMP to prevent poaching being put in place.

The Applicant has provided an estimate of suitable marsh harrier foraging habitat at paragraph 19. As predators of small mammals and birds (etc), suitable foraging will be defined by the presence of this prey, which will be determined by the management and vegetation structure within the various habitat types, which will vary. It seems unlikely that information to inform the amount of suitable foraging habitat for marsh harrier is available to any meaningful degree (one of the reasons we looked at marsh harrier population above), but the actual area of suitable forage is likely to be much lower than suggested. In addition, for forage to be ‘available’ we have to assume that it is not already being exploited by other marsh harriers. Ecological principles assume that the population of a species expands to fill suitable habitat over time, and conversely contracts

as habitat is lost (as has been suggested for marsh harriers on Sheppey³). What is clear is that in the event of failure of the marsh harrier mitigation, there will be a net loss of available forage for marsh harriers.

Unfortunately no map has been provided to accompany the figures provided within the text. We are not sure therefore whether or not the figures for inter-array grasslands (27ha) excludes the areas identified for scrub planting for landscape reasons (areas along the PROW, and in the west and south of the site). As these areas are stated as providing ‘...*optimal foraging conditions for marsh harriers*’ we assume not, but clarity would be appreciated.

As a population for marsh harriers for the SPA is not stated there is a lack of clarity regarding what would constitute a AEoI. We note, however, that the conservation objectives for the Swale include restoration, not just maintenance of a population. In this respect, anything that prevents the continued restoration of the marsh harrier population could be considered contrary to these objectives.

R17.3.2

The outline LBMP provided at Deadline 6 [REP4-008] includes two sections about the HMSG (sections 1.4 and 19), but these are currently blank. Could the Applicant advise when the ExA will be provided with the information about the constitution and role of the HMSG, as agreed with the HMSG members, including how the essential mitigation and possible response measures that will be guided or decided by the HMSG will be secured through any DCO?

As we are rather closer to the conclusion of the examination than is ideal to still be discussing this, we are providing input as members of the HMSG. Subsequent to deadline 6 the Applicant provided a draft section regarding governance of the HMSG to be included within the final Outline LBMP. A number of amendments were proposed, and these were accepted by the Applicant. We include the version of the document we agreed upon, which was a draft with track changes, submitted as a separate document (Appendix 1 to this response). We expect this to be submitted by the Applicant at Deadline 7.

R17.3.8

Do Natural England or Kent Wildlife Trust have any further comments or outstanding concerns on the updated outline LBMP provided by the Applicant at Deadline 6 [REP6-006] that are not covered elsewhere in your responses to these Rule 17 ExA questions?

We have no additional comments to make on the LBMP that have not been covered elsewhere.

³ Clements, R., Orchard, M., McCanch, N. and Wood, S. (2015). Kent Breeding Bird Atlas 2008-13. Kent Ornithological Society



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Appendix 1 to Response to the Examination Authorities Rule 17 Request for Further Information – Draft HMSG Governance document

from

Kent Wildlife Trust

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Protecting **Wildlife** for the Future

Habitat Management Steering Group Governance

1. The Applicant is committed to the development being a 'good neighbour' to the adjacent habitats around the site, and to developing ongoing land management practices onsite with input from members of the Habitat Management Steering Group (HMSG) to achieve mutual biodiversity aims and objectives. This is in addition to the wider ecological benefits of decarbonisation through renewable electricity generation.
2. In order to ensure that the Development is implemented and operated in accordance with this the landscape and biodiversity management plan ("LBMP"), the HMSG established during the pre-submission phase will continue to meet regularly throughout construction and operation of the Cleve Hill Solar Park to discuss the scope and results of monitoring and agree remedial actions if necessary.

HMSG Members

3. The HMSG will, subject to paragraph 5 below, comprise representation from the following ~~six~~ five organisations, all of whom will be invited to all HMSG meetings (the "HMSG Members"):
 - ~~The operator of the Cleve Hill Solar Park (the "Cleve Hill Solar Park Site Operator");~~ and/or The Site Operator's appointed ecological/landscape specialist(s)
~~The Site Operator's appointed ecological/landscape specialist;~~
 - Natural England;
 - Environment Agency;
 - Kent Wildlife Trust; and
 - Royal Society for the Protection of Birds.
4. A quorum of three HMSG Members, including a representative from the Cleve Hill Solar Park Site Operator and Natural England, must be present for meetings to proceed. Meetings will be chaired by an appropriately qualified representative of the host authorities (SBC / KCC / CCC) or their appointed appropriately qualified representative~~appropriately qualified ecologist appointed representative of by the relevant Local Planning Authority (Swale Borough Council) Cleve Hill Solar Park Site Operator.~~
5. Members of the HMSG~~The Cleve Hill Solar Park Site Operator may~~ may, with the agreement of the other HMSG Members, invite any other party to attend the HMSG meetings and/or become a HMSG Member.

Control of Decision Making

6. Decisions shall be made by a majority vote, subject to the following:
 - Each HMSG Member organisation in attendance at a HMSG meeting will receive a single vote.
 - Votes can be cast *in absentia* or by proxy.
 - The remit of the HMSG cannot extend beyond the scope of measures in this LBMP.
 - Measures additional or supplemental to those set out in the LBMP that the Site Operator determines could materially affect the safe, efficient and viable operation of the Development cannot be passed without the agreement of the Cleve Hill Solar Park Site Operator;
 - ~~The Site Operator has a power of veto in respect of any remedial measures that it determines could materially affect the safe, efficient and viable operation of the Development.~~
 - If there is a tied vote, the relevant planning authority Cleve Hill Solar Park Site Operator holds the casting vote, provided that such decision of the relevant planning authority may be appealed or referred to arbitration under the relevant Articles of the DCO.
 - The constitution of the HMSG cannot be changed without the majority agreement of all HMSG Members.

Timing of Meetings

Pre-construction

7. Prior to the commencement of construction, the HMSG will meet at least once, but on an ad hoc basis as required, e.g., to agree the content of the final LBMP.

During Construction

8. During the construction of the Cleve Hill Solar Park, the HMSG will meet at least once per quarter at a time and location mutually agreed by the HMSG Members.

Operation Year 0 to 1

9. From the first export of power from the Cleve Hill Solar Park until the first anniversary of such date, the HMSG will meet at least once per quarter at a time and location mutually agreed by the HMSG Members.

Operation Years 1 to 5

10. The HMSG shall meet twice yearly during the operational years falling 1, 2, 3 and 5 years following the first anniversary of first export of power and once during year 4.

Operation Years 6 to 9

11. The HMSG shall meet once in year 6 at the start of this period, or if the HMSG Members agree by majority vote (such vote being undertaken by correspondence), once each year coinciding with operational years during which monitoring is undertaken, if the monitoring schedule is different during this period.

Operation Years 10 to 20

12. The HMSG shall meet once each year in operational years falling 10 and 20 years after the first export of power, or if the HMSG Members agree by majority vote (such vote being undertaken by correspondence), once each year coinciding with operational years during which monitoring is undertaken, if the monitoring schedule is different during this period.

Operation Years 21 to 40

13. The HMSG shall meet once in year 21 at the start of this period, or if the HMSG Members agree by majority vote (such vote being undertaken by correspondence), the HMSG shall meet once each year in operational years falling 21 and 40 years after the first export of power, or once each year coinciding with operational years during which monitoring is undertaken, if the monitoring schedule is different during this period.