

From: Hunt, Richard
Sent: 24 March 2016 14:54
To: Matt Verlander [REDACTED]
Cc: KJ Johansson; Jessica Powis; 'james.lough [REDACTED]
Subject: RE: IAMP draft meeting note

Dear Matt,

Further to our meeting of 1 March 2016, we considered a number of the queries that you raised and have the following comments:

Q. How to demonstrate whether a project is a "project of substance".

Advice Note 5 does not contain 'tests' for whether the applicant has demonstrated that it is considering a "*distinct project of real substance*" within the meaning of s53(1) PA 2008; it just suggests examples of activities that could be used to demonstrate compliance:

A3.4 To demonstrate that the applicant is 'considering a distinct project of real substance' the applicant could, by way of example, provide the following information:

(i) details about what stage in the pre-application consultation the applicant has reached on the project;

(ii) whether the applicant has given notification under s.46 of the 2008 Act; and

(iii) whether the applicant has requested a screening or scoping opinion from the Secretary of State.

Consequently the applicant should submit such evidence as it has, which would include the s35 direction, any screening or scoping request, details of any consultation that has taken place and any other evidence to demonstrate the seriousness of the proposal.

Q. The implication of the staged development planning process for IAMP on potential applications for s53 consent.

The use of compulsory powers of entry should be a last resort. We would have to be satisfied that negotiations for entry to the land were in the context of "*a proposed application for an order granting development consent*" to enable the use of s53 (see s53(1)(b)). A reasoned legal argument would be required to support the s53 application.

Q. Adoption of a 'no net loss' approach and the use of land for mitigation of farmland bird impacts.

DCLGs 2013 'Guidance related to procedures for the compulsory acquisition of land' (paragraph 8) states that the applicant should be able to demonstrate to the satisfaction of the Secretary of State that all reasonable alternatives to compulsory acquisition have been explored and that the proposed interference with the rights of those with an interest in the land is for a legitimate purpose, and that it is necessary and proportionate. If an applicant seeks CA of land, they have to satisfy the requirements of s122 of PA2008. Importantly, land can be included if it meets the conditions in s122(2) and notably s122(2)(b) i.e. that it '*is required to facilitate or is incidental to that development.*' If the conditions of s.122(2) are met the applicant would also have to demonstrate compliance with s122(3), i.e. that there is a compelling case in the public interest for the land to be acquired compulsorily, and that the compulsory acquisition was proportionate and justified any interference with human rights. On the basis of the above it would seem sensible to consider if the development '*could/should proceed without the land in question*'. A reasoned argument would have to be provided in this respect.

Kind regards

Richard

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