

ISH 9 – Policy & Need Hearing

Summary of Contribution and Commentary

Given our substantial contribution at the OFH 10 on 24th August, this note records in summary our contributions and subsequent observations about some issues raised in the agenda.

Agenda Item 2 , (a) and (b)

Deliverability of SZC - on the matter of when an SZC nuclear station might be completed, we concur with the view that neither this wording nor En1 and EN6 are definitive, and are best seen indicative, with two extensions: (1) that while Sizewell as a “potentially suitable site” might be out of date and (2) that the Ministerial Statement(s) should be regarded as equally indicative in both repeating the indication and equally providing for a new “changed circumstances” consideration. We therefore think that questions of balance of policy authority are redundant, that whether the project is S104 or 5 is not helpful and that weight should be attached to changed circumstances assessment and how the SZC project relates to them.

Here we note that the developer has rejected any changed circumstances *tout court*, and consequently might be missing the opportunity to recast its “policy need and urgency” stance. The developer has however engaged with changed circumstances in reality with it’s admission that it needs a special funding regime (RAB), that its low carbon contribution is now “Net Zero Electricity” and its intention to retain only a minority interest in the project’s ownership, should it be built.

(c) We have drawn attention previously to the new national energy policy cluster of Autumn 2020, and would note the need to add the

publication of BEIS documentation in April 2021 supporting the EN NPS Review process giving in particular legal and regulatory baselines for energy policy, to assist scoping of a new Appraisal of Sustainability in respect of energy policy. This implies a differing approach to the baselines cited by the developer of BEIS modelling at 2019 – a matter discussed later in the Agenda.

(d) Scale and urgency of need. We took the opportunity later in the Examination to refer to Government financial support emerging as a priority for Small & Medium Nuclear Reactor development, within a £1bn Net Zero Innovation Portfolio launched by BEIS in March 2021 – updated 17th August, and the three new projects in North Wales, two of them for SMRs, and all dual technology based, i.e. for hydrogen production. This nuclear/hydrogen synergy poses a rival to large-scale, long life baseload nuclear as proposed for SZC.

Government has recently announced that it intends introducing a hydrogen levy and a gas levy, which together would meet an urgent need rather than leaving development to the markets alone. Further, we have previously drawn attention to one of the Prime Minister's Ten Points on turning over domestic electricity consumption to renewable by 2030, thus leaving nuclear and other carbon producing sectors to wholesale markets. We conclude that SZC's capacity and opportunity to contribute to urgent need is substantially qualified because of structural change in energy supply technologies and national policy adjustment to these changes.

(e) on RAB and funding, we disagree with Mr Phillpot's view that whole project funding is not a planning requirement. While it is a DCO requirement for financing mitigations, CA compensation and to meet other obligations, it also has standing as a longstanding policy requirement on "value for money". It also figures as an overarching consideration in the Climate Change Committee's 6th Carbon Budget. It is a matter of public interest and acute political concern too: if SZC needs a legislated RAB scheme, and other energy policy requires

hydrogen and conversion of domestic equipment and CCUS for producers, they will also need consumer levies, as already indicated by Government. Fuel poverty resulting from price escalation will become acute and public resistance to other climate change costs could undermine imperative national policy for Climate Change Net Zero.

For the record, we would like to observe that RAB as indicated by the developer at £7 per consumer does not yield great sums for a project of the scale of SZC. It is unlikely to be operable, however defined, without some form of CfD (a Contract for Difference set at a subsidy level in the absence of an open competition auction process as for offshore wind). There are many other issues about RAB, but at minimum it can be seen as a risk signal as well as a developer support opportunity for this project.

Agenda Item 3

Weight of Policy and Law We would like to comment on the discussion at the examination on the relative weight of policy and law in planning decisions. It is a complex equation with confused terminology: we suggest that policy has weight so long as it does not infringe law, which is not an issue engaged as yet in this case. But equally instruments of law establishing policy and providing for its review and change and hierarchies of consideration and examination processes about policy application are the determinants as has been shown at the end of the road in the Heathrow cases. We have therefore suggested that developer assertions of a substantial tilted balance arising from the 2011 NPS EN family of SIs is not helpful.

What matters is proper assessment of legitimate regulatory conflicts based on policy and law and how developer proposals judged in their own right conform to regulation and law. The SZC examination process is not a court of law, but an authoritative component part of a lawful process. In this setting, material considerations outside EIA

and HRA have a role and require examination and due weight. An important example is the proposed ownership change for this project, with EDF intending to retain only a minority interest, presumably in the form of a minority shareholding for an independently registered business rather than an EDF subsidiary. We suggest that this matters for, for example, the 13 EDF Community Pledges which we have suggested need to be given a secure status in the DCO. The risk of DCO securitisation being undermined without a “controlling interest” for EDF is evidently and arguably a material consideration requiring appropriate assessment and, subject to this test, most likely a substantial weight. We explore this example simply to assert that the SZC infrastructure planning agenda is not simply – or complexly - a matter of planning requirements as so frequently asserted by the developer’s representatives.

Agenda Item 5

Local and National The Exa question about local versus national plans revealed a problem for the developer counting local benefits as supplementary to, in their view, national benefits. Logically local negatives should also count and be assessed as more substantial to the extent that local planning aspirations and policies might be disrupted by the construction and actual operation and decommissioning of the project. The PA 2008 Act lays down clearly that appropriate assessment as a methodology is an unbroken vein in the statute and that the cumulative assessments create a balance of negatives and positives to be assessed finally on a reasoned basis of policy by the SoS, under IROPI where there is a built-in tilted balance for HRA issues for nature protection and a qualitatively similar climate change tilted balance. Here we note that unknown impacts, being subject to the precautionary principle for each issue count as negatives, a point essential to Suffolk County Council’s enduring assessment from the seminal report by then Cllr McGregor (Jan 18, 2013). This established that the negatives outweighed the

positives, that there too many unknowns and that these weightings meant SCC could go no further than “in principle” support.

As with court authorities on HRA requiring each step in the mitigation hierarchy to be assessed in its own right, we suggest that a wide agenda of **local** positives and negatives should be, in the first place, as fully assessed for impact in their own right as other regulatory issues. This why we have suggested that EDF’s Community Pledges need to be secured as much as other obligations, and go wider than established S106 provisions. Maybe “amenity loss” at and around SZC requires appropriate assessment in its own right.

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