ISH 14 Friday 17th September 2021

ISH 14: DCO and DoO and Allied Documents

Oral Contribution and Commentary

from: Regan Scott for S.A.G.E.

Three interventions

We made points about

1. **Planning requirements** We have followed the questioning about DCO and DoO provisions and the securitisation for planning conditions. It has become evident that the developer has an unchangeable view that "reasonable endeavours" would be sufficient to secure any environmental (EIA) and other planning compliances, with additional inbuilt dependancy on easements provided by Newbury, Rochdale and planning parameter methodology. This firm position was revealed at ISH 14 though their antipathy towards Grampian conditionality despite the DCO consultation process commencing some ten years ago. There would have been ample time for designing in some Grampian provisions had there been any proper attachment to this legitimate condition.

   A high degree of uncertainty about many aspects of the SZC project, magnified in the Examination with so many last minute changes attributable topoor project design stand in stark contrast to the developer's mantra of "urgency". This structural uncertainty suggests that statutary consultees and discharging authorities would be in need of more certainty than the developer is prepared to concede, or in truth, able to credibly concede, should be project go ahead. The narrative we observed however gave the appearance of being resolved without developer concession, emerging, we fear, as SoCGs well under par. The truth,

   In this setting, our thinking has returned to see how a likely failure to secure adequate community protections might play out at later stages of the Examination process. Here we have in mind the developer's request for IROPI – incidentally on HRA grounds which we believe are still not clear. Should the IROPI case advance to SoS level, and be accepted, we fear that many legitimate community concerns about impacts, and mechanisms of redress for breaches could be swept aside, leaving discharging authorities with unsupportable challenges and burdens – in effect, holding the babies.

The second concern which comes into play is that the DCO requirements and DoO provisions now need to be seen as likely to pass out of the hands of EDF into other controlling – i.e.majority – ownership, through the transfer of benefit provisions in the DCO. When this was exmined, the assumption was this was likely to be a perfectly stable and proper process, albeit with proviso that the SoS might not like it if the drafting remained as proposed. We suggest that the declared change of ownership is a material consideration of great weight for a massive nuclear project, and need to add that changed ownership might come about as much through crisis as through stable commercial planning. And further that the present joint EDF/CGN relaionship is formally only for the initial development of the project, with no certainty that it would continue into funding the actual construction period. In this resspect, it is inherently a profoundly different project to Hinkey Point C. We suggest that a modestly resourced discharging authorities (ESC & SCC) in such circumstances would not be in much of a position to be community champions unless copper - bottomed and gold-plated protective provisions are claimed and established at this key stage of the DCO process.

A third concern arose when we came across the apparently newly fashioned SoS instrument of DCO re-determination. This is why we thought it ought to be brought forward into consideration. While we assumed that the Norfolk Vanguard narrative would be well understood from the NIPS database and BEIS correspondence and associated media cover, we had noted legal commentary of interest - and a mention of another case – Manston Airport and another likely but unnamed case – on the BDP Pitman website (July 2021) and now put this “Re-determination News” source on record at the request of Mr Brock.

The issue is how discharging authorities should properly pursue their interests and duties in such uncertain and, franky, riskey circustances. If, at the end of the planning tunnel, they have not stood firm about a full complement of planning requirements and comprehensive obligations at the Examination stage, what chance can there be of recovering ground in the face of IROPI’s higher levels of consideration and, given the likelihood of legal challenge, an SoS minded to pursue a final decision – whatever that might be - with powers of re-determination unlikely to deal with community interests if they have not be claimed as substantial from the very start. We have long argued that Suffolk is unsuitable for this project at this time, and have seen much evidence to support this view in the course of the examination so far.

We are aware that some of the above reflections might have been more suitable for an OFH, but with these positions and issues only becoming clear in the closing sessions of the ISH hearings and so much still to be resolved, we felt the need to put these reflections on the record. Our defence, if one is needed, is that we are a commuity monitoring group. We also note that these broader

reflections mirror – if to the contrary - the developer's representatives much rehearsed "urgency" mantra and repeated appeals to "trust us to get the job done". Lastly, we suggest that our reflections are in keeping with the broad agenda of Principal Issues.

We therefore welcome the ExA's interest in securitisation, and its various pathways. Having raised Grampian issues in our Relevant Representations, we also welcome its late emergence as an issue.

For the record, we have asked for some enforceable status in the DCO process for the 13 Pledges made by EDF to local communities.

2 Caravan parks Our point here was put on record an unclear aspect of the complete accomodation story which still seems to be short of being a planning requirement.

3 RIES We noted that the Summary of the recently published RIES invites the developer to propose further mitigations for the Marsh Harriers resident at Minsmere and foraging in close proximity and notably in the SSSI. We have alrready submitted detailed reference to export opinion on marsh harrier behaviour in Entech Reports recognised by EDF in the 2010 pweriod.We raised the RIES invitation in order to understand how any new proposals might be considered for consultation. In this setting we note the appeal of local MP and Cabinet Member Theresa Coffey, via a staff member's contribution, for a 3 month extension to the Examination timetable.

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