



The Planning Act 2008

Sizewell C (SZC)

Planning Inspectorate Reference EN010012

Deadline 10: *12 October 2021*

ExA Rule 17 Letter 7 October 2021

Question no. 12 to ESC

Question on the DCO and related documents arising from the ExA Rule 17 letter dated 7 October 2021

12. In [PD-009] the ExA wrote the following to ESC and SCC: “the ExA will expect them to have done appropriate title investigations, to ensure that all the right persons and interests in land have been joined into the s.106 agreement as parties and that they do all necessary searches and registrations, remembering that the entry into a s.106 agreement is not a conveyance on sale and that therefore there is no priority period, and to confirm that this has been done”. Clearly this is no longer a s.106 agreement. But the need to ensure that the right persons are parties, that all appropriate elements of the authorised development are bound and that the agreement and the matters it secures will be appropriately enforceable notwithstanding any changes in the identity of the undertaker is important, particularly given the innovative and creative approach in this case. Please will ESC and SCC submit assurances at Deadline 10 that they are satisfied on these issues.

ESC response:

The ExA is respectfully asked to read this response alongside the draft Development Consent Order submitted at Deadline 10 which ESC has had advance sight of. ESC is satisfied that all appropriate elements of the authorised development are bound by the Deed of Obligation (“DoO”) and that the DoO and the matters it secures are appropriately enforceable notwithstanding any changes in the identity of the undertaker for the following reasons:

- *SZC Co. will be bound to the covenants it has given in the DoO and will only be released from those obligations upon the transfer of the entirety of its benefit in the DCO. Therefore SZC Co. remains responsible for all the obligations in the DoO until it has transferred the entire benefit in the DCO.*
- *Proposed Article 8 of the DCO confirms that SZC Co. has the sole benefit of the DCO (save for the carve outs) subject to the proposed Article 9 transfer provisions. Proposed Article 9(2) confirms that Work No. 1A(a) to (h) may only be operated by a person with the benefit of the DCO. Therefore, the initial DoO binds the person who has the initial benefit of the proposed DCO.*
- *Where a transfer of the benefit of Work No. 1A(a) to (h) is permitted, the transferee will be bound to the obligations in the DoO pursuant to proposed Article 9(5A) of the DCO.*
- *The DoO confirms at clause 1.2.5 that references to SZC Co. in the DoO include any entity who takes a transfer or grant of all or part of Work No. 1A(a) to (h).*

Where it is proposed that the undertaker seeks to transfer part of the benefit of the Order powers, ESC would support the inclusion of proposed Article 9 and 9(3A) (the latter amended so it applies to a transfer of *all* as well as some of the order powers) in the DCO whereby before permitting a transfer of all or part of the Order powers, the Secretary of State is obliged to consult with ESC and consider whether the transfer can take place without prejudicing the delivery of the authorised development as a whole, the ability of the person bound by the DoO following the transfer to meet all the obligations contained in the DoO and the ability of ESC (and SCC) to enforce the terms of the DoO. ESC consider that these provisions would provide additional comfort that the obligations in the DoO would remain deliverable and enforceable notwithstanding a transfer of Order powers.

As part of the enforcement provisions set out in proposed Article 9A, where there is a breach of a requirement in the DoO, ESC is able to enter onto the relevant land and carryout any operations on such land as are required and recover the costs of doing so from the person with the benefit of Work No. 1A(a) to (h), whether or not such person is the owner or has control of the land to which the breach of obligation relates.

Therefore, in the event that SZC Co. transfers the benefit of Work No. 1A(a) to (h), ESC are satisfied that the transferee shall be bound by the obligations in the DoO, that it is reasonable for the person with the benefit of Work No. 1A(a) to (h) only to be responsible for the obligations in the DoO and that the provisions of the DoO shall be enforceable in the event of such transfer.