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*By Email Only*

14 August 2013

*Dear Mark,*

**Dogger Bank Creyke Beck Round 3 Wind Farm**

In dialogue with DECC and with the Major Infrastructure and Environment Unit, the RSPB has highlighted the importance of ensuring that developers who undertake honest and robust assessments of their proposals be rewarded.

We are therefore deeply concerned by a recent example of what would appear to be exactly the opposite – with a developer who has taken just such a robust approach to assessment of their proposal being penalised, whilst those who have failed to adopt such an approach may potentially be rewarded for doing so.

We have already raised this issue with both DECC and the MIEU, and wanted to bring this to your attention for information, as an illustration of our concerns about the handling of Nationally Significant Infrastructure Projects under the Planning Act process. It is highly relevant to the discussions around Improvements to the pre-application process that I understand from Andrew Dodd were the focus of discussion at the recent first meeting of DCLG's NSIP Sounding Board.

At a meeting on 19 June 2013, the Dogger Bank Creyke Beck project team explained that they are having some difficulty in finalising their application for submission, because the Planning Inspectorate has indicated that more information will be needed in order to ensure that their application is accepted for examination.

The project team have undertaken a very thorough and clear draft HRA and ES. Whilst they conclude that their own development will not have an adverse effect on integrity (AEoI), they are unable to conclude no AEoI for a number of SPAs in combination with other projects *"on the basis of available data it is not possible at this stage to reach a conclusion regarding the in-combination impact on the integrity of the SPA population"*.

The approach the project team has taken <sup>is</sup> the correct one. It is an honest and precautionary approach and is to be welcomed. This contrasts with the approach taken by some other windfarm developers, who have sought to sidestep the issue of in-combination impacts (which you will be aware are of great concern) either by screening out projects where there are difficulties in comparing information, or by selecting a very narrow set of sites or projects to be considered in combination.

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We are concerned that, by being thorough and open, the Dogger Bank Creyke Beck project team have encountered a problem. The Planning Inspectorate during pre-application discussions, have advised that as they cannot conclude no AEol, the Applicant must move to Stage 3 and Stage 4 of the Assessment (consideration of alternatives, Imperative reasons of overriding public Interest (IROPI) and compensatory measures). If Insufficient information is included to allow the Examining Authority to conclude an Appropriate Assessment, their application may not be accepted for examination.

The RSPB does of course wish to see the Planning Inspectorate taking a firm line where projects may have an AEol. We also wish to avoid Applicants submitting complex alternatives and IROPI cases or compensation proposals at the last minute or during the course of the Examination. However, it appears that the Developer in this instance may be disadvantaged as a result of having taken the correct approach, whilst those who take a less precautionary approach slip through.

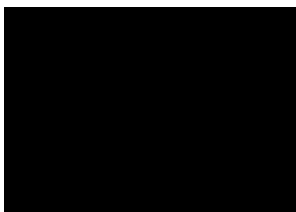
To prepare an alternatives and IROPI case for submission would undoubtedly delay this application, and is not to the RSPB's knowledge being requested for any of the other applications for which in-combination effects cannot be ruled out. Whilst this application is delayed, other projects, which have potentially greater impacts, but which have failed to consider or acknowledge potential in-combination issues in the same detail, may be consented. The Dogger Bank Creyke Beck project may in fact become increasingly less likely to be consented as a result of any such delay.

Many of the projects for which in-combination effects cannot be ruled out are yet to be consented or constructed. Avoiding potential adverse impacts in these circumstances is therefore in the gift of decision makers, rather than an Individual Applicant. If stages 3 and 4 are necessary for one Applicant, then they must also be necessary for those Applications for which an in-combination impact cannot be ruled out. The alternative approach is for the decision makers to take a view across all Applications before them and consent the least environmentally damaging schemes. The Planning Act 2008 Examination regime leaves little scope for delay or co-determination, but the result is that hurried submission and poor practice is encouraged.

The Dogger Bank Creyke Beck project team would seem to be a victim of their own good practice as set against poor practice by others, and in the context of the current lack of an agreed coping strategy to deal with the in-combination issue. The RSPB considers that this developer is at risk of being unfairly penalised for doing a thorough job, and we are most concerned that project team may be driven to consider adoption of a less robust approach, which would be a retrograde step.

A consenting process which penalises best practice and risks consenting schemes which are more environmentally damaging ahead of those which have taken a suitably precautionary approach cannot possibly be the correct one. In this case, the decision making authorities are in a position to take a view across a number of schemes and we suggest that this would be a preferable approach to requiring one Applicant to move to stages 3 and 4.

I would welcome your views on this case at your earliest convenience.



Gwyn Williams  
Head of Reserves and Protected Areas

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19 September 2013

Dear Mark

**Dogger Bank Creyke Beck Round 3 Wind Farm**

Further to my letter of 14 August 2013 (attached), I understand that an application for development consent for the above project has now been submitted. In view of the matters of principle that arise from this Application, I felt it necessary to write to you again.

As you know the RSPB was extremely concerned that an Applicant who had taken a robust approach to assessment of their proposal at the pre-application stage, was in danger of being penalised for their own good practice, and could be driven to consider adoption of a less robust approach.

Through conversations with the Applicant in this case, Forewind Limited, the RSPB understands that the intention was to take a less robust approach in the final submitted Application. The Applicant proposed a significantly downgraded assessment of the in-combination effects of the Application, entirely excluding a number of major development applications with potential interactions from its assessments.

Whilst the RSPB has not seen the final Application documents, we are extremely concerned that the Applicant's submitted Application will include these significantly downgraded assessments.

If that is the case, the RSPB considers that PINS must refuse to accept the Application for Examination, for the following reasons:

- The environmental information consulted upon at the pre-application stage differs significantly from that which will be contained in the Application documents. The RSPB (and no doubt others) would have made very different consultation responses had the recent changes been consulted upon during the pre-application consultation.
- The projects now thought to be excluded from the Applicant's in-combination assessment were included during scoping for the HRA and EIA. If those projects are excluded at the Application stage, the final Application cannot tally with the Scoping Report or Scoping Opinion relating to this development.
- The exclusion of this information would not allow a proper assessment of the in-combination/cumulative effects. If such an Application is accepted for Examination, one of two things are likely to occur during the Examination:

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- The Examining Authority will find itself unable to conduct an Appropriate Assessment, as the Applicant has provided insufficient information. The Application must therefore be refused consent; or,
- The Examining Authority will be forced to request further information (i.e. the inclusion of those projects now excluded), during the course of the Examination, causing delay, difficulty and uncertainty for Interested Parties.

Accepting an Application in the knowledge that one of these scenarios are likely to arise, would lead to wasted time and money for the Applicant, Interested Parties and the Examining Authority.

- The acceptance of an Application for Examination, which entirely excludes a number of major developments with potential interactions from its in-combination assessment, and whose final Application does not tally with either the scoping carried out, or with the pre-application consultation, will set a very damaging precedent for all future applications.

If, as we fear, the submitted Application documents contain a downgraded in-combination assessment, which entirely excludes projects previously included, the RSPB would encourage PINS not to accept this Application for Examination.

We would also encourage PINS to consider providing further advice to the Applicant in this case, about how their Application can be validly submitted, without penalising them for the thorough work they have conducted at the pre-application stage.

Yours sincerely



Gwyn Williams  
Head of Reserves and Protected Areas

Enc.

C.C. Gareth Lewis, Head of Offshore Development, Forewind  
Louise Jones, Offshore Industries Advisor, JNCC  
Rebecca Herdson, Lead Marine Adviser, Southern North Sea Team, Natural England  
Michael Rutter, Head of Renewable Energy Delivery, DECC  
Will Armitage, Head of Major Infrastructure and Environment Unit, DEFRA