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Gwyn Williams  
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Your Ref:

Our Ref: EN010021

Date: 22 November 2013

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Dear Gwyn

## **Planning Act 2008 (as amended)**

### **Application by Forewind for an Order Granting Development Consent for the Dogger Bank Creyke Beck Offshore Wind Farm**

#### **Acceptance of projects for examination**

Thank you for your letter of 25 October 2013 in response to my letter of 4 October regarding the acceptance of the above application. In your letter you raise concerns about whether sufficient information has been submitted to enable the Secretary of State to conduct an appropriate assessment, question whether the Planning Inspectorate's Section 55 checklist is fit for purpose and express concern about the potential precedent set by the decision to accept the above application. I address each point in turn below.

The Planning Act 2008 (as amended) (PA2008), provides that an application for an order granting development consent must be made to the relevant Secretary of State. Section 55 of the PA2008 provides for the circumstances in which the Secretary of State may accept an application. This includes inter alia that the application (including accompaniments) "is of a standard that the Secretary of State considers satisfactory" (S55 (3) (f)).

The Inspectorate has issued advice for those who intend to make an application for development consent under the Planning Act and guidance has also been issued by the Department of Communities and Local Government (DCLG) (June 2013) Planning Act 2008: Application form guidance:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/204425/Planning\\_Act\\_2008\\_-\\_application\\_form\\_guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/204425/Planning_Act_2008_-_application_form_guidance.pdf) .

To help decision-making on whether or not to accept applications for examination, the Planning Inspectorate has produced an Acceptance of Applications checklist, which is based upon the criteria set out in s55 of the PA2008. This is the checklist to which you refer. Applicants are encouraged to refer to the s55 checklist in preparing their

applications for submission but the completion of this checklist by the applicant is not a guarantee that the application will be accepted, as this is a matter for the Secretary of State. A copy of this checklist is included in Appendix 2 of our Advice Note 6: Preparation and Submission of Application Documents (June 2012):

<http://infrastructure.planningportal.gov.uk/wp-content/uploads/2013/04/Advice-note-6-version-5.pdf>

[http://infrastructure.planningportal.gov.uk/wp-content/uploads/2013/04/an6\\_annexe\\_Section\\_55\\_Acceptance\\_of\\_Applications\\_Checklist.doc](http://infrastructure.planningportal.gov.uk/wp-content/uploads/2013/04/an6_annexe_Section_55_Acceptance_of_Applications_Checklist.doc)

Given that the Inspectorate only has up to 28 days to decide whether or not to accept an application for examination the acceptance test cannot analyse the habitats information in detail. It rather ascertains whether the information is of a 'satisfactory standard', indicating that the balance of probability indicates it being likely that all the necessary information for an Appropriate Assessment (if one is required) is available or can be obtained before a decision is reached. Acceptance of an application means that an application proceeds to be considered at examination, but it does not address the overall quality of the information, other than that it meets the criteria set out in s55 of the PA2008. The relevant Secretary of State is the competent authority for the purposes of the Habitats Directive and the 2010 Habitats Regulations under the PA2008.

Applicants are required to submit a habitats report together with "sufficient information **that will enable** the Secretary of State to make an appropriate assessment". The appropriate assessment has not, therefore, been carried out at the point of acceptance of the application and Regulation 62 (2) of the Conservation of Habitats and Species Regulations 2010 places an on-going duty on the applicant to provide **such information as the competent authority may reasonably require for the purposes of the assessment**. In order to be considered satisfactory for the purposes of acceptance, an application does not need to meet the requirements of Regulation 25 (2) of the Offshore Habitats Regulations (or rather Regulation 61 (2) of the Conservation of Habitats and Species Regulations 2010 - the regulations which are relevant to applications for development consent for off shore generating stations as defined in s15 of Planning Act 2008).

The examination process provides opportunities for information to be submitted before an application is decided. The EIA Directive and EIA Regulations 2009 require that, before a development consent order is granted, the environmental information relating to the project is taken into consideration. This applies equally to information provided from an interested party and to information submitted voluntarily by an applicant during the course of the examination process. The Secretary of States is bound by the EIA Regulations 2009 to take that information into account. Failure to do so would make the decision vulnerable to challenge. It is for the Examining Authority to decide upon the requirements to publicise the information based upon the particular circumstances.

In some circumstances it may be the case that, notwithstanding that the application may be of a sufficient standard for acceptance under s55 (3) (f), new environmental information only becomes available (or sufficiently certain) after the application has

been submitted.

There is, however, a risk to the applicant that if information is submitted during examination it may not be possible, within the statutory timetable, to examine the environmental information properly giving all interested parties an opportunity to comment. The Secretary of State's guidance is also clear that unreasonable behaviour (including introducing fresh or substantial evidence at a late stage) which leads to unnecessary or wasted expense during an examination may result in an award of costs against the applicant.

I trust this explanation is helpful. Whilst I acknowledge your concerns regarding the impact that submission of further information during the examination can have on interested parties this is nevertheless a legitimate part of the process. The PA2008 clearly sets out what is required for an application to be accepted and this was correctly applied in the case of the Dogger Bank Creyke Beck application. I do not accept that this decision sets a precedent for other applications or, indeed, plans and projects under other legislation.

Yours sincerely

*Mark Southgate*

Mark Southgate  
Director of Major Applications and Plans

Advice may be given about applying for an order granting development consent or making representations about an application (or a proposed application). This communication does not however constitute legal advice upon which you can rely and you should obtain your own legal advice and professional advice as required.

A record of the advice which is provided will be recorded on the Planning Inspectorate website together with the name of the person or organisation who asked for the advice. The privacy of any other personal information will be protected in accordance with our Information Charter which you should view before sending information to the Planning Inspectorate.