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By Email Only

25 October 2013

Dear Mark

Acceptance of projects for Examination

Thank you for your full and helpful letter of 4 October regarding the Dogger Bank Creyke Beck Round 3 Wind Farm, confirming that the case has been accepted for Examination. As you have advised, the RSPB will raise its concerns in relation to this specific Application through the formal Examination process. However, the Dogger Bank Creyke Beck case continues to raise matters of principle in relation to the handling of nationally significant infrastructure project applications in general, which I would like to explore further. We have previously raised some of these matters with PINS's predecessor, the IPC, e.g. meeting of 13 October 2011 and subsequent letter of 3 November 2011 (attached).

Section 55 acceptance and Appropriate Assessment

In the case of Dogger Bank Creyke Beck a number of major development applications with potential interactions have been excluded from the information provided by the Applicant as part of their Application. This information was publicly available and was included at the Scoping stage and at all stages of pre-application consultation. Nevertheless, you say that the Applicant has provided "sufficient" information to enable the Secretary of State to conduct an Appropriate Assessment.

The obvious implication of this conclusion is that PINS, on behalf of the Secretary of State, considers that an Appropriate Assessment which entirely excludes several major development applications with potential interactions from its in-combination assessment, would amount to a valid Appropriate Assessment under the *Offshore Marine Conservation (Natural Habitats &c.) Regulations 2010* (as amended) (hereafter the Offshore Habitats Regulations).

If that interpretation is not the correct one (and the RSPB very much hopes that it is not) then it is extremely difficult to see how an application can meet the requirements of Regulation 25(2) of the Offshore Habitats Regulations, where the Applicant has not provided "*such information as the competent authority may reasonably require.... for the purposes of an assessment under paragraph (1)*" and therefore, how the information could be said to be "sufficient" for that purpose.

Thus, it would appear that the PINS Section 55 checklist is not fit for purpose, for the following reasons:

1. The acceptance of an application which excludes information included at the Scoping stage, rather undermines the purpose of the scoping exercise;

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2. The acceptance of an application which excludes information included at all stages of pre-application consultation, undermines that pre-application consultation exercise;
3. The practical outcome of accepting an application for Examination which excludes information necessary to conduct a valid Appropriate Assessment is that either:
 - a) The application will proceed through a costly Examination and consent will be refused, because it lacks information clearly missing from the outset; or,
 - b) The Examining Authority will have to require the Applicant to submit the missing information during the Examination process, because it cannot otherwise reach a valid conclusion. The practical implications of the submission of information during the Examination process are covered in more detail below, but entail additional cost and inconvenience for both the Applicant and Interested Parties.

The submission of new information during the Examination process

The RSPB has now been involved in a number of Examinations held under the Planning Act 2008. The submission by Applicants of new environmental information, during the Examination, is becoming commonplace.

In many cases, this is not unexpected information, which suddenly appears during the Examination process, or information that becomes relevant as a result of issues which only come to light during the Examination. Rather, it is information which is acknowledged to be necessary before the application is even submitted. Indeed, in some cases, Applicants seem to have embarked on the process with this intention, preferring to reach their own internal deadlines for submission of an application, rather than providing environmental information essential to the determination of their application at the appropriate time.

This tactic causes additional difficulty for the Applicant, the Examining Authority and Interested Parties in an already time constrained Examination period. The most recent example of the Dogger Bank Creyke Beck Round 3 Wind Farm is particularly striking, because information presented at the scoping stage, and at every stage of pre-application consultation (of which PINS was a consultee) has been removed from the final Application. You will be aware that in that case, the Applicant is now holding a public consultation, to run along side the registration for Interested Parties, to consult on the submission of information the Applicant considers will substitute some of that removed at the Application stage. The RSPB understands that it is the Applicant's intention to submit this information at the Preliminary Meeting. Further excluded information is not intended to be submitted until some time well into the Examination process.

The RSPB considers that the late submission of information not only makes the Examination process more difficult for everyone involved, but is extremely confusing for Interested Parties who are not well versed in the Examination process. This is likely to alienate members of the public faced with an already complex process.

The precedent value of PINSs decision to accept the Dogger Bank Creyke Beck Application.

As set out in my last letter, the RSPB is extremely concerned that the acceptance of the Dogger Bank Creyke Beck Application has potentially set a precedent for future Applicants where projects require an in-combination assessment. Developers and their advisers are likely to see this decision as a green light to pick and chose those projects to be included in an in-combination assessment, and to exclude those where the results are unfavourable to their application.

This has the potential to affect not only offshore wind development, or developments within the National Infrastructure Planning process, but all plans or projects requiring Appropriate Assessment.

Because of these wider implications and in advance of the DCLG 2014 review of the National Infrastructure Planning process, I have copied this letter to Stephanie Hurst at DCLG, Michael Rutter at DECC and Will Armitage at MIEU and propose a meeting between us, to discuss the matters of principle raised by this case.

I would also be grateful for your written response to the concerns raised in this letter about PINS interpretation of the Offshore Habitats Regulations, the fitness for purpose of the Section 55 checklist and the now commonplace submission of environmental information during the examination of National Infrastructure Planning applications, as this is material to the way in which we act upon the "steer" you gave in your reply of 4 October as to engagement with future Examinations.

Yours sincerely



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