

Mark Southgate
Director of Major Applications and Plans
The Planning Inspectorate
Room 3/13
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
By Email Only

17 December 2013

Dear Mark

Acceptance of projects for Examination

Thank you for your letter of 22 November 2013, in response to my letter of 25 October 2013 regarding the acceptance of projects for Examination, and the RSPB's concerns about late submission of technical information.

I apologise for further extending this run of correspondence, but I'm afraid there are matters contained in your letter of 22 November which raise further important questions and upon which we must seek clarification.

Your letter seems to suggest that provided that information can be obtained at some later date, it need not be included in an Application. The RSPB remains concerned that such an interpretation will cause undue difficulty to all involved in Examination and will undermine the purpose of pre-application consultation (as set out in my letter of 25 October), but will also severely prejudice the ability of Interested Parties to participate effectively in the Examination process.

The exclusion of information which has been included at scoping and in pre-application consultation

Where an Applicant has included information at every stage of pre application consultation, including when it carried out scoping for EIA, the RSPB consider that it ought to be a straightforward part of the acceptance test to ascertain whether an applicant has included that information in its final application, or else justified its exclusion. In the case of Dogger Bank Creyke Beck, the Applicant does neither. The information is simply omitted, without comment.

I appreciate that the Inspectorate has a relatively short time to decide whether or not to accept an Application, but where PINS has given detailed comment on the conclusions of the draft HRA at the pre-application stage suggesting that **additional** environmental information would be required to inform a Habitats Regulations Assessment ("Review of the Dogger Bank Creyke Beck Information for Appropriate Assessment Report (April 2013) ('the HRA Report')"), it is rather surprising that the **omission** of environmental information at the acceptance stage, without any explanation or justification by the Applicant, is deemed to constitute a "*satisfactory standard*" for the purposes of the Acceptance Checklist.

The RSPB is particularly concerned by your interpretation that the acceptance process requires PINS to establish that "*the balance of probability indicates it being likely that all the necessary information to inform an Appropriate Assessment (if one is required) is available or can be obtained*" (my emphasis).

UK Headquarters
The Lodge
Sandy
Bedfordshire
SG19 2DL

Tel 01767 680551
Fax 01767 692365
DX 47804 SANDY
rspb.org.uk



The RSPB is part of BirdLife International,
a partnership of conservation organisations
working to give nature a home around the world.

The logical conclusion of your interpretation is that an Applicant could submit their Application with the absence of any information to inform an Appropriate Assessment, because that information is likely to be available elsewhere, or can be obtained at some later date. This does not tally with the duty on the “*a person applying for any such consent*” under Regulation 61(2) of *The Conservation of Habitats and Species Regulations 2010* (as amended) to “*provide such information as the competent authority may reasonably require*” to allow the Secretary of State to carry out an Appropriate Assessment.

The ability of Interested Parties to participate in the Examination process

The current Planning Act regime does not allow for additional information to be submitted between the dates of acceptance and the Preliminary Meeting. In the interim, members of the public, statutory consultees and other interested parties are asked to register their interest in a development, based on the information published on the PINS web site and available in public libraries, if they wish to be involved in the Examination.

Potential Interested Parties are required to consult those documents and decide whether they wish to be registered. They may quite properly conclude that they do not have any concerns, and therefore elect not to register as an Interested Party. Your interpretation means that new information submitted at, or after the Preliminary Meeting, could well raise issues upon which a potential Interested Party would wish to comment, at a point where they are no longer eligible to register. Having satisfied themselves at the appropriate stage that there is no issue for them to comment upon in relation to a particular application, those persons may never be aware that new information has been submitted.

The Examining Authority has the discretion to allow persons or bodies who are not registered as Interested Parties to participate in the Examination, but it is only a discretion. Those parties do not share the same status as Interested Parties.

In the recent case of East Anglia One, when new information was submitted at the Written Reps stage, the Applicant was directed to hold a public consultation outside of the Examination process, and to submit any comments from members of the public to the Examining Authority. This approach may be more straightforward for the Examining Authority, and is more likely to raise awareness with persons who have not registered, but it further distances any respondent to that consultation from the Examination process, reducing their ability to participate or make further comments, because the question of discretion to participate never arises.

The way forward

Please be assured that the RSPB is not suggesting that new information which **only becomes available** during the course of Examination, should not be submitted. These situations will inevitably arise from time to time. However, in a truly front-loaded process, these occasions ought to be relatively unusual. As I highlighted in my last letter, the submission by applicants of new environmental information, which is acknowledged to be necessary before the application is even submitted, is becoming commonplace.

You will be aware that the RSPB's has submitted a Relevant Representation in respect of the Dogger Bank Creyke Beck seeking to resolve the current issue. Clearly the progress of that Application will be a matter for the appointed Examiner(s). The RSPB will also be feeding into the NSIP review, and will be raising late submission of information in that context.

In order to assist the RSPB in understanding the current position, I would be grateful if you could clarify the advice given in your last letter and in particular:

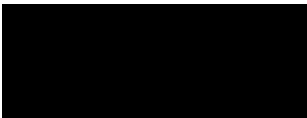
1. Explain whether Applicants should justify the exclusion of information which was included at the scoping stage but is excluded from the final Application, and whether the content of scoping

documents has any relevance to the question of whether an Application contains “sufficient information”.

2. Explain whether Applicants should make potential interested parties aware that information which has been included in pre-application consultation, has been excluded from the final application.
3. Explain what evidence PINS takes into account in assessing whether information “*is available or can be obtained*” and the extent to which such information should be submitted, or signposted within the Application documents.
4. Explain the means by which potential Interested Parties are made aware that information “*is available or can be obtained*” but is not included in Application documents available at the time of registration as an Interested Party.
5. Clarify whether PINS takes the same view about late submission of information with regard to (i) information which is publicly available at the time of Application, but which is not submitted, and (ii) information which only becomes available during the Examination process or becomes relevant as a result of issues which only come to light during the Examination.
6. Explain what comfort PINS is able to offer to parties who do not register as an Interested Party, but who subsequently become aware of newly submitted information, and what steps PINS will take to ensure that those who are not registered are made aware that new information has been submitted.

Your clarification will be helpful in informing the RSPB’s response to the NSIP review in mid January. I would therefore be grateful for your response as soon as possible.

Yours sincerely

A solid black rectangular box used to redact the signature of Gwyn Williams.

Gwyn Williams

CC: Stephanie Hurst, DCLG
Michael Rutter, DECC
Will Armitage, MIEU