



3/18 Eagle Wing
Temple Quay House
2 The Square
Bristol, BS1 6PN

Customer 0303 444 5000
Services: enquiries@infrastructure.gsi.gov.uk
e-mail:

Gwyn Williams
Head of Reserves and Protected Areas
RSPB
UK Headquarters
The Lodge
Sandy
Bedfordshire
SG19 2DL

Your Ref:

Our Ref: EN010021

Date: 22 January 2014

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 dated 17 December 2013 in response to my letter of 22 November 2013 raising a number of questions upon which you are seeking further clarification. I have considered each matter you raise, including the 6 points at the end of your letter, and I have replied to these below.

Relevance of scoping documents to the question of whether an application contains 'sufficient information'

In relation to your first query, the request for a scoping opinion relates to the preparation of the Environmental Statement (ES)¹. The intention of the scoping opinion is to assist an applicant in the preparation of their ES. The Planning Inspectorate encourages scoping, but as the process is voluntary there is no requirement for the applicant to do so. Therefore, the acceptance process does not include a cross-check of this information, as it would be inappropriate since it is not mandatory.

In any case, even when a scoping request has been made, it is possible that an ES as submitted with a proposed development consent order (DCO) application, may exclude information that was included at the scoping stage. Where topics or information are scoped out prior to submission of the DCO application, the Planning Inspectorate advises

¹ In accordance with the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended) ('EIA Regulations')

applicants to explain the reasoning and justification for the approach taken, to assist the reader of the ES. However, this is not a legal requirement under the EIA Regulations.

There is no equivalent scoping stage under the Habitats Regulations².

Whether or not applicants should highlight information excluded from a final DCO application that had been included in pre-application consultation

In terms of pre-application consultation, the Planning Inspectorate advice note 16 'the developer's pre-application duties' - <http://infrastructure.planningportal.gov.uk/legislation-and-advice/advice-notes/> - explains the developer's pre-application consultation, publicity and notification duties. Applicants should also have regard to DCLG guidance on the pre-application process – 'Planning Act 2008: guidance on the pre-application process'. Whilst applicants should consider carefully before submitting an application whether it is necessary to re-consult if an application has changed to a large degree (see DCLG guidance paragraph 56) there is no legal obligation on an applicant to notify parties that information (for example environmental information which was available at the scoping stage) has changed or been excluded from the submitted application. It does, however, remain the applicant's risk that an Examining Authority may then require supplementary information or seek clarification (for example about cumulative impacts) which would then need to be provided by a deadline set by the Examining Authority.

The question of whether information is 'available or can be obtained'

Turning to your third and fourth queries, an applicant is required to demonstrate 'sufficient information' and, if they were relying exclusively on generally available information, they would need, as a minimum, to set out where all the information is available and why they consider this to be sufficient. Further information about the requirements for HRA is explained in our Advice Note 10: 'Habitats Regulations Assessment relevant to Nationally Significant Infrastructure Projects'.

Applicants are required³ to provide "sufficient information that will enable the Secretary of State to make an appropriate assessment". There is also an on-going duty 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 for the purposes of the assessment...". This does not imply that conclusive information should in all cases be available when an application is submitted to the Planning Inspectorate for acceptance.

Throughout the examination, the Planning Inspectorate is committed to adhering to its openness policy and the relevant project team will ensure that the material submitted and issued is made publicly available as soon as possible in accordance with statutory requirements. We also maintain and update our website regularly with details relating to the examination, including the application documents as submitted and any additional

² The Conservation of Habitats and Species Regulations 2010 (as amended) ('the Habitats Regulations')

³ Regulation 5 (2) (g) Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009

material such as written representations, responses to Examining Authorities' questions etc.

It is the responsibility of any person/individual who has not registered as an interested party to keep informed about the examination of the proposed development to determine whether any information provided during the course of the examination may affect them.

Anyone who chooses not to register as an interested party needs to take responsibility for staying up-to-date with a case if they wish to do so, and this can be done through monitoring of the national infrastructure portal project website. However, in order to assist people to keep informed on a particular case our website offers the opportunity to sign up for RSS feeds or twitter updates. We intend to introduce an email update facility that will soon allow anyone to sign up to receive email alerts to any new information being issued on a case.

Submission of information after acceptance of an application

As far as the timing of submission of information and its potential implications for interested parties participating in the examination is concerned, the PA2008 does not preclude the provision of additional information during the pre-examination stage. Where information is received, there is no obligation to suspend consideration of the application unless (in exceptional circumstances) it is environmental information which is required to remedy deficiencies in the ES. If an Examining Authority accepts new information, it will form part of the examination documents and be made publicly available at the earliest opportunity. Depending on the circumstances of the case, the Examining Authority may decide that an amendment to the examination timetable is required in order to deal fairly with the additional information.

Participation of unregistered parties in an examination

If the choice is made not to register as an interested party, the Examining Authority has the discretion to invite bodies to the Preliminary Meeting as an 'other person'⁴. If the Examining Authority does so, they will write to 'other persons' with procedural decisions during the examination, such as the Rule 8 letter, and any changes to the examination timetable. In addition, under the Infrastructure Planning (Examination Procedure) Rules 2010, the Examining Authority is also able to permit any person (including any person not registered as an interested party) to submit their comments about the application (in writing or orally at any hearing held for the purpose of examining the application).

As you rightly point out, it is at the Examining Authority's discretion whether or not to accept a submission from a party who is not an interested party. When deciding whether to do so, an Examining Authority will be aware that in the interest of natural justice it is important that all relevant and important matters for the decision are taken into account, irrespective of who has raised those points and their formal status.

As with additional information submitted during pre-examination (see above), if new information is provided during the course of the examination, which a body/individual believes may affect them, there is nothing preventing them from making a submission to the Examining Authority highlighting these impacts. It will be for the Examining Authority

⁴ Rule 6 of the Infrastructure Planning (Examination Procedure) Rules 2010

to determine whether or not to exercise their discretion to accept such submissions and the weight to attach to them. Any party wishing to keep informed about the examination may also find it helpful to review the Examining Authority's written questions, the responses received and the comments on these responses, as well as any procedural decisions issued by the Examining Authority which are all available on the relevant project website of the national infrastructure portal.

I trust the contents of this letter assists further with your understanding of the PA2008 process and how it is applied in practice by the Planning Inspectorate, on behalf of the Secretary of State. I hope that my response is timely and will enable you to make any response you may wish to make on these matters to the DCLG on the 2014 review of the NSIP regime.

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.

www.planningportal.gov.uk/infrastructure