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Your Ref:

By Email

Our Ref: EN010038

Date: 7 May 2013

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Dear Mr Bassford

## **EN010038: The Proposed North Killingholme Power Project ('the proposed project')**

### **The Planning Inspectorate advice to C.GEN Killingholme Ltd ('C.GEN') in respect of the application for development consent for the proposed project**

I am writing in relation to your application submitted to the Planning Inspectorate on 25 March 2013 for the proposed project. You will be aware that the Planning Inspectorate issued its decision to accept the application to proceed to examination on the 19 April 2013.

Issues have come to light which we feel it would be prudent to emphasise and to draw to your attention at this stage. This letter therefore contains advice which is issued to you under s.51 of the PA 2008 to assist you in considering what action to take and when.

You will be aware that you now have some influence over the timetable for the start of the examination by choosing when to carry out your notification and publicity obligations. This is because the examining authority cannot be appointed until after receipt of your certificate under s.58 and notice under s.59 confirming you have carried out the statutory notification. The examining authority will make its initial assessment of principal issues within a 21 day period beginning with the day after the deadline you set in your s.56 notice for submission of relevant representations.

### **Habitats Regulations Assessment**

The Planning Inspectorate's Advice Note 10 explains the obligations placed on both the developer and the decision maker under the Habitats Directive and the Conservation of Habitats and Species Regulations 2010. The advice note states that consideration of the likely significant effects of a proposed project on European sites should take place at the pre-application stage, in consultation with the appropriate statutory nature conservation bodies (SNCB), including during s.42 consultation. This is designed to ensure that an application provides sufficient information to enable an appropriate assessment to be carried out, if required.

You will note from the s.55 checklist that the submitted report was considered by the Planning Inspectorate to comply with the requirements for acceptance. This however was based on an approach which was limited to whether procedural requirements were met based on the information on the face of the report, without any interpretation or judgement on the findings of the

report which will be undertaken during the Examination period. The Planning Inspectorate therefore considered on the evidence available in this case that it would be unreasonable to conclude at this stage that an appropriate assessment could not be carried out.

Notwithstanding the above, should the Examining Authority, through questions, be unable to conclude any necessary 'appropriate assessment' as part of its recommendation, it would be required to conclude that the competent authority under the 2010 Habitats Regulations should refuse to authorise the project. You should therefore be mindful of the strict timetable for the Planning Inspectorate's examination of applications, and the significant risk of delay to the examination timetable if further assessment work has to be carried out and completed during the examination.

### **Preparing for Examination**

You should note concerns raised in the Planning Inspectorate's 'Section 55 Acceptance of Applications' checklist, published on our website, which sets out the Planning Inspectorate's comments in respect of the tests that must be met under s.55 of the Planning Act 2008 (PA 2008).

Should you wish to discuss the content of this letter please do not hesitate to contact me.

Yours sincerely,

*Oliver Blower*

Oliver Blower  
Case Manager

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.