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Andrew Guyton
Forewind Limited

By email

Our Ref: EN010051

Date: 23 April 2014

Dear Mr Guyton

**Planning Act 2008 (as amended) – Section 55 and DCLG Guidance (2013):
Procedures for the Compulsory Acquisition of Land**

**Application by Forewind Ltd for an Order granting Development Consent for
the Dogger Bank Teesside A&B Offshore Wind Farm**

Section 51 advice concerning parts 1 and 3 of the Book of Reference

The Secretary of State made the decision on 23 April 2014 that the application for the proposed Dogger Bank Teesside A&B offshore wind farm project has satisfied the acceptance tests under s55 of the Planning Act 2008 (PA2008). The Planning Inspectorate's acceptance checklist, published on our website today, notes at section 3.3(d) some observations in relation the submitted Book of Reference. This letter contains advice to you provided under s51 of the PA 2008.

In reviewing the submitted Book of Reference, it has been noted that the DCLG guidance (September 2013) 'Planning Act 2008: guidance related to procedures for the compulsory acquisition of land' (see paragraph 8 of Annex D) has not been followed. This guidance explains that persons recorded in part 3 of the Book of Reference should also be recorded in part 1, as being persons within categories 1 or 2 as set out in s57 of the PA 2008. Whilst this does not of itself mean that the Secretary of State is unable to conclude that you have complied with pre-application procedure, there are implications for the proper and fair examination of your compulsory acquisition request as described below.

It is considered that a person having a right over land is a person who is "interested in the land" and is therefore a category 2 person. If that land will be subject to powers of compulsory acquisition, rights to use land or rights to carry out protective works to buildings those persons should be identified in part 1. Where it is known what specific rights over land are to be extinguished, suspended or interfered with those persons entitled to enjoy them must also be identified in part 3.

If the Development Consent Order (DCO) is made, the effect of exercising the compulsory acquisition powers under article 20 will be to discharge the Order land from all rights, trusts and incidents to which it was previously subject. The Order land is land within the limits of land to be acquired and described in the book of reference including the easements or other private rights over land which it is proposed shall be extinguished, suspended or interfered with identified in part 3. Before reaching a view about whether the compulsory acquisition should be authorised, it is important that the Examining Authority (when appointed) is able to examine fully through written representations and (if appropriate) at compulsory acquisition hearing(s) whether "the proposed interference with the rights of those with an interest in the land is for a legitimate purpose and that it is necessary and proportionate"¹¹.

A part 3 person may become an interested party because the applicant sends them a s56(2)(d) notification and they will then be able to participate in the examination. However, if CLG guidance is not followed a part 3 person's name will not be in part 1 of the book of reference and the name will not therefore be given in a section 59 notice. As a consequence that person will not acquire the status of "affected person" under s92 of the PA 2008 and will be deprived of the right to call for a compulsory acquisition hearing and to make oral representations about extinguishment, suspension or interference with their right over the land.

So that the interests of part 3 persons are not prejudiced in the examination you are therefore advised to ensure that documentation is attached to the certificate of compliance with s59 which provides the names, addresses for service and contact details of any part 3 persons not identified in part 1 of the book of reference which was submitted with the application.

I trust the above advice is clear; please do not hesitate to contact me should you have any queries.

Yours sincerely

John Pingstone

John Pingstone
Case Officer

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.

¹¹ See paragraph 8 of DCLG (2013) guidance 'Planning Act 2008: guidance related to procedures for the compulsory acquisition of land'