

PLANNING ACT 2008 (AS AMENDED) – SECTION 55

APPLICATION BY ABERGELLI POWER LTD FOR AN ORDER GRANTING DEVELOPMENT CONSENT FOR THE ABERGELLI POWER PROJECT

WRITTEN REPRESENTATION OF INTERESTED PARTY – MR MICHAEL EDWARDS

1. Background
 - 1.1 This is a Summary of the Written Representation submitted on behalf of Mr Michael Edwards as an Interested Party in relation to the application by Abergelli Power Limited for an Order granting Development Consent (“the DCO”) for the Abergelli Power Project (“the Project”).
 - 1.2 A Relevant Representation was submitted on behalf of the Interested Party on 27 July 2018 and the Preliminary Meeting was held on 10th October 2018. Following this, the Examiner issued an updated timetable by way of a letter dated 17th October 2018, including a revised timetable for examination of the application. The deadline for the submission of written representations of Interested Parties is Friday 9th November 2018. Guidance issued by the Examiner in conjunction with the revised timetable confirms that written representations can cover any relevant matter and are not restricted to the matters set out in the Initial Assessment of Principal Issues discussed at the Preliminary Meeting.
2. Summary of Matters Covered by Written Representation
 - 2.1 The matters addressed in these written representations are as follows:
 - (a) The validity of the Draft Development Consent Order, in particular, the consideration of the Electrical Connection and the Gas Connection;
 - (b) The Compulsory Acquisition – in particular the justification for the access route.
3. Development Consent Order – Summary
 - 3.1 The Project includes a Gas Connection (“GC”) which will consist of a new above ground installation (AGI) and underground gas connection (gas pipeline) as well as an Electrical Connection, (“EC”) which will consist of an underground electrical cable to export power from the generating equipment to the National Electricity Transmission System (NETS). Both the GC and EC have not been included within the DCO.
 - 3.2 It is submitted that the GC and the EC are integral to and form part of the Project for the construction of the generating station and therefore should have been included in the application for development consent. The DCO is required for any development which is, or forms part of, a nationally significant infrastructure project and it is submitted that the GC and EC should therefore have been included within the DCO. It is submitted that grant of development consent for only part of a proposed generating station would be unlawful and that the decision by Abergelli Power Limited (APL) to

exclude the EC and GC from the DCO renders the draft Order invalid. The DCO should therefore be refused on the grounds of it being invalidly submitted or else APL should be invited to withdraw the DCO and submit a new application.

4. Development Consent Order – Conclusions

4.1 It is submitted that APL have incorrectly applied the Secretary of State’s decision in the Hirwaun Order to the circumstances of the Project. Even if the Secretary of State was correct in the determination of the Hirwaun Order, this does not justify APL’s decision to exclude the GC and EC from the DCO when all the evidence supports the view that both are integral to the Project and should have been included within the DCO.

4.2 The Secretary of State’s decision in the Hirwaun Order is not binding on a subsequent decision maker in a subsequent case. It is submitted that the decision is of limited assistance to the current Project as the Secretary of State failed to give any detailed reasons for excluding the GC and EC in that project. Simple reliance on that decision in the current Project is not justification for excluding the GC and EC.

4.3 As the GC and EC are integral to the Project, their omission leads to the draft DCO being invalid and the grant of development consent, as currently construed, would be unlawful;

4.4 The CPO seeks to acquire land in relation to the construction of both the access road and the EC and this serves to reinforce the integral nature of the EC to the Project.

5. Compulsory Acquisition – Summary

5.1 It is submitted that APL have not satisfied the relevant tests set out in Section 122 of the 2008 Act in relation to the compulsory acquisition of land.

6. Compulsory Acquisition – Statutory Requirements

6.1 The compulsory acquisition of land within a development consent order can only be granted where the decision-maker is satisfied that two conditions are met in accordance with Section 122 of the 2008 Act, namely:

(a) 1 -

(i) the land is required for the development to which the development consent relates; or

(ii) It is required to facilitate or is incidental to that development; or

(iii) It is replacement land which is to be given in exchange for the order land;

(b) 2 - there is a compelling case in the public interest for the land to be acquired compulsorily.

7. Compulsory Acquisition – Conclusions

7.1 It is submitted that the compulsory acquisition of the Owner's Land does not meet the tests set out in Section 122 of the 2008 Act, in particular, that APL have not adequately investigated the alternative options to the compulsory acquisition of the Owner's Land or rights in land and that there is no compelling case in the public interest for the land to be acquired. It is further submitted that the DCO is therefore invalid and should not be confirmed.

Loxley

9 November 2018

