PLANNING ACT 2008 (AS AMENDED) – SECTION 55

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

WRITTEN SUMMARY OF ALL REPRESENTATION MADE AT THE DEVELOPMENT CONSENT ORDER HEARING ON 13 DECEMBER 2018 ON BEHALF OF MR MICHAEL EDWARDS, REDIPLAY LTD AND MR WYNNE WATKINS

1. The Respondents' submissions relate to the exclusion of the Electrical Connection ("EC") and the Gas Connection ("GC").

2. The Respondents submit that the draft DCO is not valid as currently drafted and submitted for examination as it does not comply with the requirements of the Planning Act 2008.

3. The Respondents believe that the Applicant has incorrectly interpreted and consequently applied the DCLG Guidance on Associated Development. The Applicant, in their Response to the Written Representations, refer the original 2009 Guidance which included "Grid Connection" to the list of indicative examples of associated development. However, the 2009 Guidance was replaced in 2013. The latest Guidance omits reference to Grid Connections in the indicative list of associated developments. However, Annex A of the 2013 Guidance does include access arrangements (which refer specifically to vehicular and pedestrian access ways) as examples of general type of associated development.

4. It is important to place the DCLG Guidance and Annexes within the context of the current Project.

5. The Guidance clearly recognises that it has limited relevance to Wales given the current constraints of what might be considered as associated development within Wales. However, in relation to NSIPs more generally, the Guidance is clear that each Project should be treated on a case by case basis – this is confirmed in paragraph 5 of the Guidance.

6. The Guidance also makes it clear that the examples of the development listed in the Annexes should not be treated as associated development as a matter of course or that such development is not an integral part of a Project, in which case development consent is mandatory requirement. Where development constitutes an integral part of an NSIP, it cannot be treated as associated development under Section 115 of the Planning Act 2008.

7. The Written Representations submitted on behalf of the Respondents made reference to the leading case of *Redcar & Clevedon Borough Council and the Secretary of State*. The Applicant has responded in its Written Response on the relevance of the Redcar case to the current Project. The Respondents disagree with the conclusions reached by the Applicant in relation to that case.

8. The Redcar case considered an offshore windfarm with cables connecting the offshore elements to the shore as well as an onshore substation. That project was under the equivalent regime within section 36 of the Electricity Act 1989.

9. The Applicant quotes Mr Justice Sullivan (as he then was) in relation to the judgment in Redcar at paragraph 4.26 of the Response. Essentially the decision maker, in considering whether development consent should be granted, is required to define the place where the

electricity is generated. In the Redcar judgment Mr Justice Sullivan compared an oil or coal fired generating station, where the turbines and some or all of the ancillary facilities may well be housed in one building or structure or complex of buildings and structures, with an offshore wind farm, where the turbines may be separated by many kilometres of water from the facilities on shore. He concluded that in the former case, it would be sensible to include all the elements in a single application. This is in contrast to the latter case.

10. Physical proximity or geographical considerations are critical in determining whether the EC and the GC are integral of the Project. The definition of generating station is not confined to the turbine building or generating plant itself but may include other facilities which should be treated as falling within the station or site – this is clearly distinguishable from Redcar where the cabling and substation couldn't, in any practical sense, be described as being part of the offshore site.

11. In the case of the current Project, both the EC and the GC are contained within the Order Land, despite being excluded from the application for the DCO. This clearly points to the integral nature of both the EC and GC. Specifically, in relation to the EC, it runs along the same pathway as the proposed access road, the two elements are essentially continugous, albeit the EC is much shorter and more proximate to the main plant. Yet the access road is included in the DCO whereas the EC is not.

12. The Applicant, at paragraph 4.28 of the Response, suggests that a determinative question to ask when considering whether an element forms part of a generating station is "*where is the electricity to be generated?* The answer given is that the EC and GC do not generate electricity and are therefore not considered to be integral. By the same token, how can the access road be considered to be integral since it cannot be described as forming part of the main generating plant? Applying the Applicant's logic and ignoring geographical proximity, any elements of the main power plant which are not strictly employed in the generation of electricity should be stripped out of the DCO. In relation to the DCLG Guidance, it is difficult to square the Applicant's approach to the Project given access arrangements are identified as possible examples of associated development in Annex A of the 2013 Guidance.

13. The Respondents submit that the Applicant's approach to the DCO is inconsistent and lacks coherence. It points to a strictly objective and rigid interpretation of the Secretary of States decision in relation to the Hirwaun DCO, which the Applicant has simply transplanted to the current Project. The Statement of Reasons appears to support this view.

14. The Secretary of State did not provide a proper explanation as to why the EC and GC in the Hirwaun Order should be excluded, except to refer to some evidence and case law which the Secretary of State apparently had regard to. The following points are relevant:

    (a) The Redcar case and the other development consent orders in Wales referred to by the Secretary of State are clearly distinguishable from the current Project, they involve electrical connections covering substantial distances with very differing environmental impacts;

    (b) The very detailed Advice provided by Senior Counsel in the Hirwaun case clearly supports the view that the EC and GC were integral to that project;

    (c) The Secretary of State, in reaching her decision on the Hirwaun DCO, did so contrary to the conclusions reached by the Applicant, the Local Planning Authority and the Examiner.

15. The Respondents have taken their own Advice from Senior Counsel on the approach taken by the Applicant in relation to the Project and that advice concludes that the EC and GC are integral to the Project and should have been included in the DCO.

16. The Examiner is not bound by the decision in the Hirwaun DCO any more than the Applicant was in submitting the draft DCO for examination. The Respondents submit that the DCO as currently drafted is defective and therefore invalid as both the EC and GC should be included as integral to the Project. It is the Respondents' submission that the draft DCO should not be confirmed in the circumstances.