KNIGHTS
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Mrs Dee Allen
Case Manager
National Infrastructure Planning
The Planning Inspectorate
Temple Quay House
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12 December 2018

Our ref:
MDMK/MG/
SASDE 1/2 & WERNI 1/1

Also by email: dee.allen@pins.gsi.gov.uk

Dear Mrs Allen

Riverside Energy Park: EN010093
Planning Act 2008 section 55

We are instructed by SAS Depot Limited ("SASDE"), by S Wernick & Sons (Holdings) Limited ("WERNI") and by Wernick Event Hire Limited.

SASDE owns the freehold land known as Site C, Norman Road North, Belvedere, Kent DA17 6JY, with title number SGL511335. It is currently leased to Riverside Resource Recovery Limited, an operating subsidiary of Cory Environmental Holdings Limited ("Cory"). References to "Cory" in this letter include its agents, advisers and consultants.

WERNI owns freehold land at Norman Road North, Belvedere, Kent DA17 6JY, with title number SGL502959. It is occupied by Wernick Event Hire Limited; a subsidiary of WERNI's.

We refer to the purported application by Cory dated 16 November 2018 for a development consent order ("DCO") regarding the proposed Riverside Energy Park.

The Planning Inspectorate on behalf of the Secretary of State is respectfully urged not to accept Cory's application.

Our clients infer from certain pre-application documentation and discussions that Cory's application seeks authorisation for the compulsory acquisition of some or all of the SASDE and

WERNI land, and that provision is made for this in the draft DCO. However, our clients have not yet been able to confirm their inference for the simple reason that, inexplicably, Cory has to date and despite several requests refused to provide them with a copy of the application documents unless and until the Planning Inspectorate accepts its application.

Cory's failings in this regard are consistent with its manifest failings during the pre-application process.

On 10 October 2017, Cory expressed to WERNI an interest in purchasing the WERNI land. Cory did not mention its DCO proposal or the possibility of compulsory purchase at that time.

At a meeting on 11 December 2017, SASDE and Cory reached what SASDE considered to be an agreement in principle for a new lease of the SASDE land. Four days later, Cory resiled from its position at the meeting. We note from the very few documents regarding the application uploaded on your website that an Inception Meeting had already taken place by this stage, on 2 November 2017. A year has now elapsed since the meeting on 11 December 2017. In all of that time, Cory has made only two offers to purchase the SASDE land (with unreasonably short acceptance periods) and neither offer has been consistent with the principle identified in *Guidance on Compulsory Purchase Process and The Crichel Down Rules* ("the Guidance") that compensation for the acquisition of land by agreement should be paid as if the land had been compulsorily purchased.

On 16 January 2018, Cory first mentioned its DCO proposal to WERNI. Again, it did not mention the possibility of compulsory purchase at that time.

On 6 April 2018, Cory produced a valuation report for the WERNI land (which WERNI's expert consultant considers to be fundamentally flawed). Cory did not even ask WERNI's permission to inspect the land so as to inform the valuation. This document was not disclosed to WERNI until 10 October 2018 and was not provided to WERNI until 21 November 2018; after the DCO application had been made. Cory has made no reasonable offer to acquire WERNI's land in the more than 8 months that have passed since the valuation report. This failing is plainly inconsistent with the principles in paragraph 25 of the Planning Act 2008 and *the Guidance* that applicants should seek to acquire land by negotiation wherever practicable and that, as a general rule, authority to acquire land compulsorily should only be sought as part of a DCO if attempts to acquire by agreement fail. This failing and this inconsistency are of equal application with respect to SASDE and its land.

It would appear that there was a meeting between the applicant and the Planning Inspectorate on 10 May 2018, at which the Planning Inspectorate advised Cory of the Compulsory Acquisition Objections Schedule in the Richborough Connection Project case. Cory has provided no such Compulsory Acquisition Objections Schedule to either of our clients.

The very first time that WERNI was made aware of the possibility of compulsory purchase of its land to facilitate Cory's DCO proposal was when certain consultation documents were sent out in May 2018.

Contrary to paragraph 24 of the Planning Act 2008 and *the Guidance* , it cannot be said that there was "early consultation" by Cory with people who could be affected by compulsory acquisition. Likewise, it cannot be said that Cory was willing to be open and to treat our clients' concerns with respect. Contrary to paragraphs 26-27 of the same *Guidance*, Cory did not make clear that compulsory acquisition would if necessary be sought and it did not offer full access (or any access) to alternative dispute resolution techniques. Contrary to paragraphs 29-30 of the *Guidance* , Cory has not provided full information about what the compulsory acquisition process under the Planning Act 2008 involves and it has not offered to alleviate concerns by entering into agreements with our clients such as to guarantee a minimum level of compensation.

On 21 June 2018, WERNI asked Cory to confirm that it would indemnify WERNI's legal and valuation fees. It then took Cory fully 5 months to offer WERNI a limited undertaking as to fees, and even then it was subject to certain terms. On 3 December 2018, WERNI accepted the offer subject to two provisos as to which Cory has only just responded. It follows that almost 6 months elapsed since WERNI first sought comfort as to its professional fees, without any concluded agreement on the issue, and no concluded agreement was in place when the Cory application was made to you.

The Cory offer to cover WERNI's fees to enable compensation to be properly considered was not made until 21 November 2018, after Cory had made the application for a DCO including (we assume) for compulsory purchase powers.

A similar position applies in relation to SASDE's fees. No reasonable offer was made until 8 November 2018, albeit just before the application for a DCO was made including (we assume) for compulsory purchase powers. As a result it was not possible for SASDE to judge whether the Cory offer was reasonable or not prior to the DCO application which was made on 16 November 2018.

As a result of those omissions it was not possible for either WERNI or SASDE to judge whether the proposals made by Cory before 16 November 2018 were reasonable or not as a result of which Cory has not satisfied the requirement to seek to acquire land by agreement before seeking authority to acquire land compulsorily through the DCO application.

On 24-25 July 2018, we submitted a consultation response on behalf of our clients objecting both to the principle of the proposed DCO and the way in which Cory had approached the issue of acquisition of land by negotiation.

The Meeting Note of the 20 August 2018 meeting between the applicant and the Planning Inspectorate records the applicant as representing that it was considering the consultation

responses received from landowners and statutory consultees, and that more than 50% of these indicated support for the proposal. This was a misleading reflection of the position adopted by our clients and of Cory's failings in terms of acquiring our clients' land by negotiation and agreement.

We note from the 27 September 2018 Meeting Note that the applicant submitted a range of documents to the Planning Inspectorate including a draft DCO, Book of Reference, Statement of Reasons and Land Plans. It did not provide any of these drafts to our clients. Indeed, as recorded above, it has refused to provide our clients with the final versions of these documents or any of the other application documents. It follows that Cory has not provided our clients with any Application Statement explaining how the proposed scheme will be funded.

It was as recently as a meeting on 10 October 2018 that Cory explained the DCO process (including compulsory purchase) to WERNI.

It is plain, having regard to the applicant's failure to have regard to or to follow the statutory and other applicable guidance, that the applicant has not complied with the pre-application procedure and that the application is not of a standard that the Secretary of State should consider satisfactory. In short, the tests in section 55(3)(e)-(f) of the Planning Act 2008 are not met.

The Planning Inspectorate on behalf of the Secretary of State should in the light of all the above reach the conclusion that the purported application cannot be accepted and is not accepted.

We await the Planning Inspectorate's decision as to whether the purported application is or is not accepted.

We would add that, if it is accepted, our clients are likely to have other objections to the application if and when they have had an opportunity to consider the application documents.

We are sending a copy of this letter to the applicant's solicitors: Pinsent Masons.

Yours faithfully

[redacted]

Knights Solicitors