

Planning Inspectorate Reference: EN010107 – South Humber Bank Energy Centre (SHBEC)

North East Lincolnshire Council's (NELC) Response to the Examiners Request for Further Information - Question(s) to the Applicant and NELC 5th May 2021

Question	North East Lincolnshire Council response
Submission of an unsigned/undated copy of confirmatory Deed has been submitted.	NELC can confirm that it is content that an unsigned confirmatory deed has been submitted.
Why did the Original Deed not bind the Mortgagee?	It is accepted that Lloyds Bank were not a party to the original deed due to the use of out-of-date land registry details as such NELC can confirm that they would have been included if up to date documentation were utilised. This was not a deliberate exclusion, therefore.
It does not appear that the Mortgagee is bound by the Deed of Variation (DoV) which took effect on the 19 th April 2021.	<p>Given that Lloyds Bank plc are now known to have a charge on the land, it was anticipated to have Lloyds Bank plc joined within the DoV but the Applicant has confirmed this has not proved possible within the timeframe of the DCO examination process. As such, NELC acknowledges that the Applicant has sought therefore to provide a Confirmatory Deed which is appended to the DoV which when signed would bind Lloyds Bank plc to the DoV.</p> <p>In addition to this, NELC is content that further security is provided through the DoV preventing the implementation of the DCO or service of a Notice pursuant to article 5 until either: Lloyds has entered into the confirmatory deed (to give consent to the DoV) or it is confirmed that Lloyds Bank plc's charge has been discharged.</p> <p>NELC is of the view that it would have enforcement powers under the Town & Country Planning Act 1990 to ensure these provisions are</p>

	<p>complied with in event that Lloyds Bank plc took over the site and developed without adherence to the provisions of DoV due to the signing of the Confirmatory Deed.</p> <p>Existing provisions in the DCO</p> <p>NELC has discussed the response of the Applicant to these questions through various drafts and supports the current approach outlined - that the Secretary of State, with the Applicant's agreement, would have to consent to transfer the benefit of the DCO to the Lloyds Bank plc for it to legally develop the land under the DCO. Without such an agreement any development would be unlawful and could be enforced against.</p> <p>Potential additional provisions</p> <p>In a similar way, the applicant has shared with the NELC revised draft of Article 5, in particular, Article 5(12) where one of three actions are required to be completed and confirmed by the Local Planning Authority (NELC) before the DCO can be activated. These amendments if accepted and confirmed by the Examiner and then Secretary of State would bind Lloyds Bank PLC, were to retain it's charge, to the consent obligations before the development under the DCO can commence through the service of a notice on NELC under para 2.</p> <p>Similarly, NELC would not have an objection to the applicant's suggestion of an alternative provision to require a direct obligation to pay the Habitat contribution before starting of construction of Work No.1 starting which would be included within the DCO as follows:</p> <p><i>"[New article/paragraph] Construction of Work No. 1 must not start until the habitat contribution (as that term is defined in the section 106 agreement) has been paid to the relevant planning authority."</i></p>
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	<p>This would accord with the requirements for payment of the contribution within the current DoV of the s106.</p>
<p>Would the confirmatory deed achieve its intention as it appears to fail to contain any obligation under s.106(1) of the Town & Country Planning Act 1990 nor s106(9)(a) or (aa) of the same Act.</p>	<p>NELC is of the same opinion as the Applicant that the confirmatory deed is not a standalone document it is supplemental to the DoV which itself varies the Original Deed, and which contained the planning obligation/ development consent obligation. It therefore complies with s106(1) and s106(9)(a) and s106(9)(aa).</p> <p>Should this not, however, be accepted NELC would welcome the additional provision within the DCO as noted above.</p>
<p>Would the provisions of the s106 (as varied) be enforceable on the Mortgagee if they take possession and a) the DCO is granted and b) is refused.</p>	<p>NELC agrees that if the DCO is refused (b) then there would be no development of the proposed scheme and only works which could lawfully commence would be those of the Consented Development. NELC and the applicant have noted the issue of the Mortgagee and the original obligation and continue to negotiate separately, to bind the Mortgagee to that agreement.</p> <p>If the DCO is granted (a) then to bind the Mortgagee to the obligation, the above points remain valid whether through the use of the confirmatory deed or additional provision within the DCO.</p>
<p>A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 25 of this Order (certification of plans, etc.) may be inspected</p>	<p>NELC apologises for any confusion as to the address where the consented DCO and associated plans and documents will be held. The following is the correct address:</p> <p>North East Lincolnshire Council/ Engie, New Oxford House, George Street, Grimsby, North East Lincolnshire, DN31 1HB</p>