

Date: 15 October 2021
Your Ref: 14079
Our Ref: EN010107



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Energy Infrastructure Planning
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Dear Sir or Madam

APPLICATION BY EP WASTE MANAGEMENT LIMITED (“THE APPLICANT”) FOR AN ORDER GRANTING DEVELOPMENT CONSENT (“THE ORDER”) FOR THE PROPOSED SOUTH HUMBER BANK ENERGY CENTRE, STALLINGBOROUGH, NORTH EAST LINCOLNSHIRE (“THE PROPOSED DEVELOPMENT”)

RESPONSE TO LETTER DATED 8 OCTOBER 2021 REQUESTING FURTHER INFORMATION

We are pleased to provide this response from the Applicant set out below under the named subheadings.

Paragraphs 3(a) to (c) – Requirement 38 and related definitions

The Applicant notes that the Secretary of State is considering an alternative approach to requirement 38 and related definitions so that the requirement would be drafted as:

“Construction of Work No 1 must not start until a development consent obligation pursuant to section 106 of the 1990 Act has been secured between North East Lincolnshire Council, the undertaker, EP SHB Limited, and Lloyds Bank plc.”

The Applicant considers that the following two matters need to be taken into account if this approach is to be followed, and has provided suggest alternative drafting below:

1. The substance of the obligation – the reference to “a development consent obligation” does not identify what that obligation must secure or contain – the Habitat Contribution. Whilst the heading of the requirement refers to the “Habitat contribution”, it is considered that the requirement itself should be specific; and
2. The parties - the absolute requirement that Lloyds Bank plc must be party to the obligation doesn’t allow for the possibility of an evolution of land ownership between when the DCO is made and when the obligation is entered into. Lloyds Bank plc could transfer or release its charge, and if either of those occurred then the parties required to enter into the obligation should also evolve. The Applicant’s definition of Lloyds Bank plc (included in its final draft DCO submitted at Deadline 7, Document 2.1) provided for successors in title to the charge, or the alternative (as adopted below) is to add wording into requirement 38 itself. Separately the Applicant considers that “North East Lincolnshire Council” should be replaced with “relevant planning authority”, being the defined term used elsewhere in the Order.

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The Applicant therefore considers that the following form of Requirement 38 (and related definitions), which is relevant, precise and enforceable, should be adopted – changes shown in red text:

“Habitat contribution

38.--(1) Construction of Work No. 1 must not start until a development consent obligation pursuant to section 106 of the 1990 Act has been secured between the relevant planning authority, the undertaker, EP SHB Limited, and Lloyds Bank plc (or any successor in title to the charge).

(2) The development consent obligation required by sub-paragraph (1) must include the same obligations as are secured by the section 106 agreement.

(3) Lloyds Bank plc (or any successor in title to the charge) is not required to enter into the development consent obligation required by sub-paragraph (1) where the charge has been discharged and no longer applies to any land within the Order limits, and evidence of this has been provided to the satisfaction of the relevant planning authority.”

In terms of definitions related to this:

- As the Applicant’s suggested drafting refers to “the section 106 agreement”, this definition would be retained in Article 2;
- The Secretary of State’s definition of “Lloyds Bank plc” is still required; and
- The definition of “the charge” (as included in the Applicant’s final draft DCO submitted at Deadline 7) is also required.

The Applicant considers that if Requirement 38 is included in the Order in this form then Article 5(12) (as proposed in its final draft DCO (Deadline 7)) is not required as well, as the two provisions effectively achieve the same. The main differences of substance are the trigger by when each must be complied with and the inclusion of the undertaker in requirement 38.

The Applicant’s previous submissions are unaffected, to the extent the Secretary of State may include drafting in the Order which they addressed.

Paragraph 3(d) – Article 5(2)(b)

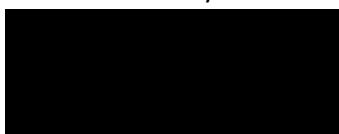
The Applicant is content that Article 5(2)(b) is not amended in the manner previously set out in the Secretary of State’s request for information dated 30 September 2021. The section 106 agreement is legally separate from the ‘SHBEC planning permission’ (as defined), and the Applicant does not consider that the section 106 agreement will be impacted by the terms of Article 5 (without the additional drafting). Should the Secretary of State be minded to include drafting, the Applicant provided its suggested wording in its response dated 7 October 2021.

Conclusions

The Applicant has provided all requested information. We have additionally sought to discuss the matters relating to requirement 38 with North East Lincolnshire Council as relevant planning authority but it has not been possible in the timescales. They are copied to this letter.

Should other information or clarification be helpful please contact DWD using the details below.

Yours faithfully



Colin Turnbull
Partner
DWD



Cc.

Jonathan Cadd, Senior Planner – North East Lincolnshire Council
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