

Application by Equinor New Energy Limited for an Order granting Development Consent for the Sheringham and Dudgeon Extension Projects

- Comments on any other information and submissions received at Deadline 5

Submitted on behalf of Mr Clive Hay-Smith, Mr Paul Middleton and Priory Holdings Limited (refs: 20033312, 20032995 and 20033311)

Planning Inspectorate Reference: EN010109

RESPONSE TO DEADLINE 5 SUBMISSION:

THE APPLICANT'S COMMENTS ON MR CLIVE-HAY SMITH, MR PAUL MIDDLETON AND PRIORY HOLDINGS LIMITED'S DEADLINE 4 SUBMISSION

1. Effects on Rivers and River Based Wildlife (Spring Beck)

- 1.1. As set out in our Client's Deadline 5 Submissions (RESPONSE TO DEADLINE 4 SUBMISSION - 18.2 THE APPLICANT'S COMMENTS ON RESPONSES TO THE EXA'S 2WQ), they remain unpersuaded that the Applicant has satisfactorily assessed or demonstrated that the risk of adverse impacts on Spring Beck will be mitigated.
- 1.2. Our Clients are concerned that the flexibility sought in the Applicant's Development Scenarios could mean **two** HDD crossings are constructed under Spring Beck (and other environmentally sensitive receptors) with associated additional risk of disturbance or harm (see paragraphs 1.5 to 1.7 of our Client's Deadline 5 Submissions). This prospect has not, to our knowledge, been considered in either the ES, or during the Examination.
- 1.3. We note that the Applicant's Deadline 5 Submission refers to "The design of the HDD crossing" (not crossings) inferring there will only be one such crossing.
- 1.4. Our Clients consider urgent clarification is required from the Applicant as to whether, and in which circumstances, two HDD crossings would be used at Spring Beck?
- 1.5. Notwithstanding the comments above our Client's welcome that the Applicant is committed to continuing to work constructively with them. In that spirit our Clients seek a commitment that the Applicant will consult with them on the design of the HDD crossing, having reasonable regard to their consultation responses.

2. Removal of Existing Trees and Hedgerows, Replanting and Management (ACC05)

- 2.1. The Applicant's response at ID18 appears to confirm they were not aware of the existence of the hedgerows located at the Main Works Access ACC05.
- 2.2. The Applicant does not challenge the conclusion in our Deadline 4 Submissions, that the width of the access (including Root Protection Zones – 'RPZ') will be limited to 3 metres. The Applicant also does not address the fundamental issue raised, which is that the limited width of the access means that the hedgerows are at a high risk of being damaged by construction of the developments, being immediately adjacent to a main construction route.
- 2.3. Undertaking an Arboricultural Method Statement and Tree Protection Plans will therefore not change the fundamental unsuitability of this route.
- 2.4. This risk of damage is avoidable by entering into an agreement for an access running parallel ACC05 as proposed by our client. This could be a stand-alone agreement or as part of a wider lands agreement.
- 2.5. This would have the further advantage of separating construction and farm traffic.
- 2.6. Our Client's therefore welcome the Applicant's assertion that it continues to work with our Client to address the working arrangements that are required and is willing

to progress discussions in response for our proposal for an alternative access route in this location.

2.7. We look forward to hearing from the Applicant to progress those discussions.

3. Blight for landowners affected by Temporary Possession

We comment as follows in relation to the Applicant's responses to the ExA's Third Written Question 3.8.2.2.

- 3.1. The Applicant acknowledges concerns about the flexibility sought in relation to the 'Development Scenarios'. While its preferred construction scenario is an integrated one where both projects are built concurrently, the Applicant nevertheless seeks flexibility for Scenarios which have the potential for materially greater adverse impacts on the environment and on landowners during construction.
- 3.2. As set out in our Deadline 5 Submission, the potential for SEP and DEP to be constructed separately also creates risk of an extended period of Temporary Possession (potentially in two phases) and significant complexities for affected parties claiming compensation for loss or damage under dDCO Article 26.
- 3.3. If the ExA concludes there is a compelling case in the public interest to recommend consent is granted for all the dDCO Development Scenarios, a minimum and proportionate mitigation would be for the Applicant to provide a comprehensive Alternative Dispute Resolution (ADR) mechanism for any compensation disputes, in accordance with Government Guidance.
- 3.4. The RICS provides ADR for compulsory purchase disputes, and a link is provided below:

[REDACTED]

a) The applicability of the Notice to Treat for up to three years for the CA and TP of land under this Order (if the Order was made);

- 3.5. We believe it likely the Applicant's response to this question is either confusing, or conflating 'Statutory Blight' with 'general blight' caused by the impact or uncertainty of compulsory purchase.
- 3.6. Statutory Blight is a mechanism under the Town and Country Planning Act 1990, where claimants (meeting specific qualifying criteria and circumstances), can serve a 'blight notice' in advance of receipt of compulsory purchase notices. A 'blight notice' is a 'deemed notice to treat', compelling the acquiring authority to purchase qualifying property in advance of their requirements.
- 3.7. The ExA's Q3.8.2.2. relates to 'Blight for landowners affected by Temporary Possession' and on our understanding of the question, 'Statutory Blight' is not relevant to this. Not least Blight Notices cannot be served to require the Applicant to take advance Temporary Possession. Rather the ExA is focusing on the impact of uncertainty on affected landowners and businesses by the potentially extended Temporary Possession period.
- 3.8. In respect of permanent acquisition powers, and as previously explained, there is no requirement for an acquiring authority to take possession of land following service of

a Notice to Treat which would expire after 3 years, so the period of associated 'general blight' is up to 10 years, which is a significant period of uncertainty.

b) How effect on business and the concern relating to blight would be considered and compensated for in the sequential construction scenario

3.9. The Applicant states:

"The maximum duration assessed for onshore construction works for the onshore cable ducting and installation in a sequential scenario is anticipated to be six years, which accounts for a gap of up to two years between the completion of the first project and the start of construction of the second project."

3.10. This contradicts previous statements made by the Applicant in its comments on Post-Hearing submissions (submitted at Deadline 4):

"In the sequential scenario, there could be a gap between the first project commencing and the second project commencing of up to four years. Each project will take approximately two years to construct."

3.11. The Applicant's apparent uncertainty on this point is concerning.

3.12. In addition to the construction period itself, the dDCO provides up to 7 years before Temporary Possession is triggered, and (in accordance with the draft dDCO) up to 1 year following completion of works. Assuming the projects do not over-run, this gives up to 16 years of uncertainty and 'general blight' for affected parties subject to Temporary Possession.

3.13. The Applicant's reference to 'Statutory Blight' is very unlikely to mitigate this impact for several reasons, but most notably that a Blight Notice cannot be served to bring forward Temporary Possession, only permanent acquisition.

3.14. The uncertainty and general blight could be mitigated by:

- i. A certain 'long stop date' for expiration of Temporary Possession powers.
- ii. Offering full access to alternative dispute resolution in accordance with government guidance. This would assist with the resolution of claims for loss associated with the threat of Temporary Possession powers being exercised (and therefore mitigate the impact of blight) as well as claims more generally.

c) Explain with reference to relevant drafting in the dDCO, particularly Article 26(3) and Article 27(4), how have you provided that TP would be temporary.

3.15. We refer to our Client's Deadline 5 Submission 'Response to Deadline 4 Submission – 18.4 The Applicant's Comments on Post-Hearing Submissions' at paragraphs 3.1 to 3.9.