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Our Ref: MW/5E/AoC
Date: 10 April 2024
Enquiries to: Mark Woodger
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By E-Mail only

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Project Reference: EN010115

Dear Five Estuaries Casework Team,

TOWN AND COUNTRY PLANNING ACT 2008 (as Amended) – Section 55
Application by Five Estuaries Offshore Wind Farm Ltd for an Order Granting
Development Consent for the Five Estuaries Offshore Wind Farm.
Adequacy of Consultation Request

Thank you for the notification in your letter as dated 27 March 2024 that Five Estuaries Offshore Wind Farm Ltd has submitted the as necessary Development Consent Order (DCO).

The Planning Inspectorate (PINS) has until 22 April 2024 to determine whether to accept the application for consideration. During this time affected Authorities along the route of the DCO are asked, by the 10 April 2023, to submit a representation regarding the pre-application consultation and say whether, in the view of the affected Authorities, pre submission consultation has been sufficient to pass the test of the Adequacy of Consultation.

For this DCO submission Essex County Council (ECC) are conjoined in the response on this request with Tendring District Council (TDC). Hence this forms the response from both Joint Councils, and meets the requested deadline for comment.

The as received letter from the Planning Inspectorate (PINS) as dated 27 March 2024 ask that local authorities should consider whether the applicant has complied with the following duties:

- Duty to Consult – Section 42 - Planning Act 2008 (as amended)
- Duty to consult the local community – Section 47 of Planning Act (as amended)
- Duty to Publicise – Section 48 of the Planning Act (as amended)

You have asked that to respond to this consultation to use the attached pro-forma. The Joint Council's wish to make their comments within this communication in this case. In doing so the Councils are minded to refer to the documentation as currently provided by PINS, which summarises the pre-application consultation and the Consultation Report, with Appendixes, which addresses the statutory requirements.

Pre-application Consultation

The as submitted "5.1 Consultation Report", with the two Appendixes, sets out that three main stages of consultation have taken place, these being:

- Stage 1 Consultation (30 June to 12 August 2022). This was non-statutory consultation on early proposals held to introduce the Project and gather initial feedback primarily from the communities potentially affected by onshore elements of the Project. This stage of consultation included two in-person events in Essex. Feedback to this consultation contributed to changes in the proposals such as reducing the size of the northern offshore array, narrowing the onshore cable corridor, and removing one of the onshore cable corridor options.
- Stage 2 Consultation (14 March to 12 May 2023). This was a statutory consultation under the Planning Act 2008, which included the Preliminary Environmental Information Report (PEIR) for the Project. This consultation was carried out to fulfil the statutory requirements for preapplication consultation and gather feedback on more detailed proposals and the preliminary environmental information. It included consultation with prescribed consultees including the Joint Councils, persons with an interest in the land, and members of the community. This consultation was conducted in line with the published Statement of Community Consultation on which the Council's commented on the 01 November 2022. This stage of consultation included ten in-person events across Essex, Suffolk and Kent, and two webinars.
- Stage 3 Consultation (5 December 2023 to 31 January 2024). This involved two focused consultations, with the purpose of these consultations was to ensure that the relevant stakeholders potentially affected by changes to the Project since Stage 2 Consultation had an opportunity to provide feedback before the application was finalised. The proposals saw no substantive change to the proposals as previously commented upon.

In addition, and throughout the pre-consultation stage, it is also correct that the applicants and their consultants carried out a series of engagement meetings with the Joint Councils, and other stakeholders, to enable discussion and progression of detailed technical matters to inform the PEIR and submission as is with PINS at this time.

Planning Act 2008 considerations

It now falls to consider whether the as mentioned pre-application consultation undertaken by the applicant has complied with the statutory requirements set out within sections 42, 47 and 48 of the Planning Act 2008. Each section of the Act will be addressed separately for clarity.

Duty to Consult – Section 42 - Planning Act 2008

The applicant must consult the following about the proposed application –

- (a) such persons as may be prescribed,
 - (aa) the Marine Management Organisation (MMO), in any case where the proposed development would affect, or would be likely to affect, any of the areas specified in subsection (2),
- (b) each local authority that is within section 43,
- (c) the Greater London Authority if the land is in Greater London (note: not relevant in this case) and
- (d) each person who is within one or more of the categories set out in section 44.

Subsection a) refers to '*such persons as may be prescribed*'. These persons are listed in Schedule 1 to the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009. A list of those consulted has been provided in the Consultation Report Appendixes 1 to 11 and appears to comply with those of relevance listed in Schedule 1.

A requirement to consult the relevant parish council is included within the submitted Appendixes 1. This appears to have been complied with.

The Applicant has provided a list of the local authorities consulted on the project. This list includes the Joint Councils, alongside a few other neighbouring local authorities such as Suffolk County Council (SCC). ECC is pleased to confirm that engagement with the applicants took place on all the consultation phases, hence it is of the view of ECC that the applicant has therefore complied with subsection b).

Subsection d) of section 42 requires the Applicant to consult each person who is within one or more categories set out in section 44. This would include owners, lessees, tenants or occupiers of land included within the boundary of the order limits or those with an interest in the land or with a power to sell or convey the land. A list of landowner and statutory undertaker consultation has been provided in the Consultation Report Appendixes. A table has been provided which details

the landowners consulted by reference to their landowner number. It is not possible from this information to see if every person set out in section 44 has been consulted, nor does the Council know that it did not, hence no comments are provided on this.

Section 45 of the Act *'timetable for consultation under Section 42'* requires that the applicant notifies the consultee of the deadline for receipt of comments in relation to the consultation which must not be earlier than 28 days after the consultation documents are received. ECC can confirm that the requirements of section 45 of the Act have been met.

Duty to consult the local community – Section 47 of Planning Act

Section 47 of the Planning Act 2008 obliges developers to prepare a Statement of Community Consultation (SoCC) in consultation with the relevant Local Authorities, publish that SoCC and then undertake statutory consultation in conformity with that statement, in the form of:

(1) The applicant must prepare a statement setting out how the applicant proposes to consult, about the proposed application, people living in the vicinity of the land.

(2) Before preparing the statement, the applicant must consult each local authority that is within section 43(1) about what is to be in the statement.

(3) The deadline for the receipt by the applicant of a local authority's response to consultation under subsection (2) is the end of the period of 28 days that begins with the day after the day on which the local authority receives the consultation documents.

(4) In subsection (3) *"the consultation documents"* means the documents supplied to the local authority by the applicant for the purpose of consulting the local authority under subsection (2).

(5) In preparing the statement, the applicant must have regard to any response to consultation under subsection (2) that is received by the applicant before the deadline imposed by subsection (3).

(6) Once the applicant has prepared the statement, the applicant must—

(za) make the statement available for inspection by the public in a way that is reasonably convenient for people living in the vicinity of the land,

(a) publish, in a newspaper circulating in the vicinity of the land, a notice stating where and when the statement can be inspected, and

(b) publish the statement in such manner as may be prescribed.

(7) The applicant must carry out consultation in accordance with the proposals set out in the statement.

In accordance with subsection (1) the Applicant prepared a Statement of Community Consultation (SoCC) which set out how they proposed to consult with

'people living in the vicinity of the land'. The SoCC has been provided in the Consultation Report.

The Applicants consulted ECC on the draft SoCC with comments being provided before the deadline. The Councils together with the other affected Authorities made several comments which were addressed prior to the publication of the SoCC.

By preparing a SoCC and consulting the relevant local authorities with the *'consultation documents'* the Applicant has complied with subsections (1), (2), (3) and (4) of section 47. The Councils are also satisfied that the Applicant generally complied with subsection (5) with comments raised regarding the SoCC being given due *'regard'* as required.

The Applicant has provided evidence in Appendix 1 – 7 to show the SoCC and revised SoCC were published in the following newspapers:

- Harwich and Manningtree Standard
- Frinton and Clacton Gazette
- Essex County Gazette
- East Anglia Daily Times
- Southwold Gazette
- Lowestoft Journal
- Aldeburgh Gazette
- Felixstowe Flyer
- Margate Mercury

The Joint Councils agree that in accordance with subsection (6)(za) that the Applicant made the SoCC available for inspection by the public in a way that is reasonably convenient for people living in the vicinity of the land,

The Joint Councils are satisfied these newspapers *'circulate in the vicinity of the land'* as required by subsection (6)(a). Subsection (6)(b) also requires the SoCC to be published *'in any other manner as may be prescribed'*. It was detailed within the SoCC that the statement would also be available to view at several other locations between specified dates.

Subsection (7) requires the Applicant to undertake the consultation in accordance with the details set out in the statement. The Joint Councils are satisfied that NGET has carried out the consultation in accordance with the SoCC.

Duty to Publicise – Section 48 of the Planning Act

For this:

(1) The applicant must publicise the proposed application in the prescribed manner.

(2) Regulations made for the purposes of subsection (1) must, in particular, make provision for publicity under subsection (1) to include a deadline for receipt by the applicant of responses to the publicity.

Part 4 of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 sets out how to '*publicise the proposed application in the prescribed manner*' in order to comply with subsection (1). The Consultation Report provides copies of the section 48 notices in Appendix 1 that were published in the sources as set out in the press as mentioned previously. H4 that were published within the following sources:

The Joint Councils are of the view that the publication of the proposed application as set out in the Consultation Report complies with subsection (1). The other phases of the consultation were also published in local newspapers.

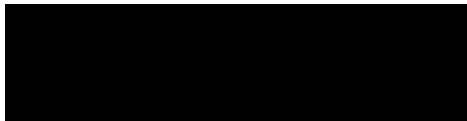
The press notice published provided a deadline for the receipt of responses to the consultation and therefore complied with subsection (2) of section 48. This timeframe exceeded the requirement set out in the 2009 Regulations of '*not less than 28 days*'. However, it is considered that the local communities and stakeholders did find digesting the significant volumes of information provided during the consultation what is a detailed and complex DCO project, and drafting a detailed response within the timeframe was challenging.

This was further compromised by two proposals being consulted upon locally, both this proposal by Five Estuaries and another by North Falls Offshore Wind Farm, which propose similar developments on similar timelines. It is considered that this could have caused some local confusion as to which project was being consulted on and resulted in some consultation fatigue.

Conclusion

It falls to the Planning Inspectorate to determine whether the applicant has complied with the requirements of the Planning Act 2008 for it to accept the application, and in doing so take into account the views of the affected Authorities along the route of the DCO proposal. It is the Joint Councils view that the Applicant has complied with the statutory requirements set out in sections 42, 27 and 48 of the Planning Act 2008 for the reasons set out within this letter.

Yours sincerely,



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