

RAMPION 2 OFFSHORE WINDFARM DEVELOPMENT CONSENT ORDER
DEADLINE 3

Response to Applicant's Submissions at Deadline 2, submitted on behalf of Susie Fischel of
Sweethill Farm (School Lane, Ashurst, Steyning, BN44 3AY)

PINS Reference Number	EN010117
Interested Party Reference Number	RAM2 – AFP698
Document Ref.	SHF 3
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Date	25 April 2024

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1. Introduction

1.1. This is a written submission made on behalf of Susie and David Fischel (**Fischels**) in respect of submissions made by the Applicant at Deadline 2.

1.2. This submission refers to the following documents:

1.2.1. Applicant's first update to the Land Rights Tracker [REP2-008];

1.2.2. Applicant's draft itinerary for the ASI [REP2-016];

1.2.3. Applicant's Responses to Affected Parties' Written Representations [REP2-028]; and

1.2.4. Applicant's Response to Members of the Public and Businesses' Written Representations [REP2-029]

2. Applicant's first update to the Land Rights Tracker – REP2-008

2.1. The updated Land Rights Tracker includes the engagement that the Applicant has had with the Fischels - reference 039 (page 6 and page 18) [REP2-008]. While the Fischels do not dispute the record of when various exchanges occurred, they do question the Applicant's statement that "*The Applicant has been in regular correspondence with the Land Interest and their agent since February 2021*". It is worth being clear what is meant by "regular".

2.2. As set out in their Written Representation [REP1-163] (see section 6), in 2020 the Fischels were actively engaged in discussions with the Applicant, and at that time the Applicant worked constructively with the Fischels to adjust the proposed cable route to follow an overall alignment that reflected some of the Fischels' concerns, and the Fischels welcomed this initial cooperation. However, despite that positive start, the Applicant effectively discontinued engagement once matters were essentially handed over to its advisors in 2022.

2.3. As recorded in the Land Rights Tracker, the Fischels made formal representations during the second round of consultation (on 28 November 2022) – however, despite repeated assurances to the Fischels during this period that a response would be forthcoming shortly, the Applicant did not respond to those representations until 17 October 2023 – notably, after the draft Development Consent Order (**dDCO**) application was submitted.

2.4. Therefore while the Land Rights Tracker accurately records these dates of correspondence, the Applicants suggestion that it has been in "*regular correspondence*" is misleading; an 11 month

delay in response might be considered “regular” in the sense that engagement happens once a year or so, but such infrequent engagement would suggest that it has not been a priority for the Applicant to resolve points of difference between itself and the Fischels.

- 2.5.** This is an important point to note because the Fischels consider that if the Applicant had continued with its positive engagement from 2022 onwards, then their concerns might have been able to have been addressed before the dDCO was submitted; unfortunately, now that the dDCO has been submitted, the available options to address the Fischels’ concerns are significantly limited now that the red line boundary of the proposed cable route has been submitted as part of the dDCO application (discussed in more detail below).
- 2.6.** This is particularly relevant as the approach the Applicant has adopted is not consistent with the Guidance on Compulsory Acquisition for DCO projects (**Compulsory Acquisition Guidance**)¹ and the Guidance on the pre-application process (**Pre-application Guidance**).² Paragraph 24 of the Compulsory Acquisition Guidance states (emphasis added):

Applicants are required under section 37 of the Planning Act to produce a consultation report alongside their application, which sets out how they have complied with the consultation requirements set out in the Act. **Early consultation with people who could be affected by the compulsory acquisition can help build up a good working relationship** with those whose interests are affected, by showing that the applicant is **willing to be open and to treat their concerns with respect**. It may also help to **save time during the examination process by addressing and resolving issues before an application is submitted**, and reducing any potential mistrust or fear that can arise in these circumstances.

And paragraph 4.1.19 of the Pre-application Guidance states:

Early engagement both before and at the formal pre-application stage between the applicant and key stakeholders [...] and those likely to have an interest in a proposed energy infrastructure application, is strongly encouraged in line with the Government’s pre-application guidance

- 2.7.** Unfortunately, the consultation the Applicant undertook with the Fischels failed to achieve this, (particularly the matters bolded above); the change in approach that the Fischels experienced

¹ Planning Act 2008: guidance related to procedures for the compulsory acquisition of land (Department for Communities and Local Government, September 2013).

² Planning Act 2008: Guidance on the pre-application process (Department for Communities and Local Government, March 2015).

from 2022 onwards gave the appearance that the Applicant was no longer meaningfully listening to their concerns, and the fact that it took the Applicant 11 months to respond to the Fischels November 2022 representations meant that the opportunity to resolve them before the application was submitted was lost. The Fischels therefore consider that the Applicant's approach to consultation falls short of the standard expected of Applicants in DCO application processes, as set out in the Compulsory Acquisition Guidance. While there was some engagement at an early stage, this did not continue, and the Fischels are finding themselves having to take up time during the examination process to resolve issues – such as inconsistencies between Application documents as to the cable corridor width – that could have been dealt with during the pre-application process.

- 2.8.** The Fischels also note that the Applicant's updates to the Land Rights Tracker indicates that they are not alone in struggling to receive meaningful engagement from the Applicant, as the document suggests that the Applicant has not made much progress with other Affected Parties either. There are several references throughout the document to the Applicant attempting to follow up with landowners in February and March of this year. Very few of these attempts appear to have generated a landowner response, and even less appear to have resulted in signed Heads of Terms.
- 2.9.** This is surprising, given that the Examining Authority noted its concern at Issue Specific Hearing 1 as to the Applicant's approach to consultation, after, at the Open Floor Hearing, the Examining Authority heard "*multiple times from various parties on the absence of adequate consultation being undertaken, specifically post submission*".³ The Examining Authority stated that it expected the Applicant to make "significant progress" with its negotiations in the coming deadlines. The Examining Authority reminded the Applicant that the Secretary of State will only exercise the [compulsory acquisition] powers as a matter of last resort, and "*will expect agreement on the vast majority of plots that are needed for compulsory acquisition, or at least a demonstration of considerable discussion taking place*".⁴
- 2.10.** The Applicant, together with agent did carry out a site visit at Sweethill Farm on 3 April 2024, and the Fischels welcomed the opportunity to explain again their concerns to the Applicant. However, the follow-up to that meeting has not amounted to anything of substance or progress:

³ See page 4 of published transcript from Issue Specific Hearing 1 (ISH1) – Transcript - Session 1 – 07 February 2024 [EV3-003].

⁴ See page 4 of published transcript from Issue Specific Hearing 1 (ISH1) – Transcript - Session 1 – 07 February 2024 [EV3-003].

- 2.10.1.** The Fischels received the agents draft meeting summary, to which the Fischels have responded with comments in respect of significant omissions, but although the meeting illustrates a willingness to engage, the Applicant does not offer any firm commitments.
- 2.10.2.** At the site visit, the agent showed the Fischels a revised “work in progress” indicative route of where the cable route could be moved to. This was presented to the Fischels as an “indicative work in progress”, and the Fischels indicated that such a map would need to be legally binding for it to go any way towards resolving their concerns. On Monday 22 April, in relation to this revised plan, the Fischels received an email from the Applicant stating:

*...this plan will only show the DCO red line and not a revised 40m working corridor as we cannot carry out an engineering design for refinement over a few weeks. The refined 40m working corridor will be shared further to detailed engineering design and site investigations and can take account of the above commitment. **Whilst a plan with a cable alignment has previously been forwarded with the key terms – this cable routeing was indicative only. The main purposes of sharing the plan was for calculating likely cable easement payment and as discussed at our meeting the corridor is highly likely to change position. In summary the blue line does not represent Rampion 2's current preferred route. I hope the commitment to locate as far south as possible on the plan and in the key terms will give you some comfort on this matter at this stage.***

This point bolded above is particularly disappointing, because it appears to revoke any progress towards agreement in principle that was made during the site visit. Throughout the discussions with the Applicant (and its agents), the Fischels have made abundantly clear that their key concern is with the location and width of the proposed cable route, and the responses that the Applicant has provided fall well short of addressing that concern. This lack of willingness to address the Fischels concerns is addressed in more detail in section 4 below.

- 2.10.3.** There has still been no useful engagement from their legal advisors with regards to terms; in the email to the Fischels on 22 April, the Applicant repeated that the Applicant would be “*looking for confirmation of key commercial and in principle terms such as the headline cable easement payment figure*” before the voluntary agreement would be progressed – despite the Fischels making it clear that they require an undertaking regarding their professional fees. It is disappointing that despite the Examining

Authority clearly stating that the Applicant needs to improve its approach to consultation with affected parties, no significant progress appears to have been made since the first set of hearings.

- 2.11.** The Fischels' experience with the Applicant's consultation leaves them with the impression that the Applicant is simply doing the bare minimum in terms of its engagement with them, to give the appearance of engagement rather than providing any genuine, meaningful attempt to resolve their concerns.

3. Applicant's Draft Accompanied Site Visit Itinerary [REP2-016]

- 3.1.** The inclusion of Sweethill Farm as reference 3 on the Draft Site Visit Itinerary [REP2-016] is welcomed, and the Fischels look forward to welcoming the Panel members to the site so that they can see the areas of concern.

- 3.2.** The draft itinerary notes the location to visit will be "[a] walk to fields at corner of B2135 and Spithandle Lane". The Fischels are content with this proposed location, as it will allow them to show the Examining Authority:

3.2.1 The area where the cable route is proposed, to demonstrate how complex the proposed exit would be, given its sloping and flood prone location.

3.2.2 The area further south of the proposed cable route, where the Fischels consider it would be preferable for the project to exit from Sweethill Farm and cross the B2135, namely between the two houses fronting Sweethill Farm on the opposite side of the B2135.

- 3.3.** In addition, the walk across the fields will assist the Examining Authority in understanding why the Fischels consider the dDCO red line boundary to be more than is reasonably required (see 4.5 below), unnecessarily close to the ASNW Lower Barn Wood (see 4.12 below) and with an unjustified sweep to the North West before exiting the farm.

- 3.4.** The Fischels hope that this site visit will assist the Examining Authority to understand their concerns about both the feasibility and effect of the proposed route for the cable corridor.

4. Applicant's Responses to Affected Parties Written Representations [REP2-028]

- 4.1. The Applicant has responded to the Fischels' Written Representation at Table 2-26 (page 149) of REP2-028.

The width and flexibility that the Applicant is seeking over Sweethill Farm in relation to the proposed cable route

- 4.2. Firstly, it is noted that, in its response, the Applicant has referred to the Applicant's Statement of Reasons (Para 9.11.7-9.11.9) [PEPD-012]; in the Examination Library [PEPD-012] is labelled "*Category 4: Compulsory Acquisition Statement of Reasons Appendix 1: List of Land Parcels, Proposed Acquisitions and Works for which the land is required (clean)*" [dated January 2024]. This document does not include any reasons itself, but is instead a list of the land parcels, proposed acquisition and works for which the land is required – as the title suggests, it is an Appendix to the Statement of Reasons, rather than the Statement of Reasons itself. We have been unable to locate an updated Statement of Reasons from the Applicant since document titled "4.1 Statement of Reasons" [APP-021] was submitted as part of the Application documents in August 2023.
- 4.3. The Fischels have therefore considered the [APP-021] Statement of Reasons to try to understand the Applicant's reasoning for taking the proposed cable route over their land. It appears that the Applicant's reference to paragraphs 9.11.7-9.11.9 in [PEPD-012] also apply to the first Statement of Reasons it submitted in August 2023, being [APP-021]. The explanation that the Applicant has provided there is as follows (emphasis added):

9.11.7 Where the Applicant is seeking to acquire land, new rights or restrictions over land, the power for temporary use of such land is also sought (this is provided for in Article 32 of the Order). These parcels are shown shaded pink or blue on the Land Plans (Document Reference: 2.1.2). These powers enable the Applicant to enter on to land for construction purposes in advance of the acquisition of the relevant permanent land or land rights. This enables the Applicant to take a proportionate approach to permanent acquisition **so as to only compulsorily acquire the minimum amount of permanent land and rights/restrictions over land required to construct, operate and maintain the Proposed Development.**

9.11.8 As explained in section 6 above, it is currently envisaged that construction works **(which will generally require a working corridor of 40m but may require a wider working corridor at crossing points, where trenchless installation**

techniques will be used), will take place in reliance on the powers in Article 32 and that rights to retain, operate, maintain and decommission, and a restrictive covenant to protect the infrastructure from interference, will be obtained subsequently over a narrower corridor (see below). However, to ensure that construction can continue, if necessary, once the temporary possession powers expire, the Cable Rights package includes rights to construct/install the cables and associated infrastructure.

9.11.9 **The typical corridor over which the permanent rights and the restrictive covenant will be sought is likely to be 20m, but this may vary according to local conditions. A maximum value of 25m (excluding HDD crossing locations) has been assessed as a reasonable worst case scenario.** Where trenchless installation is used, the depth at which the cable ducts need to be installed under the obstruction to be 'crossed' will define the spacing needed between the ducts (within which the cables will be installed) and also the distance between the drill entry and exit pits. The depth will be guided by the nature of the obstacle to be 'crossed' beneath and the requirements of the organisation responsible for the obstacle, whilst spacing will depend on the nature/condition of the ground at that depth and its ability to absorb and transfer heat away from the cables.

- 4.4. Further, the Applicant has pointed to Sheet 19 of the Crossing Schedule in Appendix A of the Outline of Code of Construction Practice [PEPD-033] which indicates that a segment of the cable route between two HDD sections will be on Sweethill Farm. In its responses to the Fischels' Written Representation, the Applicant states "*Final siting and extent of each of the trenchless crossings will influence the cable routing of the open cut trench section between*" at 2.1 of [REP2-028].
- 4.5. The Fischels understand that the Applicant requires some flexibility at this stage, however, they do not consider that the response that the Applicant has provided explains or justifies why a wide corridor has been proposed on Sweethill Farm, i.e. wider than the 40m referred to in the Applicant's documents, and stand by submissions made in their Written Representation in this respect. The red line boundary on sheet 19 (referenced above), and the Onshore Land Plans [APP-007] – in particular sheets 25, 26, and 27 – indicate that a particularly wide section of land is proposed to be used for the cable route across Sweethill Farm, and the Applicant's response has not explained this in sufficient detail. The Secretary of State can therefore not be satisfied that the Applicant is seeking no more than is reasonably required for the purposes of development, in accordance with section 122(2) of the Planning Act 2008.

- 4.6.** As set out above, the Fischels met with a representative of the Applicant and an agent for the Applicant on 3 April 2024 on Sweethill Farm, where they had the opportunity to show the Applicant and the agent the areas of concern. At the site visit, the agent showed the Fischels a revised “work in progress” indicative route of where the cable route could be moved to. This was presented to the Fischels as an “indicative work in progress” map; the Fischels made clear that they would require the map to be legally binding before it could go any way towards addressing their concerns – and they thought the agent for the Applicant understood that position.
- 4.7.** Despite this, and as set out above, in its most recent correspondence the Applicant stated (by email to the Fischels on 22 April 2024) that the map that was presented was indicative only, and the corridor [on the map the Fischels were shown at the site visit] “is highly likely to change” and does not represent the Applicant’s preferred route.
- 4.8.** This statement from the Applicant is particularly frustrating for the Fischels, because not only does it appear to seek to rescind what was discussed at the site visit, it takes the parties back to square one; the Fischels have been explicitly clear throughout all their discussions with the Applicant that what they are seeking is an updated map that limits the cable corridor. Therefore despite all the discussions that have occurred between the parties, and the recent site visit, no progress has been made on addressing that concern.
- 4.9.** The Fischels note the Examining Authority’s First Written Questions [PD-009] include question LR1.9, which asks the Applicant to, in essence, justify every location where the 40m cable corridor is exceeded. The Fischels look forward to receiving the Applicant’s response on this point.

Severance and construction access

- 4.10.** The Fischels note the Applicant’s indication that it is keen to have ongoing discussions to understand how best to mitigate any temporary severance.
- 4.11.** However, the Fischels stand by their request for the dDCO route to follow the existing field boundaries more closely, and look forward to the Examining Authority having the opportunity to see for themselves why this is sought when they visit the site shortly. The Applicant states that the trenchless entry and exit pits require a stand-off distance from the crossing obstacle (in this case, the B2135 and Spithandle Lane), which will be finally confirmed following site investigation and detailed design.

- 4.12. The Fischels anticipate that when that site investigation and detailed design is carried out, the Applicant will realise that the exit point it has proposed is unnecessarily complex and challenging, given its particular characteristics – namely its sloping and flood prone location.

Inconsistencies between the Environmental Statement and Commitments Register, and the dDCO

- 4.13. In response to the Fischels' Written Representation on this inconsistency, the Applicant states:

In relation to concerns raised regarding the proximity of the red line boundary to Ancient Semi Natural Woodland - It is noted that commitment C-216 ensures that a 25m stand-off between ancient woodland and any ground works would be implemented.

Commitment C-216 is applied in this location. There is no intention for any ground works to take place within the 25 m buffer adjacent to Lowerbarn Wood – a block of Ancient Woodland. **However, the full extent of the red line boundary is available for activities that do not break the ground that are needed to accommodate works in a constrained area.**

- 4.14. The Applicant confirms that Commitment C-216 applies in this location to protect the Ancient Semi Natural Woodland (Lowerbarn Wood). However, the statement that works that do not break the ground may still occur in the red line boundary and therefore right up to the edge of Lowerbarn Wood is of concern, as it is not clear how the Ancient Semi Woodland would be protected in such situations. The dDCO allows for works to be carried right up to the boundary of Lowerbarn Wood, and there is no gap between the red line boundary and the edge of Lowerbarn Wood (see Sheet 26 of the Land Plans [APP-007]).
- 4.15. The Fischels consider that there should be other protections in place to protect the Ancient Semi Natural Woodland, because it is foreseeable that other works (and not only groundworks) could cause damage and disturbance to the delicate habitat and wildlife. The Fischels stand by the request in their Written Representation for a commitment from the Applicant that works are carried out as far away from Lowerbarn Wood as practicable.

Environmental Assessment

- 4.16. The Fischels note the request from the Examining Authority in its Written Questions [PD-009] for an update to a number of the environmental assessments carried out by the Applicant, namely TE1.11 in relation to the Bat Surveys.

4.17. As noted in their Written Representation, the Fischels intend to retest Ponds 78-80 on Sweethill Farm (as identified in Applicant's Great Crested Newt report [APP-185]), as they do not consider that the results from the Applicant's assessment reflect their own observations.

Engagement

4.18. The Fischels response to the approach that the Applicant has taken to engagement is also set out above in relation to comments on the Applicant's Land Rights Tracker.

4.19. The Applicant states that three alternative route proposals have been investigated in respect of Sweethill Farm. The Fischels stand by the position set out in their Written Representation, that the Applicant's response to the alternative proposed by the Fischels in November 2022 was only provided in October 2023 – after the dDCO had been applied for. This meant that it was too late for the Fischels to consider the Applicant's revised route and provide further input to amend the proposed cable route.

4.20. As set out at paragraph [2.7] above, this approach is not consistent with the Compulsory Acquisition Guidance that the Applicant should be following in terms of engagement with parties whose land may be subject to compulsory acquisition, in particular paragraphs 24 and 25. Paragraph 24 is set out above, and paragraph 25 of the Compulsory Acquisition Guidance states:

25. Applicants should seek to acquire land by negotiation wherever practicable. As a general rule, authority to acquire land compulsorily should only be sought as part of an order granting development consent if attempts to acquire by agreement fail. Where proposals would entail the compulsory acquisition of many separate plots of land (such as for long, linear schemes) it may not always be practicable to acquire by agreement each plot of land. Where this is the case it is reasonable to include provision authorising compulsory acquisition covering all the land required at the outset³

[Footnote 3: *It should be noted that in some cases it may be preferable, or necessary, to acquire compulsorily rather than by agreement....*]

4.21. The approach that the Applicant has taken to date does not demonstrate a genuine attempt to negotiate for the acquisition of the relevant land on Sweethill Farm, as the responses they have received from the Applicant have continued to reiterate the same, general and high level points, rather than respond specifically to the concerns that the Fischels have raised. As the Compulsory Acquisition Guidance makes clear, while an Applicant can seek powers to

compulsorily purchase land through a development consent order, it is still required to attempt to reach an agreement with affected parties. Compulsory purchase powers therefore do not absolve an applicant of continued engagement.

- 4.22.** In relation to the Heads of Terms, the Applicant has clearly informed the Fischels that lawyers will only be engaged once the Heads of Terms had been signed in the form sent by the Applicant (and which were in terms highly favourable to the Applicant), or largely agreed.
- 4.23.** The Fischels have sought an undertaking on numerous occasions that the professional fees they would incur in negotiating with the Applicant would be covered by the Applicant, however the Applicant has so far declined to make this commitment. The Fischels note this is not consistent with the standard approach taken by Applicants in the DCO process, and they have incurred professional fees by having to engage in the DCO process, because of the approach that the Applicant has taken to consultation.
- 4.24.** It is noted that the Examining Authority in its Written Questions has asked the Applicant to outline its approach to the reimbursement of Affected Parties' professional fees (LR1.12), and the Fischels look forward to receiving the Applicant's response on this.
- 4.25.** As outlined above, in the most recent email the Fischels have received from the Applicant (22 April 2024), the Applicant continues to assert that it will not provide an undertaking for legal fees until the "key commercial and in principle terms such as the headline cable easement payment figure" have been confirmed. This approach is preventing the parties from making any progress; the Fischels have been clear that their concern and focus is on the details of the proposed cable route corridor, and without this it does not make sense to be negotiating other terms. Put another way, there is no reason to enter a Heads of Terms with the Applicant until the Fischels' have some certainty that any subsequent agreement would actually address their concerns.
- 4.26.** At the 3 April site visit, the parties discussed (and it was thought, agreed to) next steps being the Applicant providing the Fischels with a revised map, at which point the Fischels land agent and lawyers could review that map and provide detailed comments. However, if the Applicant continues to assert that it will not provide an undertaking for the professional fees incurred in that review, then the Fischels do not understand how it can consider that it is genuinely attempting to address their concerns. In the Fischels' view, rather than assisting resolution of their concerns, the Applicant's approach is in fact preventing any progress being made.

5. Applicant's Response to Members of the Public and Businesses' Written Representations [REP2-029]

5.1. For completeness, the Fischels note that they have reviewed the Applicant's response to [REDACTED] [REDACTED] Written Representation, in so far as it relates to matters that they are also concerned with (set out at Table 2-15 on page 57 of REP2-029).

5.2. The Fischels agree with the comments made by [REDACTED] in relation to flood patterns that drive biodiversity, grassland habitat of unimproved lowland meadow, the Green Lane wildlife corridor and tree boundary, and tree and scrub loss.

6. Conclusion

6.1. The Fischels look forward to receiving the Applicant's response to the Examining Authority's First Written Questions, in particular in terms of its justification as to why the 40m cable corridor is exceeded on Sweethill Farm and its approach to reimbursement of professional fees of Affected Parties', and are hopeful that the responses the Applicant provides to those questions are more substantive than the responses the Fischels have received so far when they have asked the same question. .

6.2. In terms of next steps, and as the Fischels have made abundantly clear throughout all engagement with the Applicant, to address their concerns the Fischels hope to receive a revised map from the Applicant that amends the location and narrows the width of the cable corridor that passes through Sweethill Farm – with an indication from the Applicant that the intention is that this map will be legally binding. The Fischels advisors could then review that map and provide detailed comments, with the aim of reaching agreement with the Applicant as to the revised route. Going back and forth with the Applicant seeking to agree compensation for the cable easement and Heads of Terms will not assist with resolving these concerns or progressing matters.

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