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Our ref RE.TET.DIC03803.000002

Your ref EN010117

03 June 2024

Dear Sirs / Madams of Examining Authority,

RAMPION 2 OFFSHORE WINDFARM DEVELOPMENT CONSENT ORDER

RAM2-AFP1710 - COLLEGE WOOD FARM – MR T DICKSON DEADLINE 4 SUBMISSION

Introduction

1. This is a written submission on behalf of Mr Dickson in respect of Deadline 4 as detailed in the Rule 8 letter. This submission references the statutory requirements under the Planning Act 2008 (the "Planning Act"), specifically Section 122, and the guidance provided within the Compulsory Purchase Order (CPO) Guidance (the "Guidance") as well as the following documents:

    i. **Ref**. **[AOC-020]**: Comments on the Applicant's Pre-Application Consultation
    ii. **Ref**. **[REP1-168]**: Deadline 1 Submission – Written Representations (WRs)
    iii. **Ref. [REP3-137]**: Deadline 3 Submission – Comments on any further information/submissions received by Deadline 3
    iv. **Ref. [REP3-1338]**: Submission – Responses to Written Questions (ExQ1)

Legal Framework for Compulsory Acquisition

2. Pursuant to the Planning Act, sections 122 to 134 outline the conditions under which a DCO may include powers for compulsory acquisition. Section 122 states that such powers can be authorised only if the land is:

i. Required for the development,
ii. Required to facilitate or is incidental to the development, or
iii. Replacement land to be given in exchange for the order land under Sections 131 or 132.

3. The effect of section 122 is to set two main pre-conditions to the inclusion of compulsory purchase powers in a DCO.

4. First the decision-maker must be satisfied that the land is "required" for the stated purpose. The word "required" was included in section 226(1)(a) of the Town and Country Planning Act 1990 ("TCPA 1990") prior to its amendment by the Planning and Compulsory Purchase Act 2004. The meaning of the word "required" in that statute was considered by the Court of Appeal in *Sharkey and Another v Secretary of State for the Environment and South Buckinghamshire District Council* (1992) 63 P. & C.R. 332. McGowan LJ giving the leading judgment endorsed the approach taken by Roch J and stated:

> *I agree with Roch J. that the local authority do not have to go so far as to show that the compulsory purchase is indispensable to the carrying out of the activity or the achieving of the purpose; or, to use another similar expression, that it is essential. On the other hand, I do not find the word "desirable" satisfactory, because it could be mistaken for "convenient," which clearly, in my judgment, is not sufficient. I believe the word "required" here means "necessary in the circumstances of the case.*

5. As referred to in the Deadline 3 Submission **[REP3-137]**, in *Brown v Secretary of State for the Environment* (1980) 40 P. & C.R. 285 there is a very long and respectable tradition for the view that an authority that seeks to dispossess a citizen of his land must do so by showing that it is necessary.

6. It follows that the second condition which has to be satisfied is that there is a compelling case in the public interest pursuant to Section 122 (3) of the Planning Act 2008. When considering a compelling case in the public interest, the Planning Act requires compliance with the Human Rights Act 1998. This especially refers to Articles 1 and 8 of the European Convention on Human Rights, which safeguard the peaceful enjoyment of possessions and respect for private and family life. We have previously submitted information regarding this and do not seek to make a repeat submission **[REP3-137]**.

As the Examining Authority is aware, this consideration becomes even more significant in light of Mr. Dickson's protected characteristics under the Equality Act 2010, as submitted **[REP3-1338]**.

7. The Guidance provides further clarification on these statutory requirements, emphasising the need for detailed justification for each parcel of land and the importance of negotiating with landowners to avoid compulsory acquisition where possible.

8. The Examining Authority will be conversant with R. (FCC Environment) v SSECC [2015] Env L.R. 22, in which the Court of Appeal considered the effect of the compulsory acquisition provisions.

9. Examples of where compulsory acquisition may not be justified despite the project being supported by a national policy statement include (see FCC at [11]):

    i. *Where the land sought to be acquired exceeds what is necessary to construct the proposal;*
    ii. *The acquisition of a more limited right, rather than the entire land, would suffice;*
    iii. *The owner is willing to agree to a sale and accordingly it is unnecessary to compel him to do so;*
    iv. *Where, despite the relevant NPS not requiring the consideration of alternative sites for the purposes of deciding whether to grant development consent, the existence of an alternative would be relevant for the purpose of deciding whether there was a compelling case in the public interest for compulsory acquisition.*

10. In respect of points 1-4 above, the Applicant has failed to consider any of these points prior to submitting their DCO application.

11. Mr Dickson’s individual circumstances mean the use of powers are further unjustified because:

    i. The detrimental consequences on the functionality of his farming business and his farming practices designed to minimise the impact to the land.
    ii. The adverse effect on his ability to enjoy and plan his later years and retirement.

iii. The negative influence on his role within the farming community due to the adverse severance of his land.

iv. The serious potential threat to his personal health, due to alterations in working practices that could greatly amplify the risk of injury as a result of the Applicant's proposed route and unsuitable proposed mitigation measurements to his personal circumstances.

12. The precise details of Mr Dickson's circumstances have been addressed in prior submissions **[REP1-168] [REP3-1338]**.

13. All reasonable alternatives to compulsory acquisition must be explored and exhausted. The burden rests firmly on the Applicant. This includes modifying the scheme to minimise land acquisition and making genuine attempts to acquire land by agreement. Compulsory acquisition powers cannot be granted unless the Secretary of State is convinced that it is strictly necessary to compulsorily acquire Mr. Dickson's land and that there is a clear compelling public interest in doing so. The Guidance sets out the crux of the legal test: "Compulsory purchase is intended as a last resort".

14. *Prest v Secretary of State for Wales* [1983] 1 WLUK 416 is firm authority for the following propositions:

- where the scales are evenly balanced — for or against compulsory acquisition — then the decision should come down against compulsory acquisition.

- the deprivation of an interest in land against the citizens will is only lawful if the public interest decisively so demands.

- if there is any reasonable doubt on the matter, the balance must be resolved in favour of the citizen.

15. The judgment in *R. v Secretary of State for the Environment (1986)* 52 P. & C.R. 318 is authority for the following propositions:

- the decision maker may refuse to confirm an order or confirm associated powers if unsatisfied the applicant for powers has discharged its duty to demonstrate an alternative route is not a viable one.

- the onus of establishing that a compulsory purchase order can be properly made must be on the acquiring authority.

- it is its duty to lay before the decision maker the information necessary to convince it of necessity. If the promotor fails to do so the decision maker is fully entitled to say: "I refuse to confirm this order."

Outstanding Objections and Approach to Negotiations

16. The Guidance requires that acquiring authorities must provide substantial evidence of meaningful negotiation attempts. As detailed in Paragraph 19 of the Guidance, the Applicant is compelled to demonstrate that they have exerted reasonable efforts to secure all the land and rights in the Order through mutual agreement. Resorting to compulsory purchase should only be contemplated as an absolute last resort.

17. The Guidance further states at paragraph 25:

> *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 outset.*

18. The Examining Authority has substantially heard submissions on the outstanding objections to the Order at the Compulsory Acquisition Hearing of Tuesday 21 May 2024. The purpose of this submission is not to repeat those. However, it is critical to highlight that, as far as we understand, the Applicant has only reached agreement 3 of the 156 affected parties as at the Deadline 3 submissions on 30th April 2024. It is self-evident there is an unusually high volume of both lack of progress with voluntary arrangements and remaining objections at this stage of the examination.

19. Mr Dickson has substantially addressed his experience with the Applicant's approach to negotiations in submissions. See **[AoC-020] [REP1-168], [REP3-137], [REP3-1338]**. However, the Examining Authority must place material weight to this factor as the Inspector did the London Borough of Barking and Dagenham Council (Vicarage Field and surrounding land) Compulsory Purchase Order 2021. We will not extensively set

out the decision but there are stark similarities between *Vicarage* and the current DCO before the Examining Authority which must be considered.

20. Broadly, the Inspector in Vicarage criticised the Applicant's approach as "ineffective" attempts to acquire the CPO land by agreement and for not keeping delays to a minimum. Therefore, the Inspector determined the compulsory acquisition of land as neither proportionate nor justified in the public interest.

21. The Applicant began engaging with landowners in 2020 but has secured, as far as we are aware, less than 2% of voluntary agreements. In Mr Dickson's case, he actively considered alternatives and submitted three viable options for the applicant to consider **[REP1-168]**. Moreover, Mr Dickson proactively engaged with the Applicant, suggesting alternatives and proposals during the consultation period **[AoC-020]** and long before the examination commenced.

22. The Applicant dismissed all opportunities to consider and engage in meaningful negotiations with Mr Dickson and instead gave arbitrary reasons as they alternatives could not be delivered before reverting to their standard terms. As the Examining Authority has heard, this issue is not limited to Mr Dickson alone; there is a clear failure across the scheme by the Applicant to reach voluntary agreements, reflecting ineffective and woeful negotiations over the past four years. Even following the compulsory acquisition hearing of Tuesday 21st May no substantive progress has been made, including the Applicant neither accepting nor conducting a further site meeting.

23. The Examining Authority must reflect and place material weight on the reason why so few agreements have been reached.

Pattern of behaviour

24. In *R v Brent London Borough Council, Ex p Gunning (1985) 84 LGR 168*, Hodgson J. discussed the so called *Sedley* requirements which are:

> *First … consultation must be at a time when proposals are still at a formative stage. Secondly the proposer must give sufficient reasons for any proposal to permit of intelligent consideration and response. Thirdly … adequate time must be given for consideration and response and, finally, fourthly … the product of consultation must be conscientiously taken into account in finalising any … proposals.*

25. The project before the Examining Authority remains in that process of finalisation.

26. Of all of the legal burdens of the Sedley requirements, the most relevant to this stage of the examination is meeting the threshold of discharging or demonstrating the taking into account of the representations of Mr Dickson "*conscientiously*" in respect of an alternative route across land in order to minimise the serious disruption to their lives and livelihoods.

27. A fair definition of conscientiously is conduct undertaken "*in a thorough and responsible way*". The Examining Authority is invited to conclude there has been no conscientious consultation whatsoever throughout the promotion of this project in respect of Mr Dickson's interest in land. See **[AOC-020]**.

28. Apposite descriptors for the Applicant's approach to the paramount legal considerations described in this submission are: dispassionate; dilatory; indifferent; insensible; unresponsive; heedless and careless.

29. By the evidence of Mr Dickson (and many others) the Applicant has demonstrated that powers of compulsion would be exercised in a manner that is disorganised, blated, and unjust. This conduct reflects a lamentable disregard for those persons most acutely affected, not simply in terms of their proprietary interests but in any care or consideration for how the exercise of compulsory acquisition powers will have over the course of their lives over the next decade. There is no sensible basis upon which a decision maker considering the public interest can do other than reject the proposition that such coercive powers may be conferred upon such an irresponsible organisation.

Request for modification of the order

30. On consideration of Mr Dickson's evidence and position the Secretary of State cannot allow the development consent order to be granted without amendment. We therefore request Article 23 (3) of Part 5 Powers of Acquisition of the Draft Rampion 2 Offshore Wind Farm Order 20XX is amended as follows:

> (3) The power to compulsorily acquire land conferred under paragraph (1) does not apply to the Order land shown numbered [24/17, 25/2, 25/3, 25/4, 25/5], 34/29 and 34/30 on the land plans.

31. The only plausible alternative that would dispense with the necessity for an amended order would be the Examining Authorities' acceptance of a Change Application

accommodating an alternative route proposed by Mr Dickson having regard to his farming practices and based on his previous consultation feedback to the Applicant. The acceptance of such application is however contingent on its presentation by the Applicant who, as this submission sets out, has not made any meaningful progress in securing a reasonable alternative. We are confident that any Change Application would not necessitate further consultation as any alternative proposal remains non-material and without affect to other parties and plainly would be agreeable to the relevant land interest.

32. The particulars of the final alternative route shall be duly submitted to the Examining Authority shortly. We respectfully urge the Examining Authority or Secretary of State, should they possess the legal authority to impose this change in the course of reaching their decision, to exercise such authority.

Conclusion

33. Mr Dickson has expressed his willingness to reach a voluntary agreement with the Applicant throughout the process. However, the Applicant's conduct has made this impossible due to their failure to engage meaningfully and at any point prior to the submission of the DCO and commencement of the examination phase. The reasons provided in this submission show that the Secretary of State cannot demonstrate that compulsory acquisition powers are either necessary or nor constitute a compelling case in the public interest.

34. Mr Dickson will separately be making an unreasonable costs application.

Yours faithfully

LESTER ALDRIDGE LLP