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Our ref RE.TET.DIC03803.000002 09 July 2024

Your ref EN010117

Dear Sirs / Madams of Examining Authority,

RAMPION 2 OFFSHORE WINDFARM DEVELOPMENT CONSENT ORDER RAM2-AFP1710 - COLLEGE WOOD FARM – MR T DICKSON DEADLINE 5 SUBMISSION

Introduction

1. This is a further written submission on behalf of Mr Dickson in respect of the position of compulsory acquisition and engagement with the Applicant.

2. We refer the Examining Authority ("ExA") to the previous submission made on behalf of Mr Dickson:

   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)

v. Ref. **[REP4-130]:** Deadline 4 Submission – Post Hearing submissions including written submission of oral cases.

3. We further refer to the ExA's Further Written Questions and requests for information **[EN010117]** issued to the Applicant on 18 June 2024. Specifically:

   The ExA considers that, based upon the written evidence up to and including Deadline 4, and oral evidence discussed at the Compulsory Acquisition Hearing 1 on Friday 17 May and Tuesday 21 May 2024 [EV6-001], it may not be able to recommend to the Secretary of State that the case for Compulsory Acquisition has been made. This is based upon the apparent lack of meaningful discussions and progress with persons with interests in the land and the lack of advancement of voluntary agreements. The ExA would have expected the Applicant to have been at a much more advanced stage at this point in the Examination. Provide a summary of all efforts to acquire the land required for the Proposed Development by negotiation since the close of CAH1.

   Provide the following information in relation to obtaining Land Rights for the Proposed Development by agreement (include figures for AP's who have not submitted RRs or WRs): a) Total number of signed agreements required. b) Number of Key Terms issued. c) Number of Key Terms signed. d) Number of agreements completed.

4. There is no need to repeat the respective requirements of the Planning Act 2008 (the "Planning Act"), specifically Section 122, and the guidance provided within the Compulsory Purchase Order (CPO) Guidance (the "Guidance") in substantive detail within this submission. This is comprehensively addressed in the Deadline 4 submission of 03 June 2024 [**REP4-130**] and at the compulsory acquisition hearing of 23rd May 2024. It has further been referred to by other represented landowners during the course of the examination.

5. The ExA is however reminded that the 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 outset.

Summary of position

6. The ExA is reminded of the Applicant's position expressed at the CAH, wherein the Applicant asserted its commitment to pursuing voluntary agreements. Despite repeated assertions, nearly four years have elapsed without any substantive or meaningful progress. The Applicant has consistently failed to engage in genuine negotiations that would facilitate an agreed settlement.

7. Mr. Dickson’s case is far from novel. The Applicant has demonstrated a pattern of blatant disregard and contempt for the affected parties and the examination process. The necessity for the ExA to repeatedly admonish the Applicant for their lack of engagement is indicative of this behavior. Given these circumstances, it is inconceivable and entirely untenable for the Secretary of State to conclude that compulsory acquisition powers should be lawfully granted.

8. The Applicant will seek to persuade the ExA that they should be granted compulsory acquisition powers because – as it said at the CAH - “it continues to seek to reach voluntary agreement”. This statement does not indicate that meaningful engagement has occurred for the Secretary of State to be satisfied that there is a compelling case in the public interest to decisively demand that such powers are granted. As the Secretary of State will be aware, if there is any reasonable doubt on the matter, the balance must be resolved in favour of the citizen.[1]

9. We will document the full experience with the Applicant, who has unequivocally failed to achieve any substantive progress in securing a deal over nearly four years,

[1] *Prest v Secretary of State for Wales* (1982) 81 LGR 193

in our closing submission in August. However, in this submission, we wish to direct the ExA's attention to specific correspondence and meetings. While this is not an exhaustive account, it illustrates the Applicant's conduct and apparent unwillingness to make meaningful progress toward an agreed settlement. We have regrettably concluded that the Applicant has no real intention of securing a binding commitment and has instead merely intentionally 'ran down the clock'.

10. We wish to draw the ExA to the following correspondence:

27 January 2021: An email sent on behalf of Mr. Dickson by [redacted] BLB Surveyors stated that the Applicant promised a site visit with an engineer on Wednesday, 25th November 2020. The visit was supposed to take place immediately after Christmas, early in the New Year. However, it was delayed by several months, occurring on 11th August 2021, during the consultation period. This sequence is clearly flawed, as the information was required prior to the consultation.

25 June 2021: An email sent by [redacted] of the Applicant thanking Mr Dickson for welcoming them onto this land demonstrating his cooperation.

12 July 2021 and 12 August 2021: A site meeting to undertake surveys in which the Applicant dishonestly claims was restricted. The assertion that "the extent of the survey was restricted both in the locations allowed to be accessed and the time they were allowed to be present" is categorically false. The documented times for these visits were precisely 1 hour and 45 minutes and 1 hour and 5 minutes, respectively, with signatures confirming these durations. Mr Dickson met with the surveyors on both occasions. The visits were conducted amicably, with no restrictions imposed on the surveyors of any kind. They were granted unrestricted access to the entire property, allowing them to carry out their activities as they deemed necessary.

15 June 2022: A site meeting took place on 15 June 2022 between representatives of the Applicant and Mr Dickson, and Mr Dickson's agents Savills recorded the upshot of the meeting in a letter to the Applicant's agents Carter Jonas on 19 July 2022. These points were recorded in submission **[AOC-020]** and are repeated below for ease of reference:

a. The fact the open cut route cross-farm preferred route of the Applicant would result in the extinguishment and destruction of Mr Dickson's livelihood of a single farmer [redacted]

b. Mr Dickson was led to believe that the proposal of the alternative route would be included and properly considered in the targeted consultation of sixty landowners that ran from 18 October – 29 November 2022. This was never included.

c. Request for some estimation and reasoning on the relatively financial burden of the alternative route proposed by Mr Dickson, and the Applicant's preferred route has never been justified. No information however brief has been provided on that issue of relative or absolute financial considerations.

d. The admission by Applicant's agent that the meeting of 15 June 2022 ought to have taken place two years before.

Letter of 24 May 2023: A letter from the Applicant regarding Mr. Dickson's proposed northern cable route. The Applicant stated that it had considered moving the route closer to the northern tree line but had rejected the proposal on various grounds without conducting further surveys or any intrusive investigation. This is also around the time the Applicant claims Mr Dickson requested that Heads of Terms were not issued. The assertion that "the Land Interest specifically requested that the Applicant does not issue Head of Terms to the Land Interest or their Agent" is dishonest for the following reasons:

- At no time did the Applicant provide a set of Heads of Terms or seek to discuss their detailed contents with the Mr Dickson during this time. The Applicant had refused to issue Heads of Terms for a period exceeding two years and despite Mr Dickson trying to discuss an alternative route.
- The Applicant could not have sought to discuss Heads of Terms with his Agent as claimed because Mr Dickson did not have an Agent at that time.
- Mr Dickson could not have possibly requested that no Heads of Terms be issued to their Agents as falsely claimed by the Applicant, since he did not have an Agent at that time.

Meeting of 15 March 2023: A meeting was convened at College Wood Farm with the following attendees: [redacted], and T.R. Dickson, to discuss the proposed alternative northern route. [redacted] explicitly refused the proposal, resulting in the immediate cessation of discussions and the abandonment of the meeting.

Letter of 31 July 2023: Letter sent by Mr Dickson setting out various inaccuracies and numerous misleading statements from the Applicant, which were never dealt with. A response was only received over 6 months later in January 2024.

Letter of 28th August 2023: Mr Dickson wrote to the Planning Inspectorate expressing his continued anxiety and concern that he had not received Heads of Terms whilst setting out the Applicants lack of meaningful engagement.

11. As suggested, the full extent of the Applicant's misrepresentations will be submitted to the ExA prior to the close of the examination. It is only now, after repeated warnings from the ExA and after the CAH, that the Applicant has begun to attempt to advance negotiations. Despite this, the Applicant repeatedly engages in misrepresentations and inaccuracies. They continue to introduce broad caveats concerning environmental and engineering requirements, effectively granting themselves unfettered discretion and rendering their commitments ineffective. Consequently, there is an absence of any binding commitment from the Applicant to address Mr. Dickson's concerns regarding a northern route.

12. In an email of 6 June 2024 the Applicant stated:

> *I note in this regard that NPS EN-1 states that <u>where an alternative is first put forward</u> by a third party after an application has been made, the Secretary of State may place the onus on the person proposing the alternative to provide the evidence for its suitability as such and the Secretary of State should not necessarily expect the applicant to have assessed it. - para 4.3.29 EN-1.*

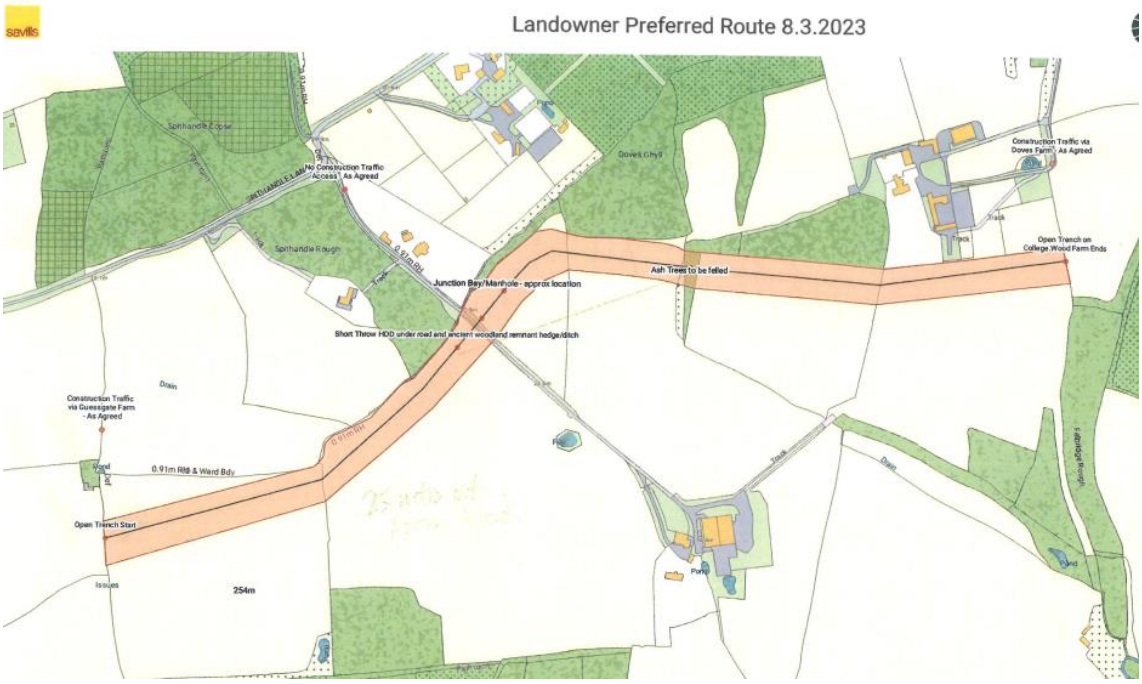
13. In a further email to Mr Dickson's agent on the 21 June 2024, the Applicant suggested that given the 28-day consultation period required for a change application, they anticipate that it will be difficult to get to Stage 4 and consult on the change prior to the end of the examination. They allude that on timing, because *this is a change proposed late in the day and which the Applicant have not currently assessed*, the NPS places the onus on Mr Dickson to demonstrate its suitability. This is unacceptable conduct of the Applicant to place the onus on an individual landowner to fund the evidence required to demonstrate the suitability of an alternative in place of the well-funded Applicant.

14. We refer to the '*Nationally Significant Infrastructure Projects - Advice Note Sixteen: requests to change applications after they have been accepted for examination*' and statutory mechanism for a change application through the Act. It is explicitly clear that <u>only the Applicant</u> holds the authority to modify their application. This is

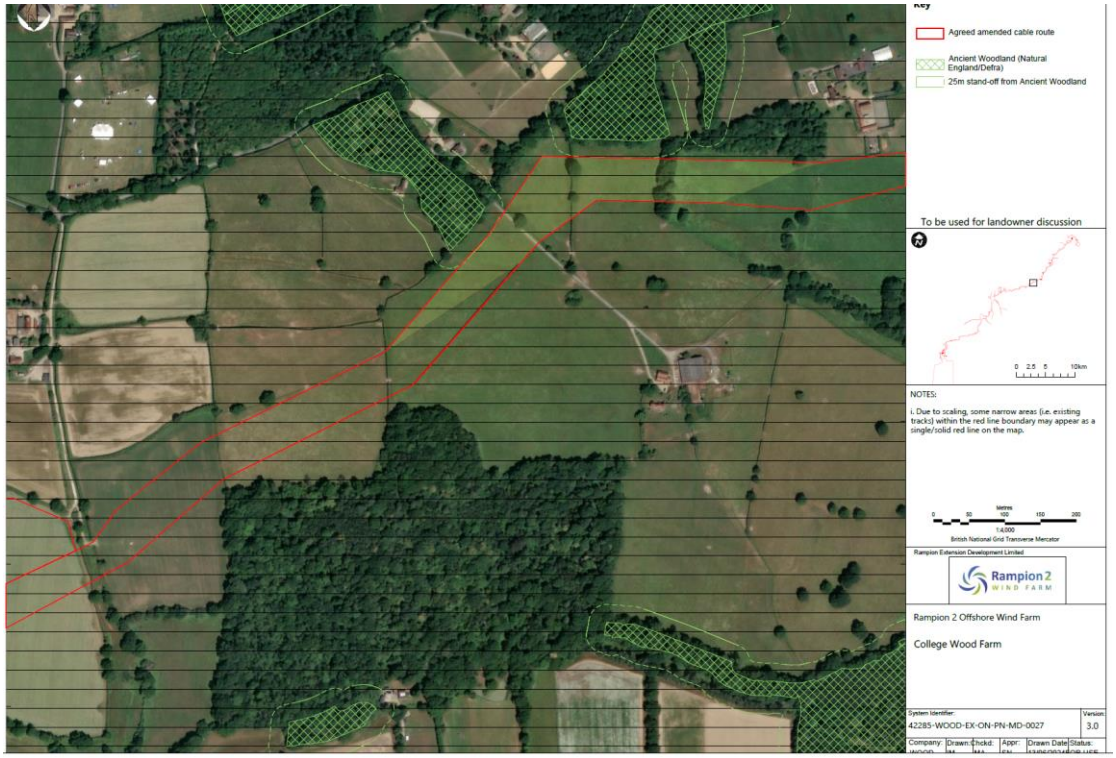
a position that should be well known to the Applicant who has a suite of professional consultants and legal advisors. To now suggest, after nearly four years of correspondence with an Affected Party who has consistently demonstrated full cooperation, that the responsibility now falls on him – relying on the NPS EN-1, first published on 01 November 2023 – is both preposterous and a flagrant disregard for the Guidance and the relevant compulsory purchase legislation.

15. There is clear and documented evidence of a northern route being proposed by Mr Dickson as early as 2023. A direct comparison between the 2023 proposal and current proposed route is provided below for the ExA's reference. They will note the similarities between the two:

Initial route plan of 2023:



Current proposed route:



16. The fact remains that Mr. Dickson proposed a reasonable alternative, which is not materially different from the currently proposed route, yet the Applicant is only now suggest it *might* undertake the relevant surveys and environmental assessments to make this proposal possible.

17. The Applicant now admits it is out of time to commit to legally securing the alternative route – which is deliverable - during the examination through a change application. If the Applicant had any genuine intention of securing a deal with Mr. Dickson, it would have properly and meaningfully considered reasonable alternatives from the outset. It would not have frustrated the process, given that there was ample time and funding to conduct all necessary assessments and surveys. Claiming now that it cannot be delivered on procedural grounds is wholly unacceptable.

18. The recent correspondence from the Applicant can only be interpreted as a desperate attempt to discharge their obligations pursuant to Guidance and the Act. This is both scandalous and disingenuous. The Applicant has compelled affected parties to incur unnecessary costs due to its failure to undertake genuine attempts to secure alternative options, such as by undertaking sufficient assessments. It is only now, as the examination period nears its end, that the Applicant suggests such

assessments to facilitate an alternative—which it admits *could* be delivered—can be commissioned. The Applicant cannot demonstrate it has done everything necessary to discharge its legal obligations as referred to in the Deadline 4 submission **[REP4-130].**

Conclusion

19. The ExA must critically assess the position, recognising that the Applicant has failed, over a four-year period, to make any substantive progress in negotiations with an affected party who is both professionally represented and willing to enter into a deal. This prolonged inaction has caused significant frustration and financial strain on the affected parties. The fact is Mr Dickson has exhausted himself trying to secure a deal with the Applicant, seeking only to protect his livelihood and wellbeing. This is a scandal rivaling that of the Post Office Horizon, highlighting the dire need for accountability and resolution.

20. The Secretary of State must uphold the principles of fairness and justice, ensuring that the affected parties are not unduly burdened by the Applicant's inaction. *In R v Secretary of State for Transport*, ex p de Rothschild[2] Slade LJ referred to judgements in the cases of Priest and Brown and commended that they gave:

    A warning that, in cases where a compulsory purchase order is under challenge, the draconian nature of the order will itself render it more vulnerable to successful challenge…

21. Either the ExA must recommend the DCO is not granted, or it must, as set out in **[REP4-130],** recommend 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 [25/2, 25/3, 25/4, 25/5] 34/29 and 34/30 on the land plans.

22. As we have previously stated, 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

[2] [1989] 1 All ER 933

meaningfully and at any point prior to the submission of the DCO and commencement of the examination phase. The Secretary of State cannot demonstrate that compulsory acquisition powers are either necessary or nor constitute a compelling case in the public interest.

Yours faithfully,

LESTER ALDRIDGE LLP