

## National Infrastructure Planning

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Our ref RE.TET. GRE04171.000001

09 July 2024

Your ref EN010117

Dear Sirs / Madams of Examining Authority,

### **RAMPION 2 OFFSHORE WINDFARM DEVELOPMENT CONSENT ORDER RAM2-AFP223 GREEN PROPERTIES (KENT AND SUSSEX) LTD – DEADLINE 5 SUBMISSION**

#### **Introduction**

1. This is a further written submission on behalf of Green Properties (Kent and Sussex Ltd) (“Green Properties”) 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 Green Properties:

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**[REP1-101]:** Deadline 1 Submission – Written Representations (WRs)

**[REP3-109]:** Deadline 3 Submission – Comments on any further information/submissions received by Deadline 3 iii. Ref.

**[REP3-110]:** Deadline 3 Submission – Comments on any further information/submissions received by Deadline 3

**[REP4-111]** – Deadline 4 – Post hearing submission

3. We 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 in 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 for submission of 03 June 2024 **[REP4-111]** and at the compulsory acquisition hearing of 23<sup>rd</sup> 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:

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'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 purposely and consistently failed to engage in genuine negotiations that would facilitate an agreed settlement.
7. As we have previously set out, Green Properties 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 it 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.<sup>1</sup>

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<sup>1</sup> *Prest v Secretary of State for Wales* (1982) 81 LGR 193

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9. The full extent of the Applicant's misrepresentations will be submitted to the ExA prior to the close of the examination. In this submission, we wish to direct the ExA's attention to specific points demonstrating that compulsory purchase powers cannot be granted. 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 application 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:

- Neither the Applicant nor their agents have ever met with Green Properties on the land during the consultation period or prior to the acceptance of the DCO application for examination, except for a dormouse survey conducted on 13 July 2021.
- Despite the Applicant's dishonest claim in DCO Application that "the Applicant has met onsite & Engaged with the Landowner & their professional advisers" the first and only time this occurred was on 24th April 2024.
- In correspondence with Green Properties the Applicant sought to suggest the preferred cable route "accommodates substantial existing buried services". This is entirely false.
- The Applicant has repeatedly ignored information supplied by Guy Streeter, Savills as previously set out in prior submissions.

11. As suggested, the full extent of the Applicant's misrepresentations will be submitted to the ExA prior to the close of the examination. However, 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 effectively granting themselves unfettered discretion and rendering their commitments ineffective. Consequently, there is an absence of any binding commitment from the Applicant to address Green Properties' concerns regarding a preferred reasonable alternative.

12. The Applicant is now out of time to commit to legally securing the alternative route during the Examination through a change application, if such application should be required. If the Applicant had any genuine intention of securing a deal with Green

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Properties, it would have properly and meaningfully considered reasonable alternatives from the outset and properly engaged with Green Properties and their advisors to assess route corridors which would have mitigated the impact of the Scheme on their retained land. Instead, the DCO submission chose the most damaging route.

13. The Applicant's recent correspondence 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. Having only met the Green Properties once during a four year period, the Applicant cannot demonstrate it has done everything necessary to discharge its legal obligations as referred to in the Deadline 4 submission **[REP4-111]**.

## Conclusion

14. 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. Green Properties has exhausted itself trying to secure a deal with the Applicant. This is a scandal rivaling that of the Post Office Horizon, highlighting the dire need for accountability and resolution.
15. 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*<sup>2</sup> 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...*

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<sup>2</sup> [1989] 1 All ER 933

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16. 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 [33/24, 33/25, 33/26], 34/29 and 34/30 on the land plans*

17. As we have previously stated, Green Properties has expressed its willingness to reach a voluntary agreement with the Applicant throughout the process. 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 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**