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12th April 2024

Dear Sir

PLANNING ACT 2008 AS AMENDED

MALLARD PASS SOLAR FARM LIMITED

INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES 2010

Thank you for notification dated 2 April 2024 inviting parties to comment on comments received in response to the 'Secretary of State's request for information dated 13 March 2024 and in particular the applicants response to this request dated 27 March 2024.

The following question was asked by the Secretary of State to the applicant, LCC and RCC:-

"The Applicant, RCC, and LCC should confirm if side agreements have been reached in relation to highway matters. If side agreements have not been reached, confirmation will be provided to the Secretary of State confirming that agreement has been reached."

The applicant provided the comments below and it is important for the Council to provide the Secretary of State with a more accurate position as the Council do not recognise the statements made by the applicant in their response.

The applicant states

"The Applicant is currently negotiating with Lincolnshire County Council in respect of reaching an agreement to deal with highways matters. The draft agreement is also designed to deal with the payment of fees to LCC and other local authorities (including relevant parish councils) for participation in community liaison groups and as such all the authorities (being LCC, RCC and SKDC) would be a party to the Agreement."

The Council originally received the draft agreement from the applicant and sent this to Rutland County Council (RCC) for comments on 5th February. No response was received back from RCC so the Council returned the Agreement with LCC comments to the applicant on 16th February making it clear that whilst we had sent the draft to RCC previously we had not heard from them at all, and further suggested that in the absence of hearing from RCC that perhaps it would be prudent to have separate agreements with LCC and RCC. The Council **did not** state that our comments were also made on behalf of RCC.

The applicant further states:-

“The Applicant is confident that an agreement can be reached as good progress has been made. The Applicant has been dealing directly with LCC on the basis that they are in a position to liaise with RCC on highways matters and that an agreement reached with LCC on highways matters should also be acceptable to RCC. RCC had previously indicated in meetings with the Applicant that they were happy for this to be the arrangement. Given the nature and location of the Mallard Pass Solar Farm project, there are areas where the highway works could be in solely in LCC’s jurisdiction, solely RCC’s jurisdiction or be in both authorities’ jurisdiction so the Applicant believes it is important to have one agreement with both parties so that highways matters can be dealt with consistently with both authorities rather than having multiple individual agreements. “

As set out above the Council has **not** at any time suggested that any agreement that it reaches on highway matters will also be acceptable to RCC and has stated that if progress cannot be made with RCC then separate agreements should be sought with LCC and RCC. LCC have not been made aware by RCC or the applicant, prior to this submission, that they had agreed to LCC taken the lead on the draft agreement. The applicant’s position on wanting to avoid having multiple agreements is noted but because it is making more progress with LCC does not automatically follow that RCC will also be in agreement and if progress is delayed whilst RCC consider and respond to the terms of the agreement that is a matter for the applicant to take up with RCC but it is not correct to assert that LCC are in a position to comment on behalf of RCC.

The applicant then states:-

“The fact that negotiations are ongoing should not delay the Secretary of State from granting development consent as, during the Examination, the Applicant added wording to article 9 (power to alter layout, etc. of streets), article 10 (construction and maintenance of altered streets) and article 13 (access to works) of the Draft Development Consent Order [REP9-005] to provide that the works carried out under those articles is to be “in a form reasonably required by the... authority”. This means that works cannot take place until some form of agreement is secured that is agreeable to the local authorities, whether by the agreement discussed above or such other form that may be later agreed.”

This is ultimately a decision for the Secretary of State to determine if she is able to grant the DCO without the Agreement being in place which from LCC’s perspective would be an unusual course of action to follow to determine the application without the Agreement being in place especially as the applicant has had 5 months since the close of the examination to progress this. The view of LCC is that a decision on the application should

not be made until the Agreement is completed and if this is not possible to determine if the development is acceptable without the Agreement or that it is captured in a different way. Whilst progress is being made on the Agreement it is not expected to be completed from LCC's perspective by 16th May as well as the highway issues there is also the matter of fees. The agreement does have provisions for the reimbursement of costs associated with the community liaison group to the two council and parish councils. Those provisions are not yet agreed. The Council is clear that it does not consider it should be an obligation on the part of LCC to assist with the administration of the Parish Council's costs and this should be matter dealt with between those parties.

Finally the applicant states:

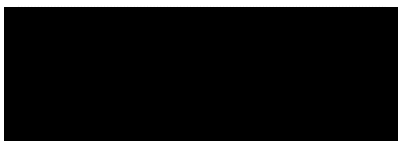
"The Applicant also notes that Lincolnshire County Council confirmed that it was comfortable with the approach taken in the dDCO in the Final Statement of Common Ground with Lincolnshire County Council [Version 4] [REP9-020] (see reference: LCC-12-06), saying: "Articles 9, 10 and 13 have been updated to confirm that the powers conferred cannot be exercised without the consent of the highway/street authority and that such consent is to be in a form reasonably required by the highway/street authority. This therefore provides LCC with sufficient comfort those works cannot take place until some form of agreement is secured whether this be via the side agreement or not, but it will continue to negotiate with the Applicant to agree that Side Agreement as soon as practicable and with the aim of updating the Secretary of State prior to the decision being made."

This was agreed with LCC but it does not represent the views of RCC as to how highway matters can be controlled and RCC may have a different interpretation which they are entitled to take.

In conclusion the Council is deeply concerned that it has been mis-represented by the applicant in their response to the Secretary of State request for further information and welcomes the opportunity provided by the Secretary of State to set out the correct position on the side agreement.

Should the Secretary of State or the Department's case team have any further questions please do not hesitate to contact me.

Yours faithfully



Andy Gutherson
Executive Director of Place