



Hearing Transcript

Project:	EN010130 - Outer Dowsing Offshore Wind Project
Hearing:	Issue Specific Hearing 1 (ISH1) – Part 2
Date:	4 December 2024

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00:06

Okay, so welcome back. I think we will move on now to Agenda Item three, within 3.2 of our agenda, which is covering schedule 18 of the draft development consent order, which is the subject of protective provisions, could I ask to begin with the applicant, to provide, to provide an update in line with the agenda for each of the parties with whom protective provisions are set out in the draft development consent order, namely, electricity, gas, water and sewage, undertakers, electronic communications, code networks, angling water services, limited the Environment Agency, drainage authorities and the harbor authority. Again, what I'd like as a priority, as an update on progress towards agreement, as opposed to an intricate dissection of the finer points of any of the protective provisions. Mr. McCallum, please.

01:19

Thank you, sir. Emma Moyer for the applicant turning to schedule 18 part one, these set out protective provisions for the benefit of statutory undertakers whose equipment may be affected by the authorized project. These protections are fairly routine in DCOs of these kinds, and to date, the applicant has not received any specific comments from any statutory undertakers on the wording of those provisions in that part, and we are therefore of the view that those are as in final form as they're going to be subject to any further comments that are received. Moving on to part two, please set out protection for operators of electronic communications, code networks, and similar to the provisions in part one, are relatively standard form protect provisions included in these types of DCOs. And again, the applicant has not received any specific comments from any operators on the wording of those turning to part three, the protective provisions for Anglian Water. These have been agreed with Anglian Water, and therefore the boarding included in part three of schedule 18 is final. As far as the applicant is concerned, part four sets out protective provisions for the protection of the environment agency. These are the subject of ongoing negotiations between the EA and the applicant. Points of discussion are ongoing in relation to matters raised in the EAS relevant and written reps, which I can provide more detail on if required. And and the applicant currently waits confirmation from the EA that this wording is acceptable and that the provisions generally are acceptable, but the applicant does note and welcome the EAS response to ex, Q, DC, O, 1.4 which is rep 2067, which confirms that, from the EAS perspective, they are having productive discussions with the applicant on this matter, and hope to

conclude these negotiations before the end of the examination period, and the applicant concurrence with that, Turning now to the protection for the drainage authorities in part five of schedule 18 of The DCO, similar to the EA these are the subject of ongoing negotiations between the applicant and the five relevant idbs. That's says Holland, Lindsay Marsh, black sluice, welland Deepings and with and forth, the proposed protect provisions are currently the subject of a review by the idbs and their legal representatives, and the applicant awaits confirmation from them that the PPS are in a form acceptable to the idbs. We're hopeful that those can be agreed before the close of examination, and are actively engaging to agree those as soon as possible, turning to part six of schedule 18. That is the protective provisions for the protection of the harbor authority being the port of Boston limited. Those are agreed with the port of Boston limited and port of Boston limited. I've also issued a letter, which is rep 2061, consenting to the disapplication of local legislation insofar as it is inconsistent with those protective provisions and the legislation that is referred to as set out in Article 34 one of the draft DCO. So those protective provisions. Are in final and agreed form with the harbor authority, sir, I note that you asked to run through the ones that are in the DCO. Would you also like an update on protected provisions that are not in the DCO yet, but which we are negotiating with statutory undertakers and other parties? Ms

05:21

Moore, that that would be helpful, that that deals with a question that I, that I had for the applicant, which, which was whether the applicant anticipates there being a requirement for any protective provisions with organizations not yet identified within schedule 18. So so yes, do please carry on with those.

05:39

Thank you, sir. Emma Moyer, for the applicant. The first party on our list who we are progressing protective provisions with is national grid electricity transmission. These are being negotiated between the applicant and in get, and we note that in get have produced a version of protected provisions with their written representation, and that is rep one, zero for one, for clarity, that is the version that we are currently negotiating with national grid electricity transmission. And the applicant has provided its comments to and get on those and its proposed changes for discussion so that those discussions are ongoing. There remain a few points of difference between the parties. They are limited, and the applicant is actively engaging with Nga on these protect provisions and is seeking to reach agreement as soon as possible on those moving on. On a similar vein, we are also negotiating protective provisions with national gas transmission, and these are along similar lines to the protective provisions being negotiated with national grid electricity transmission. And therefore a couple of the same remaining points of difference exist between the parties on those. And again, we are actively seeking agreement with national gas transmission on those, and want to agree those as soon as possible. Another party who we are currently negotiating protective provisions with is cadent gas. The applicant acknowledges cadent gasses deadline two submission and that the standard protective provisions that they have attached to that that they wish to be included in the DCO. These are currently being negotiated between the parties, and the applicant has reverted to cadent gas on its proposed protector provisions. Since that deadline to submission, we're actively engaging on those, and as with other protected provisions, are seeking to agree those as soon as possible. Another party that we are currently negotiating protect provisions with is Network Rail on those. There remains one outstanding point of difference between the parties, which is the subject of ongoing discussions. And as with all

other protected provisions that I've noted so far, the active applicant is actively engaging with Network Rail on these and is seeking to agree these as soon as possible. And turning now to offshore, the applicant is currently negotiating a set of bespoke protect provisions with perenco in relation to their oil and gas assets, and these aim to deal with concerns raised by perenco in their representations on helicopter access, access and radar line of sight. And the applicant is also actively engaging with perenco on these and seeking to agree these as soon as possible. And finally, the other party who the applicant is trying to agree a set of protect provisions with is shell along the same lines of the parenco Protect provisions to provide protection for their oil and gas assets, and the applicant has sent a version of protected provisions to shell for their consideration, and has set a meeting to discuss those with them. And as with all of our protected provisions that we are discussing, is hoping to agree those as soon as it is reasonably possible. That concludes my list of parties that we are currently negotiating with.

09:04

Thank you. Ms Moore, that's helpful. I think coming on to the subject of timeframes for anticipated timeframes for agreement, I note the use of the phrase as soon as reasonably possible, I wonder if I can push you to be a little bit more precise than that, and I would ask you to do that with with the examination timetable in mind. So on the 17th of February, the timetable has the examining authority issuing its preferred draft DCO, and what is essentially, what is the likelihood of of those protective provisions being agreed by that time point

09:54

the applicant would hope to be in a position to submit agreed protective provisions within the DCO at deadline. Aim for however, if the position has not been agreed by that point, the applicant would propose to submit its preferred set of protect provisions for the examining authority's consideration.

10:12

Thank you. Ms Moore, that's very much what I hoped you'd say. And I will raise an action point at this point for the IPs in interested parties who are not present and who are party to protected provisions, to provide commentary on their commentary on progress towards agreement, but also to do the same if, if protected provisions are not agreed by deadline for for them to also submit their preferred wording to to the examination. Please,

10:50

with that, unless there's anything further that the applicant would like to add at this stage, I'll just give you the opportunity to say anything else?

11:03

Emma Moyer, for the applicant, sir, just to confirm, nothing further to add.

11:06

Thank you very much. In that case, we'll move on to the next item in in on our agenda, which is documents to be certified. Now that the draft eco contains a number of documents, which which it which will be certified if, if the order is given approval at this stage, I would ask whether any interested

parties have any additional comments other than those that have already been submitted to the examination on any of the or that have been covered today, on any of the documents to be certified within the draft DCO.

11:52

And I'm seeing no hands raised, and therefore I'm not going to ask the applicant to respond, but I will raise a further action point for, again, for any interested parties who are not present to provide any commentary on on those documents to be certified at the next deadline coming on then to the securing of HRA compensation measures that have been advanced on a without prejudice basis. The examining authority notes that schedule 22 of the draft development consent order includes provisions for compensation measures for kitsu Wake guillemot and raise a bill of the Flamborough and Fauci Coast SBA as well as sandbank and biogenic reef compensation measures, excuse me, of the inner downside race bank and Northridge SAC, if the examining authority were to conclude that further compensation measures were required, so additional to those already set out within schedule 22 then I'd like To ask the applicant, how it would propose that these were secured through the draft, through the development consent order? For instance, would the applicant submit further addenda to schedule 22 on a without prejudice basis, so that the examining authority could attach these if required? Or would it propose to do this by another means?

13:22

Thank you, sir. Scott McCallum, for the applicant, sir, I think obviously, without knowing what sort of topic areas we're talking about, it's difficult to see. But my starting presumption would be that if there were other measures, so other compensation measures, then these would be added in to the relevant parts of the schedule. And similarly, if there were other topics to be compensated for other species, for example, or other habitats, then they would then form a separate part of that schedule. So yes, I think everything could be contained and without prejudice basis within, within the schedule itself.

13:59

Thank you. And whilst I appreciate, I'm not asking necessarily the relevant party here, but what, what would the applicant's view be of the necessary time, time scale for these to be submitted in time for the statutory nature conservation bodies to comment on, again, on and without prejudice basis, before the end of the examination? I

14:26

thank you, sir, Scott McCallum, for the applicant. Initial thinking, sir would be that that would ideally have to something in my deadline five in order for it to be examined.

14:39

Thank you. That's helpful. I will raise a further action point for Natural England to and any other relevant interested parties to comment at deadline, three, generally, but also specifically on this, this matter of of the timescale and their ability to. And submit their comments by deadline five, coming on then to consents licenses and other agreements. Can, can I ask the applicant its proposed timeframe for obtaining the further consents that would be required for the proposed development to proceed, please.

15:25

Thank you. Sir. Scott McCallum, for the applicant, sir, I would refer you to a document submitted by the applicant into examination which is as one, hyphen, 027, which sets out the list of other consents and licenses which the applicant has identified will be required. Most of these other consent licenses, sir, will be obtained as usual post consent of the development consent order, and we have, however, since submitting the most recent version of that document, made some progress on some of those consents, which I can can briefly update you on just now, if that would be helpful.

16:06

Yes, please do.

16:08

Thank you, sir. So again, going to page eight of that document, I would refer to the role dealing with Crown consent again, as touched on briefly at the compulsory acquisition hearing yesterday, sir, the applicants engaged in very productive discussions with the Crown Estate and the Regal advisors in relation to securing submission of the section 135 crown consent documentation that's required in good time during this examination. So again, we're hopeful, sir, that that we'll be able to provide a more substantive update on that at deadline three, which failing deadline four, moving down on that page, sir, we also deal with flood defense consent, and in particular in that respect, sir, it's noted that We are wrapping up certain consents into the development consent order, and in that way disapplying some provisions of the environmental permitting in London, Wales regulations for that, sir, Environment Agency consent is required to that disapplication. And the most recent position, as we say there, sir, is that good progress is being made in relation to protected provisions for the Environment Agency, and they have indicated in their written representations that rep one, hyphen, 048, that at the point that we have an agreed set of protected provisions, they will then Look to consent to that this application. So again, sir, we're hopeful that that that can be procured in short order. Again, I suspect, for that one, sir, aiming, aiming to give you a substantive update, probably at deadline four on page nine of that document, sir, in relation to land drainage consent. In this case, we're dealing here with the interests of internal drainage boards again, sir, there's a difference here in that consent to this application is not required from internal drainage boards, but as a matter of good practice, the applicant is seeking that consent, and again, that's wrapped up with agreeing that the protective provisions, which again is Miss more said is moving moving closer. So again, hopefully a substantive update on that one, sir by deadline for moving on to page 10. And probably the most substantive update is in relation to a European protected species licenses, again, so these are things that would be procured proper post development consent order. But in relation to the onshore aspects of European protected species licenses the applicant, the applicant has sought and has now received from Natural England letters of no impediment in relation to great crested newts and water voles. And that was received sir on the eighth of October. It's not anticipated that licenses will be required for any other species onshore. But of course, sir, pre construction surveys, check surveys will be carried out in due course, but those letters of no impediment have now been received and will be submitted into the examination.

19:31

I think that's the end of my list, sir, in terms of useful updates on on other consents.

19:37

Thank you, Mr. McCallum, I will move on then to being cognizant of responses that to the examining authority's questions at deadline two, does the applicant envisage a need for any section 106 agreements in connection with this application?

19:58

Thank you, sir Scott McCallum, for that. Applicant, sir, we are exploring the possibility of a section 106 agreement with Lincolnshire County Council. The county council identified a number of topics in its local impact report, which is rep one, hyphen, 053, which it thought was was apt for inclusion in a section 106 agreement the applicant, sir, has subsequently met with the county council and set out its view on on which of these items the applicant doesn't consider would be, would be necessary or appropriate, either because, sir, they're covered elsewhere, or indeed, they're not addressing a an identified impact. There are, however, sir, remaining matters which are still under discussion, and those in particular are part funding of an environmental compliance officer, landscape and ecology enhancement fund, and part funding of an agricultural specialist the applicant considers are the summer of the issues around about these matters could be dealt with by by requirements or updates to plans. However, given the County Council's preference to deal with these matters via 106 the applicant is exploring that, and discussions are progressing well. The applicant, sir, is aware of the timescales for completing those discussions and is committed to moving that forward quickly as as indeed, I believe the county council are so that we can come to to a final view on whether a section 106 agreement is to be proposed. And obviously notes, sir, the deadline of deadline six for for completion and submission of that section 106 agreement.

21:40

Thank you, Mr. McCallum. Ms Hall, is there anything that you would like to add from the Lincolnshire County Council's point of view? Stephanie Hall, Lincolnshire county council, no, no. Thank you that. So I think that's an accurate so we obviously will keep the XA updated. Thank you, Miss McCallum. So you noted submission by deadline six assuming, let's assume the case that the route of section 106 agreements are is pursued, is, are you essentially saying that deadline six is when you would submit any proposed section 106, agreements into the examination.

22:30

Thank you, sir. Scott McCallum, for the applicant, yes, sir, that's that is the proposal.

22:37

Okay, and we will take that away and consider but thank you. That's sufficient for now coming on. Then to what the one additional point which I, which I referenced that when I, when I began this morning. So an additional agenda item, three point 2.7 wording of restrictive covenants. The examining authorities added this agenda item as a follow up to a question posed at yesterday afternoon's compulsory acquisition hearing, in which it asked TH Clements to comment on the proposed wording for restrictive covenants as set out in column two schedule seven of the draft consent order at the compulsory acquisition hearing, Mr. Westmoreland Smith deferred extensive comments on this matter to this hearing, and I'd like to ask him now if there are any further points that he would like to raise at this point in relation to the matter of restrictive covenants, Mr. Westman and Smith, please.

23:36

Yes. So Mark Westman Smith, for TH Clements, I'd just like to pick up on a few of those comments, but not extensively so. So as you've identified article 22 compulsory acquisition of rights. Two links to schedule seven, and that provides a form of restrictive covenant within the schedule, and the one that's relevant to TH Clements land is on page 95 and its current drafting is fairly widely drawn, and prevents anything being done in or upon the land or any part thereof which interferes With or might interfere with the exercise of the rights or use of the cables. It is possible, as we see it, for normal farming activities to fall foul of that, particularly thinking about machinery falling into the soil. And we would propose an amendment to clarify that it doesn't bite upon normal agricultural activities. That's the first point. The second point we raise is in relation to the prevention of excavations to a greater depth in point seven, five, and we'd like a carve out for consent beyond that debt. Depth. And then the third point, which I didn't mention yesterday, is that the restrictive covenants we can look at today are housed in schedule seven, and that rely relates to certain types of land, but by no means all land. And when one looks at schedule seven, as Mr. Flanagan described yesterday, it really bites upon enabling and temporary works for the construction of the an installation of the cable corridor, but not in the cable corridor itself. So that 22 one applies to the cable corridor itself and allows for restrictive covenants to be applied, and they're not prescribed in any form at all. So could, in theory, be more restrictive than what we see in schedule seven, and the short point is we wouldn't want to see restrictions with upon our land, within the cable corridor that were more restrictive than those set out in schedule seven. And those are the the only points we want to make at this stage with regards to restrictive covenants. So thank you, sir.

26:31

Hello, sorry, sir. Is it possible to reply on behalf of the applicant? Yes, please

26:36

do. I'm just writing myself some notes, so bear with me, but please do respond, Mr. McCann so

26:43

Stephen Hubner here on behalf of the applicant. Thank you, Mr. Westman and Smith, we've spoken briefly yesterday, Mr. Flag and spoke briefly yesterday about restrictive covenants and the point you make about consent to deeper excavation. We, I think, made a commitment yesterday. We certainly make it now to take that away. We would prefer to draft appropriately, rather than in this meeting, if that's acceptable, but we will go through that, and we do intend to consult with TH Clements about that wording for the benefit of the Islamic authority. Mr. Westbrook and Smith's clients and advisors have been kind enough to take on board the wording and said they'll come back to us, which we're looking forward to. So that's very helpful of them. The point about Article 22, one, this may be a semantic point, and in which case I have no objection to what Mr. Westman Smith has said. The way I read 22 one, and I may be wrong, is that it's subject to 22 two, so therefore we are necessarily incorporating the provisions of the restricted covenants and are limiting those to set those set out in schedule seven in respect of those plots. So if I've made a mistake about that, I can only apologize. I say, Well, I will take it away, certainly, and have a look that was, however, the basis on which I was addressing the point that's just been made.

28:21

Thank you, Mr. Westman and Smith, would you like to respond

28:25

very briefly? Mark Westman and Smith for TH Clements, I'm very grateful for those helpful indications. And of course, we will provide Suggested Wording. I do read 22 one slightly differently. It's subject to paragraph two. And then paragraph two uses the words in the case of the order land specified in column one of schedule seven. And so I think for other land outside of schedule seven, there's a wider power that is retained in 22 paragraph one, but we can discuss that with the applicant,

29:04

and coming back to the applicant, is there anything further that you would like to add? No.

29:08

Stephen, happened on behalf the applicant. Thank you very much indeed for clarifying. Mr. Westman Smith, that's understood, and we will follow up directly, if that's all right by the panel,

29:20

and asking both parties, is it reasonable for us, for the examining authority to have an update on those discussions at the next deadline? Sorry,

29:30

Stephen, happening of the applicant, if I may reply, we have scheduled a meeting with ch Clements and their advisors for the week after deadline three so it would depend upon their availability between now and then. I'm happy to say that we will do our best to respond to Deadline three. I don't want to commit teenage Clemence to that without them having a chance to say so.

29:57

Of course, Mr. Westman Smith, I. Is that something that you can comment on now, or do you need to take that away?

30:05

So I think we should be able to come back or on the narrow parameters of this article and schedule by the next deadline. So I don't think that would be an issue from our perspective.

30:20

That's helpful. Thank you both. Is there anything else from the applicant before I move on? Then?

30:30

Thanks, sir Scott McCallum, for the applicant to know nothing further. Thank you.

30:39

Okay, thank you in that case, that concludes the points over over. Agenda Item 3.2, I think we will have another brief adjournment now until 1230 just so that we can tidy up our action points and then we will, we will present them to the hearing so we will return now at 1230 so.