

TRANSCRIPT_GATEBURTON_ISH2_SESSION1_2_23082023

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00:07

Okay, thank you very much it is now 1140. So, the hearing is resumed we are remind people burn, I can give a draft consent scheduled who dealt with scheduled, two scheduled 15 And I know I moved not I will now move to scheduled 16. So scheduled 16 and article 46, which is also something to the effect that we need to discuss here. Basically deal with the procedure for the discharge of requirement or consents. Concerns have been raised by a number of the local authorities principally in relation to the timescales, Consultation requirements and cost recovery. LCC are concerned at the timescales, the applicant should be required to notify relevant consultation in this regard. They also consider that the scheduled should contain the provisions relating to fees as set out in appendix one two additional 15 was Lindsay strongly objected to article 16 as currently drafted, six week approval period currently required by article 46. Two does not adequately reflect the usual timescales for AI development. Also object to the deemed approval provision. Justification relied on by the applicant is one of efficiency, but they do not cite any unique or specific reasons why such a provision should be included. But Lindsay, also object to the requirements under Article 40 632 that further information must be requested in 10 working days, relevant determining authority will need to sufficiently assess the information in order to identify whether further information is required. As Lindsey have also submitted the usual fee provisions has been excluded without any justification by the applicant, and that that should be reinstated and they point to longfield DCO, which has recently been made NCC again in respect of article 46, The Undertaker should comply with the statutory notifications where such notification periods exist, such as contained in the Nottingham sure county council permit scheme order 2020 and obtain all necessary licenses agreements and permits as applicable. Before commencing streetworks. dealt with a little bit of that Article Nine. They are concerned that an application if submitted six weeks prior to commencement would not comply with the statutory notification periods and may not allow sufficient times for approvals to be granted as required by Article Nine four which we talked about earlier.

03:24

EA have also raised some concerns with me in relation to the relevant representation. Now, they've noticed that the applicant disagrees that the timescales of paragraphs three three of scheduled 16 need to be amended and make reference to allege precedent set by other development content order applications, but the aim intended for 15 working days is an inadequate timescale for consultation. And I'll continue their concerns around the procedure outlined in this section of the DCA or remain. Also draw my attention to orders that do not provide for appropriate consultation timescales or they do provide for appropriate timescales such as the East Northamptonshire Resource Management Facility order, which is 21 days the Meaford gas fired Generating Station which is 28 days. For further notice. For further information, Norfolk Borealis offshore wind form order which had 42 days may also maintain

that shedule 16 paragraph for appeals should be amended to allow the representations to be submitted within 20 working days. So we've got a number of representations from a number of parties which are concerned with timescales. Rather than turning to the applicant first in this I think it would be better if I hear from the consoles and the other parties, they can flesh out what their concerns are in relation to the provisions of sheduled 16 so that we can get all of that out on the table in the first instance, and then the applicant can respond to those issues. And then we can have a bit of a discussion around that. My concerns really focused around why has the applicant sought a deemed approval? Why has it not identified that it would notify consultees and provide them with copies of the documents? Why are they reduced timescales on requests for further information? Why have they excluded the fee provisions? And are the appeal response times reasonable? are the issues that I want to sort of explore but if I can turn to the to the consoles in the first instance, so if I can turn to let's say, start with West Lindy?

06:10

Yes, thank you, sir. Tremor shake West Lindsey District Council. In short, all of the representations that were made in the lshs, one draft DCA post hearing representations remain applicable. The only change that appears to have been made is the relevant time period under paragraph two, which is that there's an amendment from six to eight weeks. Other than that there's no justification provided, in addition to what was already provided in the explanatory memorandum. And there also appears to be some inconsistency in the relevant time periods generally in the draft DCA because article 46, which appears to be a catch all provision for anything else that requires discharge still has a six week time period. So it's not it's not clear. And we would invite the applicant just to consider that or explain why there's inconsistency in that respect. For the reasons that we previously gave, there is an objection to the time period of eight weeks for the same reasons. Similarly, there's still an objection to the deemed approval for the reasons previously given. There is no explanation as to why the fee provision hasn't been added despite that they've requested it may be at this stage that I pause and perhaps add particular relevant things in due course if necessary, but most of them are in those lshs. One post hearing submissions.

07:39

Okay, thank you very much. Lincolnshire,

07:44

has definitely hold Lincolnshire county council. So I think this is probably one of those matters where the debate has been set out in writing. It was canvass at the previous hearing. And the applicant is determined not to make changes that we have requested. It's probably for the applicant to explain why not? Our stall was, I think, quite clearly set out last time that it should be for the applicant to justify specifically in relation to why model provision in relation to fees wasn't included. based on conversations taking place outside the formal hearing, we understand there's some concern from the applicant that it would be more you more unusual than usual, to include fees within the scope of the DCO itself. We are very happy to provide precedent for that being included within the scope of the DCO. We understand in other ongoing DCA that I've currently under examination, there is some scope for dealing with fees in a side agreement or a 106. That's fine insofar as it goes but for us would very much be Plan B. And so we consider that being supported by the model provision, it ought to be within the DCO to provide public certainty on that. I'm not sure I can take the debate very much further. So that's

09:09

just giving you a flavor for the issues that we need to discuss. And then if I turn to NCC

09:16

Thank you, Steve points are not going to shut up. Nothing greatly to flesh out what we've already said. We're just concerned that appropriate notification periods are included. Were these are statutory periods. And the proposal or the proposal we've seen does not seem to allow sufficient times but nothing more to add. Really, Chair

10:00

Okay, I shall not turn to the applicant, do you want to address them as separate issues or take it all as one and then go to that we can deal with fees, timescales or take it whatever way I leave it in your hands on that.

10:19

Thank you, sir. Mr. Sterling on behalf of the applicant is in relation to the principle of a deemed approval mechanism is required and is well precedented at this scheme as a nationally significant infrastructure project. The Planning Act sets up a process for developing consent order to be granted. It's important that a deemed approval mechanism is in place to ensure that the scheme can proceed in a timely fashion to achieve the policy objectives which is intended to do so. It is well precedented and number sdcos. To date, I'm not aware that the principle of deemed discharge is at odds between us and the local planning authorities. And actually, we've now focused on thinking skills. I can come back to that. So if you've got more specific questions, but I'll just move through the other points raised in terms of providing copies of the documents to the named consultees at the point of submitting them for approval. I don't see anything in principle that we wouldn't be happy with in that. But I would take that away and consider if that's something that we can add in. It's more of an administrative than a substantive point. But I can see how that may allay some of the concerns around around timing. So if you leave that with us, we'll consider and if we can add that into an either the requirement or schedule 16. In relation to the timescales, generally, we maintain that eight weeks is an appropriate timescale almost two months. And again, it goes back to ensuring that the insert can proceed in a timely fashion given that the principle of consent will already have been established at that point in time in relation to the timescale at article 46, which still relates to six weeks, that is a Rata. So when paragraph two or schedule 16 was updated, that article was not updated to reflect that timescale. So we will be amending the six weeks reference and article 46 to eight weeks at deadline three and that's something that we picked up in advance of the hearing, in any event, moving forward then to the timescales, in paragraph three, which relate to further information and consultation. And we have, I think, as I mentioned that MV monitoring progress which is being made in other examinations on this point, and we note that in the mallow pass, so there are DCO, which is also in Lincolnshire, that the timescales have been extended. And we do propose and are proposing to update those timescales in line with those and Mallow path, the current draft DCO for deadline three. So just for clarity, that would be to update the 10 working day timescale and paragraph three to 20 working days, the reference of five working days and paragraph three, three to 10 working days. So in each case, doubling the length of time that's available. And then also in paragraph three, the reference to 15 working days would become 20 working days, thus

allowing at one additional week. So essentially, we've heard the feedback we've been monitoring progress in other examinations and we are revising and updating those timescales.

13:46

moving them to the fees position. As Miss Hall explained, yes, we did discuss this briefly with Lincolnshire county council before the hearing it to clarify, the applicant isn't opposed to the principle of the payment of fees for discharge of the requirements. And I think it is fair to say that the normal process is to deal with SVR planning performance agreement rather than a requirement or a specific condition and the draft DCO we add a word of own field precedent, but I wouldn't say that that is normal practice to date. And nevertheless, it the principle is agreed. So I think it is one that we can take away in and consider further. We have offered planning performance agreements to the various planning authorities and continue to remain open to entering into those including to govern the post DCO world.

14:49

Okay,

14:50

that's all thanks.

14:51

Thank you. Okay, so can I go back to the console sent in sumo Whereas I had before and let's just hear your response to those. So, West Lindsey, first of all,

15:05

thank you shake West Lindsey District Council, taking those in turn and first reading and we're deemed approval, it's agreed that the principal deemed approval is in debate. But what is is, is were deemed approval is relevant and which requirement it relates to. There are precedents where deemed approval relates to a number of specific requirements, there are precedents where deemed approval relates to all of them, and there are others where there's no deemed approval whatsoever. So the point is, that we would request that the applicant justifies specifically why deemed approval is necessary in relation to this end set, and also explores whether or not it's necessary in relation to all of the requirements as currently drafted. The second point is the relevant time frames, and we note and an accept that there's been an addition from six to eight weeks, but again, that the justification given by the applicant is one, which is general and doesn't specifically request some of the representations that have been made by Westland District Council. Those representations relate to usual EIA development timeframes, which was 16 weeks, but also in relation to the number of different schemes that are coming forward and are being examined, and therefore potentially the number of discharge applications that might be on Westland District Council's desk at any one moment. And that is specific in this context. And so we do ask that the applicant considers that and the proposed eight weeks timescale in light of those specific objections and give specific reasons why eight weeks is suitable or adjusts that to increase it. And in relation to the last point, which is that as the fee provision, we I think cited longfield. The other relevant point is that advice note 15, which is drafting development consent orders does contain a fee provision as standard. So if the applicant wishes to depart from that, we would ask for specific justification we do consider that the appropriate standard approach.

17:18

Okay, thank you. Can I just pick up with you you mentioned the movement from 60 weeks new reference, normal ei developed AIA development is 16 weeks. That's obviously for the approval of an EA application from start, not the approval of a discharge of a condition related to an EIA development. What if, if the applicant is moving in a general direction to increase timescales? What is a reasonable timescale that you think for a discharge of condition is more appropriate?

18:13

Should we shake Westland District Council? Yes, so the the point that was made in relation to EIA development, and the 16 week period is reflective of the fact that some of the requirements and I'll point specifically to requirement five, which appears to be more akin to reserved matters application does require further analysis and environmental assessments. On the other hand, other requirements don't. So it may be that a reasonable amount of time depends on the specific requirement, but the eight to 10 weeks, and it's something that I think we'd have to consider, and perhaps deal with in written representations. But the eight or perhaps 10 weeks for some of the other requirements might be reasonable, but the concern specifically relates to requirement five.

19:12

And in the context of the other justification for increasing time limit is workload in that what you're suggesting is that if all of these schemes are approved in a reasonably compressed time period, then the likelihood is that discharge of conditions or requirements will also happen in a very contained time, which will put additional resource stress on you rather than a time limit. Is that not a fee resource issue or a PPA issue rather than a time limit?

19:53

Show of shape Westlands, the District Council, yes. So it's probably a bit of both. It represents the fact that as it says and there's no mechanism within the draft DCO to prohibit multiple discharge applications, even in relation to one particular project, landing on Westland District Council's desk at any one time. But in that context and in the context of the other projects that are currently being examined, there are also that that may apply to the others in tandem. So it's accepted that perhaps one element of it is the arrangement, for instance, and resourcing, but I think one of the other aspects is time and the timescales that reflected Okay.

20:42

Lincolnshire, sorry, can I get your comments

20:46

for Lincolnshire county council, this court West Lindsay in the drive for a slightly longer timescale, just for comparison. It's so I noticed that you said oh, well, the conditions under a TCPA scheme, you would be required to discharge those in eight weeks and just emphasize what I said. Yeah, so just to emphasize what sort of shakes point this strict requirement five is, I mean, in all, but name, if this were a TCP IP scheme, it would be in reserved matters condition. And for reserved matter approvals, planning authority for major development, and bearing in mind, major development Under the TCPA

scheme could be somewhat smaller than this development, you'd get 13 weeks, and eight weeks is seen as the appropriate timescale for minor TCPA developments. So we are some way above that scale. And so the design implications, or the implications of a poor design being approved, or that much greater given the scale of the project. This isn't wholly a fee issue, because when we're talking about PPA fees, or fees for discharge of conditions, the sums involved a very small, think we're talking about, you know, 200 pounds, you know, we're not, we're not talking about large sums of money, so that the sums of money would not be sufficient for us to hire additional staff. So the fee does not support additional capacity. We couldn't go out and hire extra members of staff to assist with the discharge of these conditions with with the fees that we're talking about. So it's a capacity problem that has to be solved by additional time given relevant additional money given. So I think I think that's probably all. Yeah. Yeah. So I think we think 1010 weeks would be more reasonable. Thank you.

22:40

And when you say 10 weeks is that for all the requirements of just for condition five, or requirement five,

22:47

we'd ask for everything. But obviously requirement five is the biggest issue. Yeah.

22:58

Thank you.

23:01

Mr. Ling, on behalf of the applicant, just a welcome the clarification that the main concern is in relation to requirement five, I think this is the first time we're understanding that that is where the real concerns seem to lie. We will take it away and see if there's anything additional we can offer in terms of comfort, I think is a marker, it's probably unlikely that we would ever be able to get to a position where we could offer 16 weeks, which is you know, in effect for months, and is the termination as you've pointed out so as of a new EA development. But we're here you I think mat matters have been added. As I said we were intending to update the schedule for deadline three next week. In any event, I propose that we do that we share our drafting with the local planning authorities and then we can see if we can move matters forward.

24:00

Thank you very much, just to sort of round things off a little bit. Sorry. NCC, did you have any further comments that you wish to make on that what you've just heard?

24:11

Thank you see a pointer Nottingham shirt. Now we welcome the clarification regarding the change to eight week. Notifications. I think our position is slightly different because of the nature of the scheme in the in the county. So broadly happy with what we hear from the applicant there.

24:34

Thank you. So you're going to take away and look at the timescales potentially looking at adjusting timescales slightly differently from different requirements. And looking at whether or not there's a

potential of uplifting those and in terms of fees. Can we just go back to that and I understand the position on fees and why. In terms of advice number 15, which does include that you excluded those provisions.

25:10

Me standing on behalf of the applicant? Yes, it was, was a remainder preference to deal with these the planning performance agreement I just said, I think those have been offered to all of the local authorities. Nevertheless, we will take this reality constructions and see if we can accommodate the fees mechanism at the next TCO deadline.

25:31

Okay. And in terms of if you decided to offer planning performance agreements, would that be in the context of the DCO? So you would have an article requiring you to do that? Or would it be in site agreements? And you would have those PPAs in place before the DCO as other licenses or agreements in that shedule? Or would they be things that would come along? How would I secure the fact that those agreements would be provided? If that's the approach, you adopt

26:12

me standing on behalf of the applicant? And yes, I wouldn't suggest that the kind of performance agreements and should be are, if necessary, to secure them via the DCO their voluntary agreements, which the applicant has offered to the local planning authorities, if they wish to take them up. And we've most recently corresponded with some of those on that offer some of those cancels on those today. So I don't think it's necessary in your determination. So but I think if we can get comfortable on the fees, then

26:43

I suppose it's a question where, because if we had something in shedule, 16, which had a fees provision, then there's something within the mechanism of the DCO, which requires the provision of the fees. Whereas if that's excluded, and you are going to rely on PPAs, there's nothing within the DCO at all. That requires that other than your goodwill with the determining authorities that you come to a voluntary agreement with him, there's nothing to there that would suggest that you even offer them an agreement.

27:23

Anything on behalf of the African? Yes, your concern was noted. So I'm confident it is not something that you need to concern yourself with. So if you were to take that way we can respond and writing it at deadline three year

27:36

long as you've heard the issue. Thank you very much. Okay, display, probably wind up on sheduled 16. Then go back Randy consoles. Now there are issues in Qatar, but I'm sure no other issues. Okay, it will seem fine. Everybody else? Yes. Okay, thank you, everybody. I think that draws us to a conclusion on Item five on the agenda. So that takes me to item six is a very contained and short matter. I just wanted to just a checkpoint really with the applicant as to whether or not any other matters had evolved that

may require the submission of other agreements or licenses, that I need to be aware of whether these could impact on the examination. Is there any potential for 106 agreements or any other agreements? It's just using using today as a checkpoint to sort of say, is there anything else in the background that I need to be aware of

28:51

me standing on behalf of the applicant? No. So we are not aware of any updates required to the content and agreements position statement, any contents which are listed would be obtained by a post DCO award? We are not expecting any further updates either.

29:18

Okay, thank you very much. So that takes me to item seven, and then any other business Sorry, just

29:24

before we leave the item says Lincolnshire county council grateful. So just to re wave the flag that was waived earlier about monitoring, particularly for the fire risk strategy associated with the best that there'd be an ongoing obligation on Lincolnshire county council and potentially other authorities to monitor those. Those management plans in perpetuity offers 60 years. And so that comes with a revenue cost that we would look to consider discussing with the applicant in terms of providing as part of a one a six obligation No similar mechanism

30:13

that would be outside of a fee provision or at least sort of fee recovery for the other discharge of consent matters. But yeah, where you would be looking to go and do your 106 agreement or something of that nature?

30:25

Yeah. So as we identified earlier, it's definitely holding a chair County Council, the existing provisions in the draft DCA don't encompass obligations flowing from articles only from requirements. So this is finds its root in, in the articles rather than in the requirements. So it's not a discharge point. It's more of a it's a monitoring point.

30:58

publican,

30:59

me standing on behalf of the applicant, and yes, this was discussed briefly with Lincolnshire county council. And I think that we understand their position that they would like some form of cost recovery for their monitoring obligations during the operation of this scheme. And we're only just now considering it. So I think if we can take that away and discuss it with them, and hopefully come to an agreeable solution.

31:31

Okay, thank you very much. Now kiss then move on to any other business. So does anybody want to raise anything with me about the DCO that we have not already touched on?

31:46

This thanks. So much shake Westland District Council have just two points that progress our previous position. The first is is just a note for the applicant in respect of requirements 14 Our original position was that we should be the relevant determining authority. But following discussions, we are happy to be a consultation. And we are content that Lincolnshire county council on the relevant determining authority for that requirement. And the only other point is in relation to some of the representations we made about retention clauses for a number of requirements. Now, we note that some of the requirements have been have had retention clauses added, but others haven't. We've simply just asked that the applicant explains if they don't feel it's necessary for some of those other requirements to have retention clauses, that they indicate why or at least give us a position? It's slightly unclear at this stage, whether or not they haven't been added because they've been overlooked or they're not considered necessary.

32:55

Okay. Other specific requirements that you're aware of that you want to draw to their attention? So you can Yes, I can point them towards that. Yes. Great. Where are those

33:10

few requirements? I think our requirements six 815 and 18,

33:15

six, 815 and 18.

33:19

That's it may be that the applicant considers that can be dealt with through the relevant management plans. But we don't we don't know what the current position is. And that's simply a request for clarification.

33:30

So there's there's no attention closer news. And you're just wondering, is that an oversight or is that because that is done through the management plan? Yes. Yeah. Okay.

33:44

Amy's doing on behalf of the applicant? And yeah, no, so we have no issue in principle, I think it's a situation of DC has been updated at different deadlines and almost playing catch up with the submissions that have gone previously. So whenever a plan has to be implemented, as approved for the duration of the operation, we're happy to add in the clarification that we've got the issue requested. So we'll do that for the next deadline and hopefully, resolve any of these concerns.

34:12

Thank you. Thank you very much. Any other party have any other business?

34:23

Learning technical details? No, because Can I just ask if the applicant has considered an agreement with the local parishes for an annual contribution for the disruption that this project is going to cause them?

34:59

name is Tony On behalf of the applicant, the applicant is engaged with the relevant local planning authorities in relation to community benefits. But as you're aware, so that is not a matter which is relevant to the determination of the DCU application.

35:19

Okay, thank you.

35:22

Certainly courts. Is that your considered opinion then, sir, that it is not a matter matter for the DCO? I think an agreement, we're talking about all these commercial agreements and payments of fees on a regular basis, is also should be considered to the local population.

35:41

I hear your comment. I'm not here to provide positioned at this point in time I'm gathering information. I hear your comment, I'm gonna hear the applicants response.

35:59

Okay, I don't have any other matters that I wish to raise.

36:03

Sorry, Mr. Shaw, I'm just like you've got you've got a couple of hands up.

36:07

I've got your hands up. So I've got let me see. Fortunately, I don't have access to the list of parties. So Sophie summers, yes. Can I go to you, first of all, thank you for listening.

36:28

Thank you. So Sophie summers canal river trust, it's just a small question. And the parties have come a long way in agreeing protective provisions. And then your rule six letter, you requested a statement of common ground between the parties. It just occurred to me so I haven't had a chance to speak with Miss Sterling about about it. If you no longer needed a statement of common ground, then, could you let us know I'm very happy to enter one if that is helpful to the examining authority. And you don't need to answer now, but

37:04

a statement of common ground is always useful, identifies where you have reached agreement. And what those agreements are their protective provisions will actually be the clauses where you agree

between yourselves different matters, but that doesn't necessarily always cover all of the matters within the Protect within the statement of common ground. So, I think it is still useful to have that

37:27

Thank you. Thank you sir.

37:38

And then Mr. Pryor

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at thank you so Mark Pryor for 7000 acres, we continue to dispute that 60 years is temporary use and we believe that the scheme should be approved for the lifetime of the solar panels circa 35 years. The second point I wish to make is that we believe the scheme should be kept because then improvements in technology can be used to reduce the impact such as the height of the solar panels are not merely be used to increase the profitability of the scheme.

38:24

Sorry, when you say the scheme should be kept What do you mean by kept are the the the the

38:33

the generating capacity of the scheme should be kept?

38:38

Right. I am dealing with generating capacity in issue specific three. So we will have a discussion about that in the second session, which is tomorrow morning.

38:51

Thank you, sir. But I do note that in the past, some schemes such as Little Crow have had elements of the scheme cap

39:01

in the DSU in relation to the BSS Yes, yes, yes. Certainly I understand your comment. So you're you think that there should be at a cap on a generating capacity or be at the generating capacity does not of itself deal with the environmental impact of the Outland design principles which are related to the physical parameters of the scheme? Yes, sir. Yep, thank you, applicant, if you could only comment,

39:36

me standing on behalf of the applicant. So I would just refer to our previous submissions on this point explaining why it is not necessary or appropriate to include a generation cap. And as you've noted, generating capacity is an agenda item for tomorrow's hearings.

39:55

Sure, we'll explore that in greater detail there. Okay, in that case, I think we've dealt with all the hands up. No other matters in the room, I have a matter there to deal with review of issues and actions arising

haven't taken any specific action points arising from today's meeting, there are a number of updates to documents and matters which will be done in the normal course of event. And in terms of the normal deadlines. Important action from today's hearing is, obviously the update of the DCEU E M, and any other documents that are necessary to update. The next deadline is deadline three, which is Friday, the first of September 2023. And also any written summaries of submissions that have been put orally today from the parties should be submitted by deadline three, which as I say, it's Friday, the first of September. I've got no specific action points arising. I have in the timetable, and identified date for further written questions, if any should arise, which could include questions on the provisions of the DCO that are that are not covered here, or don't get concluded here. So there may be that that may arise. I'll just put that on notice. And there is obviously the potential for further consideration of the DCO if that's necessary, but we're we're moving along quite rapidly with that in any case, so that may not be the case. Can I just thank everybody for your time today. And for those joining us on the virtual room and it was here today. Thank you all very much. Your contributions are welcomed. Time night 1222. And the hearing is now closed. Thank you very much