

Via email only: monaoffshorewindproject@planninginspectorate.gov.uk

3rd December 2024

Dear Sirs

Mona Offshore Wind Farm ('the Project')
**Mr M T Leach and Mrs S A Leach ('the Owners') – CYM74465 – Nant
Ganol, Y Nentydd, Abergele, Conwy LL22 8EF ('the Property')**
Deadline 5 – Response to ExQ2

In response:

Q.2.1.4 – The Owners are not satisfied with the response at REP3-113.1. The statutory position is not sufficient to offer adequate protection for potential losses that may arise from the execution of the works. No assessment of compensation is being requested, merely an assurance from the Applicant that a sufficient route to protect the Property will be provided.

Section 10 of the Compulsory Purchase Act 1965 and the resultant “McCarthy Rules” (as consolidated by the House of Lords in Metropolitan Board of Works v McCarthy (1874) LR 7 HL 243) are wholly inadequate to provide protection against losses that may arise from the works (Injurious Affection) as they limit any loss to those that stem from the interference with any legal rights enjoyed by the Owners (specifically in this case, rights for the Water Pipe). The wider threat of impacts from increased noise, dust, vibration and other disturbances at the Property are already putting off prospective purchasers and this may result in a loss in value. It is likely that the quantum of any impact will directly affect the quantum of any loss (this is over and above the limited losses caused through interference with the rights to the Water Pipe).

This deficiency in statute has been raised by the Compulsory Purchase Association as an area for major reform as per the attached summary at Appendix 1. In a situation where this deficiency in statute has been identified and where there may clearly be a loss sustained by the Owners because of the wider execution of the works, the underlying compensation bedrock of equivalence is clearly not adequately addressed. This situation may present a basis of challenge to the Project on the grounds of Human Rights. A solution has been proposed to provide this protection should any loss need to be assessed because of the execution of the works. The assessment of quantum is not the issue, it is lack of provision of statutory protection that is issue.

If the Applicant can satisfy itself that no significant impacts will arise it is not clear why they are cautious to assure or underwrite such a position as requested. There has been no meaningful engagement with the Affected Party on these issues.

Q.2.6.20 – The Owners are content that section 10 of the Compulsory Purchase Act 1965 is sufficient to deal with any impact on the rights for the Water Pipe. As set out in the response to Q2.1.4 above, the matter of quantum is not for consideration here. The possible impacts of the

execution of the works generally (increased noise, vibration, dust, traffic etc) and the lack of statutory protection for any resulting losses over and above the impact on the Water Pipe needs to be acknowledged and provided for by the Applicant. When such is in place, quantum, if any, can be considered if losses arise. Given the proximity and identified potential impacts a position leaving the Owners potentially exposed is not sufficient or compliant.

Q2.8.14 & Q2.16.9 – As above with regards to comfort on route to compensation. Despite the mitigation proposed by the Applicant the levels of impact at the Property will still be significant and there has to be an acknowledgment to ensuring a fair and reasonable route to compensation is available to the Owners should it be necessary.

Yours faithfully,



Richard Fearnall MRICS

Appendix 1 – Compulsory Purchase Association – Major Reform Summary – S10 Injurious Affection. <http://www.compulsorypurchaseassociation.org/injurious-affection-s.10---compulsory-purchase-act-1965.php>



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What is the Problem	s.10 of the 1965 Act provides injurious affection compensation where legal rights held with land are interfered with but no interest is acquired from the claimant. The measure of compensation is the reduction in the value of the claimant's land as a result of the interference. Eligibility for compensation is summarised in the "McCarthy Rules" and includes a requirement that the interference with the affected right must have been "actionable" in the absence of the authority's statutory protection. The actionability of interference in the absence of protection stems from the law of tort but in many cases is not easily ascertainable, particularly in relation to interference with public rights which may or may not constitute an actionable tort. This uncertainty makes it difficult and potentially expensive for claimants to seek redress under this provision with little certainty as to the outcome.
Aim	To create greater certainty in relation to eligibility for compensation under s.10 to allow claimants and authorities to deal more quickly and efficiently with situations where public and private rights are interfered with in pursuance of public works.
What We Seek	We have considered this issue in the past without being able to propose a workable solution. The principal problem surrounds clearly defining criteria by which the interference with rights should be judged to fall within or without the provision in s.10, particularly in relation to interference with a public right which may constitute an actionable nuisance for example. We do not currently have reform proposals for this issue but welcome thoughts and observations that may inform our further consideration of the matter.
Notes from Discussion	Should do away with S10 and revise Part 1 and this should be a high priority for reform or any future Law Commission report. Do not agree that we should remove the actionability test.
Next Step/Actions	This issue to be considered further in light of Autumn statement on CP law reform. Matter for further discussion with DCLG.