

Our Ref: MW/Riv/AoC
Date: 24 November 2023
Enquiries to: Mark Woodger
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BY EMAIL

rivenhalliwmf@planninginspectorate.gov.uk

Dear Ms Adams

Planning Act 2008 (as amended) – Section 55
Application by Indaver Rivenhall Ltd for an Order Granting Development
Consent for the Rivenhall IWMF and Energy Centre
Adequacy of consultation request

Thank you for your letter as dated 13th November 2023 and the notification that the above Development Consent Order submission had been made to the Planning Inspectorate on the 10th November 2023, this submission we had been expecting.

The Planning Inspectorate now has until Friday the 08 December 2023 to determine whether to accept the application. During this period the affected Authorities along the route of the DCO, these being Braintree District Council and ourselves Essex County Council are asked, by Monday 27 November 2023 to submit a representation regarding the pre-application consultation and say whether, in the view of the affected Authorities, pre submission consultation has been sufficient to pass the test of the Adequacy of Consultation (AoC). This forms the response from Essex County Council (ECC) and you are asked to note that this meets the requested deadline for comment.

Authorities are asked to consider whether the applicant has complied with the following duties:

- Duty to Consult – Section 42 - Planning Act 2008 (as amended)
- Duty to consult the local community – Section 47 of Planning Act (as amended)
- Duty to Publicise – Section 48 of the Planning Act (as amended)

In making the following comments ECC has been minded of the document as provided by the Planning Inspectorate and currently available on the project web site, which

summarises the pre-application consultation, together with the Consultation Report and its Appendixes which seek to address the statutory requirements.

Pre-application Consultation

One round of statutory consultation on the proposals submitted by this DCO took place between the 28 June and 23 August 2023.

This followed a number of engagement meetings with the Authorities Essex County Council and Braintree District Council. It is also noted that the application site, which is currently under construction prior to commencement of the permitted operations, also has a regular Stakeholder Liaison Group. This helped develop and refine the consultation strategy at a site which has both a complex planning history and a high profile.

Both Authorities were asked their views on a draft Statement of Community Consultation (SoCC) and responded to the same, with these being accurately set out in the applicants Consultation Report at Table 2. These comment were, as the Report indicates, not added to significantly on formal consultation as the comments made previously were incorporated already.

ECC sees no reason why this consultation did not accord with its recommendations as made to the applicant in this respect. Similarly ECC agrees with the applicant's summary as set out within its as submitted "Consultation Report", with the document reference Document Reference: EN0101038/APP/5.1, version Revision Number 1.0, as dated November 2023.

Planning Act 2008 considerations

It now falls to consider whether the as mentioned pre-application consultation undertaken by the applicant has complied with the statutory requirements set out within sections 42, 47 and 48 of the Planning Act 2008. Each section of the Act will be addressed separately for clarity.

Duty to Consult – Section 42 - Planning Act 2008

The applicant must consult the following about the proposed application –

- (a) such persons as may be prescribed,
- (aa) the Marine Management Organisation (MMO), in any case where the proposed development would affect, or would be likely to affect, any of the areas specified in subsection (2),

- (b) each local authority that is within section 43,
- (c) the Greater London Authority if the land is in Greater London, and
- (d) each person who is within one or more of the categories set out in section 44.

Subsection a) refers to '*such persons as may be prescribed*'. These persons are listed in Schedule 1 to the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009. A list of those consulted has been provided in the Consultation Report and this appears to comply with those of relevance listed in Schedule 1.

A requirement to consult the relevant parish councils is included within Schedule 1. This also appears to have been complied with.

It is noted that pursuant to (aa) above there is no requirement in this case to consult the MMO as the order limits of the Rivenhall do not fall within the categories set out in subsection 2. Similarly the GLA as the application site is well outside its administrative boundary.

The Applicant has provided a list of the local authorities consulted on the project, this being ECC and Braintree District Council.

ECC is pleased to confirm that engagement with the applicants took place on the statutory consultation phase, hence it is of the view of ECC that the applicant has therefore complied with subsection b).

Subsection d) of section 42 requires the Applicant to consult each person who is within one or more categories set out in section 44. This would include owners, lessees, tenants or occupiers of land included within the boundary of the order limits or those with an interest in the land or with a power to sell or convey the land. A list of landowner and statutory undertaker consultation has been provided in the Consultation Report at Part D together with the consultation letter sent. It is not possible from this information to see if every person set out identified has in fact been consulted, nor does the Council know that it did not, hence no comments are provided on this.

Section 45 of the Act '*timetable for consultation under Section 42*' requires that the applicant notifies the consultee of the deadline for receipt of comments in relation to the consultation which must not be earlier than 28 days after the consultation documents are received. ECC can confirm that the requirements of section 45 of the Act have been met with respect to the consultation notification they received.

Duty to consult the local community – Section 47 of Planning Act

Section 47 of the Planning Act 2008 obliges developers to prepare a Statement of Community Consultation (SoCC) in consultation with the relevant Local Authorities, publish that SoCC and then undertake statutory consultation in conformity with that statement, in the form of:

- (1) The applicant must prepare a statement setting out how the applicant proposes to consult, about the proposed application, people living in the vicinity of the land.
- (2) Before preparing the statement, the applicant must consult each local authority that is within section 43(1) about what is to be in the statement.
- (3) The deadline for the receipt by the applicant of a local authority's response to consultation under subsection (2) is the end of the period of 28 days that begins with the day after the day on which the local authority receives the consultation documents.
- (4) In subsection (3) "*the consultation documents*" means the documents supplied to the local authority by the applicant for the purpose of consulting the local authority under subsection (2).
- (5) In preparing the statement, the applicant must have regard to any response to consultation under subsection (2) that is received by the applicant before the deadline imposed by subsection (3).
- (6) Once the applicant has prepared the statement, the applicant must—
 - (za) make the statement available for inspection by the public in a way that is reasonably convenient for people living in the vicinity of the land,
 - (a) publish, in a newspaper circulating in the vicinity of the land, a notice stating where and when the statement can be inspected, and
 - (b) publish the statement in such manner as may be prescribed.
- (7) The applicant must carry out consultation in accordance with the proposals set out in the statement.

In accordance with subsection (1) the Applicant prepared a Statement of Community Consultation (SoCC), based on prior informal consultation, which set out how they proposed to consult with '*people living in the vicinity of the land*'. The SoCC has been provided in the Consultation Report.

The Applicant consulted ECC on the draft SoCC with comments being provided before the deadline. ECC and Braintree District Council made several comments which were

addressed prior to the publication of the SoCC, with the as submitted comments on the draft being incorporated into the final document.

By preparing a SoCC and consulting the relevant local authorities with the '*consultation documents*' ECC is of the view that the Applicant has complied with subsections (1), (2), (3) and (4) of section 47. ECC are also satisfied that the Applicant generally complied with subsection (5) with comments raised regarding the SoCC being given due '*regard*' as required.

ECC also agree that in accordance with subsection (6)(za) of the Act that the Applicant made the SoCC available for inspection by the public in a way that is reasonably convenient and appropriate for people living in the vicinity of the land,

ECC are satisfied these newspapers '*circulate in the vicinity of the land*' as required by subsection (6)(a). Subsection (6)(b) also requires the SoCC to be published '*in any other manner as may be prescribed*'. It was detailed within the SoCC and revised SoCC that the statement would also be available to view at several other locations between specified dates.

Subsection (7) requires the Applicant to undertake the consultation in accordance with the details set out in the statement. ECC are satisfied that the Applicant has carried out the consultation in accordance with the SoCC.

Duty to Publicise – Section 48 of the Planning Act

- (1) The applicant must publicise the proposed application in the prescribed manner.
- (2) Regulations made for the purposes of subsection (1) must, in particular, make provision for publicity under subsection (1) to include a deadline for receipt by the applicant of responses to the publicity.

Part 4 of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 sets out how to '*publicise the proposed application in the prescribed manner*' in order to comply with subsection (1). The Consultation Report at Appendix F provides copies of the section 48 notices.

The publication of the proposed application as set out in the Consultation Report complies with subsection (1). The other phases of the consultation were also published in local newspapers.

The press notice published provided a deadline for the receipt of responses to the consultation and therefore complied with subsection (2) of section 48.

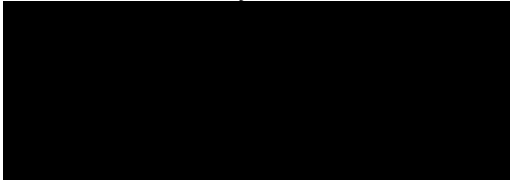
Similarly, the timeframe within which responses were requested exceeded the requirement set out in the 2009 Regulations of *'not less than 28 days'*.

Conclusion

It falls to the Planning Inspectorate to determine whether the applicant has complied with the requirements of the Planning Act 2008 for it to accept the application, and in doing so take into account the views of the affected Authorities along the route of the DCO proposal.

It is the ECC's view that, on balance and being mindful of the nature of the development as here applied for by this DCO, that the Applicant has complied with the statutory requirements set out in sections 42, 27 and 48 of the Planning Act 2008 for the reasons set out within this letter.

Yours sincerely,



Graham Thomas

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