

Dear Sirs

Please find attached a submission from the NFU and Lincolnshire Association of Agricultural Valuers in response to the questions CA 2.3 and CA2.6 from the Examining Authority's second written questions.

Please if any further information is required do not hesitate to make contact.

Kind regards

Louise.

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PLANNING ACT 2008

INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES 2010

SUBMISSIONS OF THE NATIONAL FARMERS UNION (NFU) AND THE LINCOLNSHIRE ASSOCIATION OF AGRICULTURAL VALUERS (LAAV) REGARDING THE TRITON KNOLL ELECTRICAL SYSTEM DEVELOPMENT CONSENT ORDER 201 [...]

PLANNING INSPECTORATE REFERENCE NO EN020019

SUBMISSIONS OF THE NFU & LAAV IN ANSWER TO QUESTIONS CA 2.3 and CA 2.6 OF THE EXAMINING AUTHORITY'S SECOND WRITTEN QUESTIONS

DATE 5th January 2016

Introduction

The Examining Authority ("ExA") raised two Questions on 11th December 2015 on which they sought answers:

(1) CA 2.3 Acquiring land by negotiation

In a number of places in your Written Summary of Oral Submissions Made on Behalf of the National Farmers Union and the Lincolnshire Association of Agricultural Valuers at the Compulsory Acquisition Hearing on 13 November 2015 [REP3-027] you state that Agents felt unable to recommend the Heads of Terms to their clients. Explain why this is so.

The Agents felt unable to recommend the Heads of Terms to their clients for (*inter alia*) the following reasons:

- a. TKOWFL were seeking a Permanent Easement, and would not consider any alternative arrangement. Our clients do not consider that a permanent right is required for a temporary project and that a conventional subterranean lease for the same period as the lease for the offshore wind farm itself would be both adequate and appropriate. Very recently TKOWFL have proposed a lease of rights and the Agents have requested the opportunity to have an independent review of this latest proposal as compared to a subterranean lease.
- b. TKOWFL refuse to adequately acknowledge the existence of, or meaningfully engage with, occupiers (where distinct from land owners) despite them having an obvious physical and financial interest.
- c. Land owners and occupiers are most concerned about the physical impact on existing field underdrainage systems and the proposed reinstatement thereof. TKOWFL did not consider the specific detail of individual field underdrainage systems when fixing the cable route. In a number of instances they could have mitigated or avoided impact on those systems by having due regard to such information. We did not, and do not, consider that the Heads of Terms give adequate protection to landowners and occupiers.
- d. The principal financial terms on offer are considered inadequate when considered against other similar projects the Agents have been involved with.
- e. Provisions on future crop loss claims are inequitable and unacceptable.
- f. The restrictions as set out in the draft Deed of Grant are too onerous and unacceptable.
- g. The lack of provision for payment for survey access during the option period is unconventional and unacceptable.
- h. The scope of the Indemnity clause within the draft Deed of Grant is too narrow.
- i. TKOWFL proposed both a grossly inadequate cap on, and a limit on the scope of, professional (legal and agents) fees which exposes landowners and occupiers to incurring unintended professional costs. This is inequitable and is unacceptable.

(2)CA 2.6 alternatives to compulsory acquisition

In your Written Summary of Oral Submissions Made on Behalf of the National Farmers Union and the Lincolnshire Association of Agricultural Valuers at the Compulsory Acquisition Hearing on 13 November 2015 [REP3-027] you state that the compulsory acquisition of land or rights over land is a draconian measure which should only be sanctioned as a measure of last resort. Show where in statute or guidance the test of 'last resort' is required or suggested.

2.1. The test of last resort is explicitly referred to in paragraph 2 of “*Guidance on Compulsory purchase process and The Crichel Down Rules for the disposal of surplus land acquired by, or under the threat of, compulsion*” (DCLOG October 2015):-

“Compulsory purchase is intended as a **last resort** (*emphasis added*) to secure the assembly of all the land needed for the implementation of projects”.

2.2. It is implicit in the words of paragraph 8 of “*Planning Act 2008 Guidance related to procedures for the compulsory acquisition of land*” (DCOLG Sept 2013):-

“The applicant should be able to demonstrate to the satisfaction of the Secretary of State that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored.”

2.3 It is submitted that it is also implicit in the European Convention on Human Rights.

3.0 The background to this issue is that:-

- 3.1 The rights sought in the draft DCO are required for the installation of underground cables;
- 3.2 Whilst there were some talks with some of the landowners of a general nature only, TKOFWL did not engage with the affected landowners and occupiers prior to November 2015 in any meaningful way, or at all, to negotiate for the acquisition of any rights;
- 3.3 Prior to December 2015 TKOFWL did not appear to consider seriously or at all the issue as to whether the acquisition of any lesser rights than permanent acquisition would suffice in respect of the Order Land; and
- 3.4 The Landowners represented by the NFU and the LAAV have maintained that their respective clients would be, and would have been, prepared to negotiate for the grant of rights less than permanent acquisition in respect of the Order Land.

4.0 Compulsory Acquisition: the legal and policy framework

4.1 TKOWFL must show a “*compelling case in the public interest for the land to be acquired compulsorily*”: see section 122(3) of the Planning Act 2008 Act. Article 1 of the First Protocol of the Convention for the Protection of Human Rights provides: “*Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*”

4.2 Policy guidance is found in paras 8 and 12-16 of the DCLG *Planning Act 2008 - Guidance related to procedures for the compulsory acquisition of land*, September 2013 (“the Guidance”). Para 45 of the Guidance states that ODPM Circular 06/2004 *Compulsory Purchase and the Crichel Down Rules* contains further general guidance on matters related to compulsory acquisition. This Guidance has now been withdrawn and new “*Guidance on Compulsory purchase process and The Crichel Down Rules for the disposal of surplus land acquired by, or under the threat of, compulsion*” was published by DCLOG in October 2015. Accordingly the ExA should be considering this publication.

5.0 The following are extracts from “Planning Act 2008 Guidance related to procedures for the compulsory acquisition of land” (DCOLG Sept 3013):

5.1 General considerations

Paragraph 8 in Planning Act 2008 Guidance

The applicant should be able to demonstrate to the satisfaction of the Secretary of State that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored. The applicant will also need to demonstrate that the proposed interference with the rights of those with an interest in the land is for a legitimate purpose, and that it is necessary and proportionate

5.2 Compelling case in the public interest

Paragraph 12

In addition to establishing the purpose for which compulsory acquisition is sought, section 122 requires the Secretary of State to be satisfied that there is a compelling case in the public interest for the land to be acquired compulsorily.

Paragraph 13

For this condition to be met, the Secretary of State will need to be persuaded that there is compelling evidence that the public benefits that would be derived from the compulsory acquisition will outweigh the private loss that would be suffered by those whose land is to be

acquired. Parliament has always taken the view that land should only be taken compulsorily where there is clear evidence that the public benefit will outweigh the private loss.

5.3 Balancing public interest against private loss

Paragraph 14

In determining where the balance of public interest lies, the Secretary of State will weigh up the public benefits that a scheme will bring against any private loss to those affected by compulsory acquisition.

Paragraph 15

In practice, there is likely to be some overlap between the factors that the Secretary of State must have regard to when considering whether to grant development consent, and the factors that must be taken into account when considering whether to authorise any proposed compulsory acquisition of land.

Paragraph 16

There may be circumstances where the Secretary of State could reasonably justify granting development consent for a project, but decide against including in an order the provisions authorising the compulsory acquisition of the land. For example, this could arise where the Secretary of State is not persuaded that all of the land which the applicant wishes to acquire compulsorily has been shown to be necessary for the purposes of the scheme. Alternatively, the Secretary of State may consider that the scheme itself should be modified in a way that affects the requirement for land which would otherwise be subject to compulsory acquisition.

Such scenarios could lead to a decision to remove all or some of the proposed compulsory acquisition provisions from a development consent order.

6.0 The following are extracts from “**Guidance on Compulsory purchase process and The Crichel Down Rules for the disposal of surplus land acquired by, or under the threat of, compulsion**” (DCLOG October 2015)

Paragraph 2 of the guidance

6.1 Acquiring authorities should use compulsory purchase powers where it is expedient to do so. However, a compulsory purchase order should only be made where there is a compelling case in the public interest. The confirming authority will expect the acquiring authority to demonstrate that they have taken reasonable steps to acquire all of the land and rights included in the Order by agreement. Where acquiring authorities decide to/arrange to acquire land by agreement, they will pay compensation as if it had been compulsorily purchased, unless the land was already on offer on the open market.

6.2 Compulsory purchase is intended as a last resort to secure the assembly of all the land needed for the implementation of projects. However, if an acquiring authority waits for negotiations to break down before starting the compulsory purchase process, valuable time will

be lost. Therefore, depending on when the land is required, it may often be sensible, given the amount of time required to complete the compulsory purchase process, for the acquiring authority to plan a compulsory purchase timetable as a contingency measure; and initiate formal procedures.

6.3 This will also help to make the seriousness of the authority's intentions clear from the outset, which in turn might encourage those whose land is affected to enter more readily into meaningful negotiations. When making and confirming an order, acquiring authorities and authorising authorities should be sure that the purposes for which the compulsory purchase order is made justify interfering with the human rights of those with an interest in the land affected. The officers' report seeking authorisation for the compulsory purchase order should address human rights issues. Further guidance on human rights issues can be found on the Equality and Human Rights Commission's website.

Paragraph 16 in the guidance

6.4 Undertaking negotiations in parallel with preparing and making a compulsory purchase order can help to build a good working relationship with those whose interests are affected by showing that the authority is willing to be open and to treat their concerns with respect. This includes statutory undertakers and similar bodies as well as private individuals and businesses. Such negotiations can then help to save time at the formal objection stage by minimising the fear that can arise from misunderstandings.

6.5 Talking to landowners will also assist the acquiring authority to understand more about the land it seeks to acquire and any physical or legal impediments to development that may exist. It may also help in identifying what measures can be taken to mitigate the effects of the scheme on landowners and neighbours, thereby reducing the cost of a scheme.

6.6 Acquiring Authorities are expected to provide evidence that meaningful attempts at negotiation have been pursued or at least genuinely attempted, save for lands where land ownership is unknown or in question.

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