

From: [Holmes, Jon](#)
To: [Aquind Interconnector](#)
Subject: Havant Borough Council - Deadline 7 comments
Date: 25 January 2021 16:57:31

Dear Heffin,

Aquind Interconnector Project

Ref: EN020022

Deadline 7 Submission

The following is Havant Borough Council's response to the Deadline 7 submission.

HBC received an Employment Skills Plan on deadline day for responses for Deadline 7, which the Applicant intends to submit to the examination. HBC will review and comment on this in due course.

Comments is response to the draft Development Consent Order. Please note that as Environmental Health is a shared service between EHDC and Havant Borough Council, the following comments are on behalf of both Councils.

The Applicant still has not demonstrated the need for Article 9 within the proposed draft DCO. No clarification has been provided and the Applicant has simply advised that this is a common condition. Whilst EHDC/HBC accepts it may have been used elsewhere, we do not consider that this is a site-specific justification, as there are also DCOs commonly without this provision. EHDC/HBC does not consider that it is appropriate to seek exemption from primary legislation (*Environmental Protection Act 1990 – Part III – Statutory Nuisance*) without site-specific justification. It is considered Section 80 of this legislation provides adequate defences in terms of approvals under the Control of Pollution Act 1974 (COPA) (*Section 80 (9)(a)*) and in the demonstration of Best Practical Means (BPM) (*Section 80 (7)*).

Reference was made to the statutory nuisance statement within the EIA assessment, relating to noise and vibration, that concludes “no nuisance is likely to occur” (*PINS Reference EN020022*) and it was questioned if this document was therefore correct. It is understood that the Applicant has stated that the lack of Article 9 would prejudice their position from an “Agent of Change” perspective. It is unclear what the Agent of Change argument is that is relevant here (*detail was not provided to this reasoning*).

Regarding construction, we have less concern over Article 9 if it seeks only to provide additional assurances regarding nuisance action during the development phase. EHDC/HBC accepts that these impacts are of shorter-term duration and that the proposed Construction Environmental Management Plans (CEMP) and COPA provisions provide a degree of assurance during the construction phase.

However, EHDC/HBC still have concerns with Article 9 referencing the operating (use) period. The inclusion of the term “cannot be reasonably be avoided” is not favoured because it is considered to water down the test of BPM that would otherwise be in place.

The applicant has now proposed a defence based upon following the Noise

Management Plan (NMP) as referenced with “condition 20” of the draft DCO (*clarification was subsequently sought by Inspector that this should have been referenced as Requirement 20 - Control of noise during the operational period*). Although the inclusion of a NMP is welcomed, EHDC/HBC have concerns that it is unreasonable over the 40-year life of such an operation to seek an exemption from statutory nuisance solely based on a NMP before all equipment and operational realities have been established. If there is the opportunity to require the NMP to be reviewed and revised at appropriate intervals that would be welcomed – for example at a 5-year interval, or if a new operator takes over or there are material changes to the installation plant /equipment. This would make it more palatable.

In terms of the Agent of Change, The revised paragraph 182 of the National Planning Policy Framework (NPPF) states:

“Planning policies and decisions should ensure that new development can be integrated effectively with existing businesses and community facilities (such as places of worship, pubs, music venues and sports clubs). Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use) in its vicinity, the applicant (or ‘agent of change’) should be required to provide suitable mitigation before the development has been completed.”

This is expanded within the associated Planning Guidance on noise Paragraph: 010 Reference ID: 30-010-20190722.

This should provide the applicant with reassurance, not concern, that any future development that could prejudice their operation would be assessed in planning terms in accordance with the Agent of Change principle. The Planning Authority would be required to ensure that any proposals for sensitive receptors closer to the Applicant’s site would not therefore prejudice agreed operational parameters. The applicant is therefore seeking planning controls via this DCO to negate a concern that the NPPF already provides adequate controls and duties upon the planning authority to prevent.

The Agent of Change principle is not part of a defence to proceedings in statutory nuisance under the Environmental Protection Act 1990 (or in common law nuisance) and it maybe that it is this that Applicant is referring to.