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Hector Pearson
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Dear Mr Pearson

ALTERNATIVES IN APPLICATIONS FOR DEVELOPMENT CONSENT

Thank you for your letter of 22 February 2012. I am sorry not to have replied sooner. I am sure you will appreciate that these are complex matters on which I have had to take advice.

We have considered very carefully the arguments you put forward in your letter to support the proposition that an application for development consent could include alternative options for limited elements of the proposed nationally significant infrastructure development, and that the decision maker could, if he or she were minded to grant consent, choose between those alternatives.

We agree that the decision maker does have powers under the Planning Act 2008 to grant consent in the manner envisaged subject to my comments below.

You correctly draw a clear distinction between alternative options submitted as part of an application for development consent, and alternatives submitted or considered after the application has been made. In relation to the latter, we broadly agree with your comments on the IPC's powers under s114 of the Planning Act 2008, but I do not propose to say any more about that here, as it is the former which is more germane to your central proposition.

Applicants should make it clear in their application documents whether they are seeking authorisation for one of any alternative options, or whether they are seeking consent within the 'Rochdale envelope'.

Consent granted where a Rochdale envelope approach had been taken would allow the applicant, potentially, to choose at a later date from a number of alternative arrangements within an outside envelope (often defined by the Order limits subject to any allowed deviation). The number of permutations within that envelope, and the fact

that the details are to be submitted at a later date, mean it may not be appropriate to describe those as 'alternatives'.

Consent granted under the approach you have outlined would authorise only one specified scheme, and is most likely to be appropriate for linear schemes, where applicants may look for flexibility at certain pinch points or in areas of most environmental impact. This flexibility would not lend itself to a Rochdale envelope approach, and would be better expressed as alternative options within the application. For example, an application might propose *either* an underpass *or* a bridge in connection with a railway or highway development; or propose *either* an overheard line *or* a section of undergrounding through a particular area. We agree that there would be an expectation that the applicant in such cases would express a preference for one option over another.

While similar points of law arise across these two approaches to flexibility, particularly with regards to EIA Regulations and consultation requirements, it will be important for all parties to understand which approach to seeking consent is being taken in each case.

Where an applicant is applying for alternative options, a number of important principles will in our view apply.

1. No alternative proposed should result in a scheme comprising development for which development consent is not required. If, for example, options in an application for a long overhead line involved undergrounding certain sections, it would be important that it was clear that the applicant was (irrespective of any option proposed) seeking authorisation for an electric line above ground comprising an NSIP.
2. It must be clear what has been applied for - and it is up to the applicant to articulate that appropriately in all relevant application documents including the draft development consent order.
3. The alternatives should not be so different that they appear to result in entirely different schemes. Questions of fact (including the scale and nature of the proposed development) will need to be considered in order to determine that development consent is being sought for what is in essence one scheme. The approach you propose could not be used to seek consent for either one of two entirely different schemes.
4. It must be clear that all the alternative options proposed in the application for development consent have been robustly assessed - in accordance with EIA Regulations and with sufficient clarity of evidence to support the proposal. The approach you outline in the relevant section of your letter dealing with EIA would appear to be appropriate.
5. It must be clear that the consultation carried out at pre-application stage has included the alternative options proposed in the application for development consent. The approach you outline in the relevant section of your letter dealing with consultation would appear to be appropriate.

Where alternatives were proposed within an application, there would be an opportunity for interested parties to put forward their views on these alternatives. Given that the

applicant would have had to assess any alternative options, and assuming it had stated and justified its preference for one over another, interested parties wishing to argue for a non-preferred option would need to provide evidence, whether based on the applicant's assessment or otherwise, to support the alternative and counter the applicant's evidence on its preferred option. The Examining Authority would then be able to examine the evidence and make a recommendation to the Secretary of State as to which, if any, option should be consented.

In considering the best approach to this issue, applicants should have regard to any relevant guidance issued by the Department for Communities and Local Government.

This letter constitutes advice under s51 of the Planning Act 2008 and I will therefore be publishing it on our website. As it will assist understanding, and taking account of the fact that you have indicated that you have no objection to its publication, I will also be publishing your letter of 22 February 2012.

Yours sincerely

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