

Planning Act 2008

Infrastructure Planning (Examination Procedure) Rules 2010

PINS – TR030001

Objector Reference – 10015525

Proposed AMEP

Associated British Ports - Responses to ExA Questions

Question 60: With specific reference to Section 2 of ABP's Relevant Representation –

- (a) Is there evidence to challenge or refute the evidence offered in Document 12 in the AMEP application, Project Justification, that using standard industry methodology the notional rated Port Capacity of the proposed quay and associated storage area would be 6.54 million tonnes per annum, thereby exceeding the threshold of 5 million tonnes set out in Section 24(3)(c) of PA 2008?

ABP's response – ABP disputes the statement made in the application's Project Justification. The information provided to date does not demonstrate a proposed use which would achieve the notional rated Port Capacity.

What is very clear, however, is that the project that has been assessed – an offshore wind turbine manufacturing facility supported by a quay that will be used solely for the shipment of completed wind turbines and/or the shipment of materials needed to manufacture the wind turbine, fails to meet the minimum 5 million tonnes threshold set out in the PA 2008. It falls so far beneath it that the project cannot – even with the broadest and most generous interpretation – be termed an NSIP.

The project which has been the subject of environmental assessment is not a quay that is 'capable of handling' more than 5 million tonnes of general cargo, but rather a quay that would be handling the comparatively limited volume of materials associated with the manufacture and shipping of wind turbines.

The points and the implications arising in connection with the above are discussed further in the written representations submitted on behalf of ABP.

- (b) On what basis does ABP contend that the Secretary of State could conclude that the manufacture of large wind turbines does not constitute Associated Development as specified in Section 115 of the PA 2008 and as exemplified in CLG Guidance on Associated Development, for example as an associated working site?

ABP's response – Paragraph 10 of Government Guidance on Associated Development (DCLG, September 2009) provides that Associated Development -

*"should not be an aim in itself but should be subordinate to and **necessary for the development and effective operation to its design capacity of the NSIP** that is the subject of the application."* (DCLG emphasis)

Paragraph 10 continues –

"Development should not be treated as associated development if it is actually an integral part of the NSIP."

As a footnote to this last statement, it should be noted that the Guidance also provides that development –

"should not be treated as associated if it is only necessary as a source of additional revenue for the applicant, in order to cross-subsidise the cost of construction of the core infrastructure. This does not mean that the applicant cannot cross-subsidise, but if part of the development is only necessary as a means of cross-subsidising the main development then this part of the development will not be treated as associated development."

Able describe the project for which authorisation is sought in their Notice of Application (Lloyds List, 27 January 2011) as follows –

"Able is proposing to build a 1320m long quay at Killingholme on the South Humber Bank in North Lincolnshire which together with associated development will allow the manufacture and transportation of wind turbines to sites in the North Sea."

In the light of the above, the wind turbine manufacturing element of the development is either:-

- (i) an integral part of the project, which on the basis of the description detailed above is plainly intended to be the case – whereupon it cannot constitute "associated development" in that it cannot be viewed as being "subordinate" to the NSIP element; or

- (ii) it is unrelated to the proposed new quay, (and therefore, falls outside the PA 2008 thus requiring a separate planning permission) whereupon the quay falls even further below the NSIP threshold than is suggested in our answer to question 60(a) above.

ABP does not see how in either scenario, the manufacturing element of the proposal can be considered to be "subordinate" in accordance with the PA 2008, thereby constituting "associated development". It seems to us that the purpose of the manufacturing facility, as assessed, is to manufacture wind turbines for the off-shore wind industry. On that basis, therefore, it follows that the quay is being provided to service the manufacturing facility and as a consequence, it is the quay that is subordinate to the facility.

These points are amplified in the written representations of Philip Rowell of Adams Hendry Consulting.

- (c) Does ABP consider the proposed restriction in para 3(b) of Schedule 1 of the Draft Development Consent Order to "the provision of onshore facilities for the manufacture, assembly and storage of components and parts for offshore marine energy and related items" to be an appropriate and adequate restriction? If not, why not, and what alternative provision would ABP wish to see?**

ABP's response - An analysis of the project for which authorisation is seemingly being sought by the applicant through the Development Consent Order is provided in the written representations of Philip Rowell, submitted on behalf of ABP. This analysis demonstrates that sub-paragraph (3)(b) of Schedule 1 of the draft Order is not in fact a restriction on the use to which the NSIP can be put, or indeed a restriction at all; rather it is simply a description (albeit ill-defined) of one element of the associated development for which authorisation is being sought. It certainly cannot be interpreted as operating as a restriction on powers conferred elsewhere in the Order.

Authorised development is defined as the "*development described in Schedule 1 and any other development authorised by the Order*". Other powers proposed to be granted in the Order include Article 10, which authorises general harbour development anywhere within the Order limits. The description of development in para 3(c) of Schedule 1, however, cannot and does not restrict the exercise of these powers either wholly or partially.

It is for the applicant to clarify the wording in the context of the assessed project.

Question 61: With specific reference to Section 7 of the Relevant Representations, does ABP still maintain that there is serious inconsistency in the description of the proposed berth works in the Environmental Statement? If so, what precisely are these inconsistencies, and what are the issues that have still to be assessed?

ABP's response - The problems identified in section 7 of our Relevant Representations have now been amplified by the written representations submitted by Peter Whitehead of ABPmer. . In the context of Mr Whitehead's representations, however, it should be noted that the term "berth" is now described as the "quay".