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Brian Greenwood
Osborne Clarke
By email only

Our Ref: TR030001
Date: 25 July 2012

Dear Mr Greenwood,

SUBMISSION re INFRASTRUCTURE PLANNING (ENVIRONMENTAL IMPACT ASSESSMENT) REGULATIONS 2009 REGULATION 17

I am writing on behalf of the Panel appointed as Examining Authority for the Able Marine Energy Park application in response to your submission of 17 July 2012 following the first Specific Issue hearing on the draft Development Consent Order (DCO) on 12 July 2012.

In your submission you make three substantive points. I am responding to each of them specifically.

First: the Environmental Statement does not supply data about, nor assess, a general cargo port. The material in it is confined to facilities dedicated to wind energy. The DCO, however, as currently drafted, if approved, would authorize a general cargo port.

The applicant stated at the hearing that they would be happy to amend the draft DCO so that it was clear that it would not authorise a general cargo port. In their summary of their oral representations made to the Examining Authority on 23 July the applicant has now stated in writing –

The applicant agrees that a restriction in the type of cargo that the development should be permitted to handle should be imposed in the DCO to reflect the basis of environmental impact assessment (EIA) and shadow Habitats Regulations Assessment (sHRA). A proposed draft requirement that takes into account any suggestions from other stakeholders will be included in the revised DCO to be submitted by 3 August. The draft requirement is likely to restrict the cargo that the harbour is permitted to handle to that consisting of, associated with or ancillary to marine energy infrastructure, and adopt a similar mechanism for changes to this restriction as operated by ABP in its Associated British Ports (Hull) Harbour Revision Order 2006. Such changes would be subject to EIA and appropriate assessment as normal.

This will be subject to further examination but it appears to dispose of the concern you have expressed.

Second: The 1500 pages of 'Supplementary Environmental Information' which was not

supplied in full until July 9th, only very shortly before the oral hearing of July 12th suggest that Able now recognise that the Environmental Statement was inadequate even for a facility limited to wind energy.

The 'Supplementary Environmental Information' was submitted by the applicant, and given that description by the applicant. The Examining Authority did not request this information pursuant to Regulation 17 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (the EIA Regulations)

The fact that the applicant sees a need to amplify or elucidate or supplement the material in the original application does not, in the Panel's judgement, necessarily imply that the Environmental Statement was or is inadequate.

It is inevitable in the course of an even-handed and rigorous examination that issues will be raised by either the Examining Authority or other parties to the examination which require clarification or some other response from the applicant, or where the applicant thinks that their case will be assisted by volunteering supplementary information.

Third: although the material supplied a few days before the oral hearing has not yet been fully analysed by ABP (nor by the time of the hearing by others such as the EA and NE) it appears to be inadequate even if the assessment were limited to wind energy facilities. For example it is not cross referenced to the original ES, nor is its significance explained.

The Examining Authority is currently considering the supplementary information, and will bring into this consideration any comments made by other parties to the examination.

The Examining Authority has not concluded at this time that the Environmental Statement is deficient and that it requires further information to make it an Environmental Statement.

If the Examining Authority considers that more supplementary information or explanation is required relating to the environmental information put forward by the applicant, then we shall use the second round questions, the provisions of Rule 17 or the scheduled Specific Issue Hearings on matters relating to the Habitats Regulations Assessment as appropriate and necessary.

As I said at the hearing, the Examining Authority has at all times a duty to consider whether the Environmental Statement as submitted "should contain further information," as defined in EIA Regulation 2 (1), to enable the Environmental Statement to comply with Schedule 4 of the EIA Regulations.

In the event that the Examining Authority decides at any time to suspend consideration of the application a written statement will be provided giving clearly and precisely the full reasons for its conclusions, in accordance with EIA Regulation 17 (1) (a).

If the Examining Authority is of the view that further information is required under EIA regulation 17 (2), then consideration of the application must be suspended until the information has been produced by the applicant and the publicity requirements under EIA Regulation 17 (3) have been met in full.

Under s.98 of the Planning Act 2008 the Examining Authority is under a duty to complete the examination of this application by 25 November 2012. It would then be for the Secretary of State, using his discretion under s98 (4), to consider whether or not to extend the statutory timetable if it is not possible by that date to meet the requirements of EIA Regulation 17 and to complete the work of the examination as timetabled.

Yours sincerely,

Robert Upton

Lead member of the Panel of Examining Inspectors

Advice may be given about applying for an order granting development consent or making representations about an application (or a proposed application). This communication does not however constitute legal advice upon which you can rely and you should obtain your own legal advice and professional advice as required.

A record of the advice which is provided will be recorded on the Planning Inspectorate website together with the name of the person or organisation who asked for the advice. The privacy of any other personal information will be protected in accordance with our Information Charter which you should view before sending information to the Planning Inspectorate.