

3/18 Eagle Wing
Temple Quay House
2 The Square
Bristol, BS1 6PN

Help line: 0303 444 5000
e-mail: ablemarineenergypark@infrastructure.gsi.gov.uk

Mr Brian Greenwood
Osborne Clarke
By email only

Our Ref: TR030001

Date: 20 September 2012

Dear Sir/Madam

PROPOSED ABLE MARINE ENERGY PARK, SOUTH KILLINGHOLME

REGULATION 17 INFRASTRUCTURE PLANNING (ENVIRONMENTAL IMPACT ASSESSMENT) REGULATIONS 2009 (EIA REGULATIONS)

Thank you for your letter of 2 August responding to my letter of 25 July. I apologise that I have not been able to reply before now.

You have asked for further clarification about the points made in my letter of 25 July and I think it would be helpful to all parties if I seek to address again the central concerns in your submission of 2 August.

(1) It is a well-established principle that the cases where an Environmental Statement is likely to be so deficient as not to be an Environmental Statement will be "few and far between"¹ and that whether or not an Environmental Statement is deficient is a matter for the reasonable judgment of the decision-maker.² On the facts of this particular case the Panel considers that the Environmental Statement as originally submitted was not deficient to the point that it did not constitute an environmental statement thus requiring suspension of the examination under EIA Regulation 17.

(2) The supplementary information submitted on 29 June 2012 by the applicant does not lead the Panel to conclude that the Environmental Statement as submitted was deficient and should contain further information in order to be an Environmental Statement requiring suspension of the examination under EIA Regulation 17.

(3) As noted above, it is the adequacy of the Environmental Statement as submitted by the applicant on 19 December 2011 (referred to by the applicant as an Environmental Statement) which has been considered by the Panel.

The requirement to suspend consideration of the application arises if the Examining Authority "is of the view that the statement should contain further information." The definition of "further information" in EIA Regulation 2 does not expressly require it to be requested by the Examining Authority for it to be "further information" although it must in the view of the Examining Authority "be required" to be included. If additional information is considered to be further information (whether submitted in response to a request or voluntarily by the applicant) the Examining Authority must suspend consideration of the application.

¹ R (Blewett) v Derbyshire County Council 2004

² Humber Sea Terminal Ltd v Secretary of State for Transport 2005

To conclude, on the facts of this particular application the supplementary information submitted voluntarily by the applicant has not led the Panel to conclude that the Environmental Statement as submitted should contain further information in order to be an Environmental Statement requiring suspension of the examination under EIA Regulation 17.

Yours faithfully

Robert Upton

Lead member of the Panel of Examining Inspectors