



Meeting note

File reference

Status

FINAL

Author

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Date

8 March 2018

Meeting with

Able Humber Ports Limited

Venue

Teleconference

Attendees**Able Humber Ports Limited (AHPL)**

Angus Walker (BDB)

Andrew Lister (BDB)

Peter Stephenson (Able UK)

Richard Cram (Able UK)

The Planning Inspectorate (the Inspectorate)

Dave Price – EIA and Land Rights Manager

Kate Mignano – Case Manager

Rob Ranger – Case Manager

Meeting**objectives**

Introduction to a potential Non-Material Change

Circulation

All

Summary of key points discussed and advice given:

The Planning Inspectorate explained the duties placed upon it under section 51 of the Planning Act 2008 (as amended) (the PA2008). A note of the meeting would be taken recording the key points discussed and any advice issued by the Planning Inspectorate. The note would be published on the Planning Inspectorate's website. Any advice issued by the Planning Inspectorate would not constitute legal advice upon which the Applicant, or others, could rely.

Project Introduction

AHPL introduced their proposed change to the Able Marine Energy Park Development Consent Order 2014 to allow for alternative provision of an area of mitigation land. The land is currently described as "Mitigation Area 4", and it is proposed to substitute for it an area currently outside the order limits, alongside Mitigation Area 3.

AHPL explained that Natural England had confirmed that they had no ecological concerns about the proposed change, and that Planning Permission for the new mitigation area had been granted by the local authority following an Appropriate Assessment.

The proposed change would be to include the new area of land within the Order Limits. There are no new landowners affected, and the land is currently under the control of AHPL.

The Inspectorate asked if the affected land was mitigation provision. AHPL confirmed that it was, and that compensatory measures applicable under the Habitats Regulations were a separate component of the DCO, located to the north on the other side of the Humber estuary.

The Inspectorate asked if the Appropriate Assessment undertaken by the local planning authority had considered the proposal in its entirety. AHPL confirmed that it had. The Inspectorate advised that any assessment will need to consider the in-combination effect of all elements of the proposal.

The Inspectorate asked whether, and AHPL confirmed that they were not aware of any reason why, the order having been through special parliamentary procedure would have an effect on the non-material change process.

The Inspectorate advised that AHPL should also consider the implications of their proposal in terms of the Environmental Statement (ES), and may wish to demonstrate that there are no different, or no significantly worse, environmental effects. They would also want to consider any implications applicable since the introduction of the 2017 Environmental Impact Assessment (EIA) Regulations and any applicable transitional provisions.

AHPL asked if there was a time period for consultation under the non-material change process. The Inspectorate confirmed that the period was 28 days, and began when the application for a non-material change was submitted. Prior to an application being made, there is an opportunity to apply to the Secretary of State for consent to reduce the list of prescribed consultees.

Further to this proposed change application, AHPL discussed a further potential change to remove the restriction in requirement 4 that the facility be used only for renewable energy related development.

The Inspectorate advised that it would be important to consider whether any change brings about any impacts that have not been assessed and the extent to which this may affect matters relating to the original decision to grant authorisation. The Inspectorate asked if the proposed changes were linked, and AHPL confirmed that they were not. The Inspectorate pointed out that the reason for the imposition of the requirement were important to understand and address in seeking any change.

AHPL expressed the view that associated development could be amended by way of a town and country planning application. The Inspectorate advised AHPL to take legal advice regarding this matter.

The Inspectorate noted that the Secretary of State is likely to have regard to any earlier changes when considering a change application; and that this second proposed change may be substantial.

AHPL noted that both changes were supported by the local planning authority.

Actions

AHPL to keep the Inspectorate advised of anticipated timescales and submissions.

Following the Meeting

After the meeting the Inspectorate had further regard to the points raised by AHPL relating to changes to requirement 4. The Inspectorate highlights the relationship between requirement 4 of the DCO and the AHPL position regarding Imperative Reasons of Overriding Public Interest (IROPI) for the Habitats Regulations Assessment. The Inspectorate notes that any proposed change which may affect the grounds for IROPI would need to be carefully examined in order to ensure compliance with the Habitats Regulations.