



National Infrastructure
Planning
Temple Quay House
2 The Square
Bristol, BS1 6PN

Customer Services: 0303 444 5000
e-mail: ENRMFextension@planninginspectorate.gov.uk

Ms L Heasman
MJCA

Your Ref:

By email

Our Ref: WS010005

Date: 26 August 2021

Dear Ms Heasman,

Planning Act 2008 – Section 55

Application by Augean South Limited for an Order Granting Development Consent for the East Northants Resource Management Facility Western Extension

Notification of decision not to accept an application for Examination for an Order Granting Development Consent

I refer to the above application for an Order granting development consent made under section 37(2) of the Planning Act 2008 (PA2008) and received by the Planning Inspectorate on 30 July 2021.

Under section 55 of PA2008 the Planning Inspectorate considers that the application cannot be accepted as it is not of a standard that the Planning Inspectorate considers satisfactory (s55(3)(f)). The content of the application and inconsistencies between certain documents submitted make the application insufficiently clear.

The main items identified are as follows:

- The Applicant has identified Category 3 Persons but has not provided a Book of Reference. The Infrastructure Planning: Applications Prescribed Forms and Procedures Regulations 2009 (APFP), Regulation 5(2) states that "The application must be accompanied by – (d) where applicable, the Book of Reference". A book of reference is considered to be necessary in this instance because Regulation 7(b) explains that part 2 of the Book of Reference contains names and addresses for service of each person within Category 3 as set out in section 57. In this case, Category 3 persons were identified by the applicant.
- A Land Plan has been submitted as part of the application. However, it is not considered by the Inspectorate to be a relevant plan in accordance with Annex D, of the DCLG Guidance related to Compulsory Acquisition or compliant with APFP Regulation 5(2)(i). It is ambiguous in that it does not clearly show the plots of land required for, or affected by, the proposed development. It is not sufficient to refer the Inspectorate to the Land Registry, rather it is for the Applicant to demonstrate APFP Regulation 5 (2)(i) to a satisfactory standard.

- The application documents as submitted, contain contradictions, for example the draft Development Consent Order (DCO) at Article 12(7) mentions powers of Compulsory Acquisition, but there are no other Compulsory Acquisition provisions in the draft DCO and the Explanatory Memorandum states there is no Compulsory Acquisition sought. In relation to land interests, the information within the Consultation Report, Land Interest Schedule and supporting documentation are not of a satisfactory standard as they also contain contradictions for example Appendix CRV to the Consultation Report states in a letter to consultees that "*Augean may also need to seek legal powers to compulsorily acquire new rights over your land, although we will continue to negotiate with you privately in relation to any rights which may be required.*"

Paragraph 2.7 of the Explanatory Memorandum refers to there being no extinguishment of rights, but does not cover suspension or interference, which are also referred to in APFP Regulation 7(1)(c). As such, and considering the contradictions referred to above, it is difficult for the Inspectorate to ascertain if any other interests may be interfered with in some other way, for example interference with an existing right.

Whilst the application form and Explanatory Memorandum state that there is no Compulsory Acquisition sought, the contradictions in the application documentation, including the Land Interests Schedule, Consultation Report and Appendices, as a whole, remain ambiguous and therefore are not considered to be of a satisfactory standard.

In reaching its decision as to whether an application is of a satisfactory standard, the Planning Inspectorate must have regard to, *inter alia*, the extent to which the Applicant has followed any applicable guidance given under section 37(4) of PA2008 (section 55(5A)(b)). In relation to the application documents referred to above, the Planning Inspectorate has concluded that the Applicant has not sufficiently followed this guidance. For example, paragraph 6 of the DCLG Application Form Guidance (2013) states that 'the application information must be provided to a sufficient degree of detail that will enable the Secretary of State (and all interested parties) "to appropriately consider the proposal". In this instance, the detail in the application documents contain contradictions.

We would encourage you to meet with us so we can advise how best to address the issues to help facilitate a new application at the earliest opportunity.

Yours sincerely

Kathryn Dunne

Kathryn Dunne
Operations Lead – National Infrastructure

This decision was made by officials on behalf of the Secretary of State for Housing, Communities and Local Government under delegated powers

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