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By email only

Your Ref:

Our Ref: WS010005

Date: 26 August 2021

Dear Ms Heasman

Planning Act 2008 (as amended) – Section 51

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

Advice following issue of decision not to accept the application for examination

On 26 August 2021 the Planning Inspectorate decided that the application for the above project did not satisfy the acceptance tests under section 55 of the Planning Act 2008 (PA2008).

In undertaking checks at the acceptance stage, the Planning Inspectorate has made some initial observations in relation to the application. This letter comprises advice to the Applicant provided under section 51 of the PA2008 in respect of these initial observations. The Applicant should pay attention to its content and consider how appropriate action might be taken in response.

Book of Reference

The Applicant has identified Category 3 Persons but has not provided a Book of Reference. Only where there are no interests and no land as described in APFP Regulation 7(1)(a) to (e) is it not applicable to provide a Book of Reference.

The Book of Reference is used for service of notice both by the Applicant and the Inspectorate. This therefore also raises an issue of natural justice, since those Category 3 persons could be prejudiced without any such notification.

For further information see Annex D to the *Planning Act 2008 Guidance related to procedures for the compulsory acquisition of land.*

Land Plan

A Land Plan was submitted as part of the application. However, it is not considered by the Inspectorate to be compliant with APFP Regulation 5(2)(i) or a relevant plan in accordance with Annex D, of the DCLG Guidance related to Compulsory Acquisition. It is ambiguous in that it does not clearly show the plots of land required for, or affected by, the proposed development.

A small area on the southern boundary of the site (immediately to the east of the inset area) is not shown as being covered by freehold or leasehold interests. In other places, hatching showing land interests on the Land plan does not align with the Order land boundary. At the most eastern part of the site (the existing facility) land is held by the applicant as both freehold and leasehold.

These observations will need to be addressed in any resubmitted application. For further information see Annex C and D of the *Planning Act 2008 Guidance related to procedures for the compulsory acquisition of land*.

Development Consent Order (DCO)

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.

This observation will need to be addressed in any resubmitted application.

Explanatory Memorandum (EM)

Paragraph 2.7 of the EM refers to there being no extinguishment of rights, the statement does not also cover suspension or interference which are also referred to in APFP Reg 7(1)(c).

Paragraph 2.8 of the EM explains that there is a small area of land which falls outside the Applicant's ownership but is within the Order limits, although no Works are proposed.

Paragraph 2.9 explains that a Book of Reference was not supplied as it is not considered necessary given these circumstances and that the Land Interests Table summarises details of Category 1, Category 2 and Category 3 persons for the purposes of sections 42(1)(d), 44, 56(2)(d) and 57 of the 2008 Act.

Please see the advice issued in relation to the Book of Reference.

Environmental Statement (ES)

Lack of a plan identifying water bodies in a River Basin Management Plan (APFP Regulation 5(2)(l)(iii)). Relevant water bodies are identified in the ES text, but they are not shown sufficiently clearly on the Ordnance Survey (OS) bases (Plans at ES Figures ES17.3, ES17.4 and ES18.2) to be able to understand their relationship to the site and the effects of the proposal.

Omission of information submitted in support of the Environmental Permit applications to the Environment Agency (eg quantitative hydrological risk assessment). The conclusions of the ES on matters including water resources, biodiversity and human health and the Habitats Regulations Assessment, No Significant Effects Report are predicated on the controls to be implemented through the Environmental Permits. An Examining Authority (ExA) would need to satisfy itself on these matters in the event that:

- The Permits are not issued before the close of the examination;
- The Permits are issued, but the ExA is concerned that their controls are not sufficient to support the ES and NSER conclusions on the absence of impact or the proposals for mitigation.

Consultation Report

The Consultation Report was unclear in regard to Persons with an interest in land – s42(1)(d)

The Applicant must demonstrate that diligent enquiry was undertaken to identify persons under s44 of the PA2008 and to ensure that an up to date Book of Reference is submitted. In that context, it is useful to set out the methodology for identifying persons in Category 3 (those who may make a relevant claim).

The Consultation Report should explain how many persons with an interest in land were consulted, under which category and when. It is not necessary to list the names of all individuals identified in the Book of Reference.

If additional persons with an interest in land were added and consulted following changes to the project boundary during the Pre-application stage, it is useful to describe:

- How many additional persons with an interest in land were consulted;
- when they were consulted;
- how they were consulted; and
- what information they were consulted with.

Satisfactory Standard

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.

Please ensure consistency across the full suite of application documents.

Please pay close attention to the advice set out in this letter and act on it accordingly in any resubmitted application. This will contribute towards a more efficient examination and give any future Examining Authority comfort that the documentation is complete and accurate.

We trust you find this advice helpful, however if you have any queries on these matters, please do not hesitate to contact our office using the contact details at the head of this letter.

Yours sincerely

Kathrine Haddrell

Kathrine Haddrell
Case Manager

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