

S.A.G.E. Community Monitoring Group

(Suffolk Alternative Green Environment)

Sizewell C Planning Inspection IP No 20026009

23.5.2022

Five Areas of Commentary : Post Examination Submission 2

1 Disclosure of the Inspectors' Report

It is to be regretted that in our response to post Examination Questions, we as ordinary IPs - and maybe also the statutory IPs designated in these Questions - have not been able to read the Inspectors' Report and Recommendations to enable them to base their comments on a full appreciation of the background to the Questions. This shortcoming can be seen as conflicting with the spirit of the Aarhus Convention.

The unusual extent of post Examination Questions in this case might serve as an argument for the exercise of SoS discretion in releasing the Inspector's Report.

Further, we note that our intervention on the rather short period the Inspectors allowed for scrutiny of the RIES Report was successful, resulting in additional time for IP comment. It seems that some discretion can be exercised in norms of documentary release where there is a public interest.

Our request reflects working experience of the need for good access to information. S.A.G.E. responded in substance, this being one of 16 written contributions, alongside equivalent verbal contributions to the hearings, and many previous citizen contributions to the EDF-SZC public consultations. These have all been in public. It seems strange therefore that the latter end of the process should be characterised by a publication restriction at a vital stage in this public narrative.

Of particular concern is the uncharted water of a likely IROPI decision arising from a negative HRA on the newly reported marsh harrier breeding pair at Aldhurst Farm, supplementing the initial dDCO. IROPI was explored in the Examination, before the recent Aldhurst Farm “discovery/observation” and had been accepted as a Principal Issue by Inspectors after suggestions from IPs including S.A.G.E. We participated in that examination session and submitted views questioning whether alternative foraging for marsh harriers might not be mitigation rather than compensation and whether IROPI was therefore justified on such a narrow basis, and whether the overall HRA assessment of disturbances to Minsmere species and protected features of land was adequately founded on precautionary principles. Given that senior legal commentary regards IROPI as a “high hurdle” (Tromans, Humphries), and that it is – we believe - untested by courts after now over 100 National Infrastructure Planning cases, it would serve the broader public interest in exercising judicial review rights if the Inspector’s Report on this complex matter were to be available well in advance of the expected SoS decision at the end of July.

We therefore suggest that there is a general Aarhus case, an SZC Examination precedent and a special case - the uncharted legal waters of IROPI – for an early release of the Inspectors’ Report.

2 (a) Marsh Harriers at Aldhurst Farm and (b) consequent IROPI matters

- (a) The proximity of Aldhurst Farm to the SZC construction site is an established issue, as is also the nature protection status – actual or deemed – of this newly created nature site, which we assume, in any case, can be regarded as part and parcel of the EDF “estate” and certainly within the designated impact zones of the project.

Aldhurst Farm nature park is physically contiguous with the SZC construction site and its transportation routes, and evidently within the foraging – and breeding – zone of MHs originating at Minsmere where they were bred from virtual extinction some years ago. In early years, EDF stated frequently that Aldhurst Farm was a pro bono project unrelated to the SZC project and therefore legitimate to be considered on local planning criteria. S.A.G.E. members commented in that

consultation - and subsequently - that Aldhurst Farm was too close to SZC's envisaged constructon site to avoid likely future disturbance.

While it is marsh harriers that are now found to be breeding at AF, EDF's Community Newsletter has claimed that otters from the SSSI and surrounding areas within their estate as nominated "receptors" to the SZC project, have also migrated to Aldhurst Farm, a report which might be taken as corroboration of its proximity to the protected sites and Minsmere itself.

The new issue, namely that a marsh harrier pair have been found to nest there, as well as elsewhere around and at Minsmere, is whether the construction activity over 8 to 10 or maybe as long as 15 years might constitute disturbance at this site. The strictly precautionary question is whether subsequent MHs – the result of successful breeding and a steady survival rate - in this recovering but still vulnerable protected species might not also be disturbed over future years of breeding and feeding seasons and, as we undedstand, residence for the female MHs. Should disturbance be found to be caused by commencement of works, or pre-works activities, since there is no licensable mitigation for MHs, it follows that IROPI would be triggered from the HRA.

There is a further consequence of such a local AF finding. Likely disturbance at Aldhurst Farm would cast considerable doubt over the original dDCO HRA's conclusion of no likley disturbance to Minsmere et al.

We therefore propose that a new, comprehensive HRA is required. The narrow EDF case that some MH foraging loss would occur, and that alternative foraging would be made available, would logically become either redundant or indeed magnified if foraging loss at Aldhurst Farm were to be factored into this particular equation.

A further IROPI question arises. Should not a new comprehensive HRA consider whether any IROPI level of compensation measures could be available both for this species and others in and around Minsmere and the SPA/RAMSAR/SSSI sites. Here we have noted that BNG is not applicable to National Infrastructure cases, though EDF seem to think otherwise, and therefore have proposed a very substantial BNG

estimate. We respectfully suggest that BNG cannot constitute IROPI compensation, for want of a court test, as we understand case law.

Having suggested a need for a wide and comprehensive canvass for a proper HRA, we wish to place on record that early on in consultations we raised questions about the nightjars mentioned in early SZC Consultations. As already noted, otters have also come back on stage. The apparently migratable (mitigatable) otters are now also at Aldhurst Farm, although they seem to have migrated without human assistance. Along with nightjars and other species, they should be included in a new comprehensive HRA. The otter receptor experience question is whether the AF move is an otter gain, or stasis, or maybe even the precursor of a local population reduction ?

The proposal in the dDCO for Aldhurst Farm to count as potential “compensation” for HRA disturbance therefore needs proper assessment in a new HRA because of the likely challenges of nature disturbance from its proximity to the proposed construction site.

- (b) Turning to IROPI matters, should it be invoked, we ask what features of this project might be reasoned to be “imperative”, “overarching” and of “public interest”. And further, how these might connect, in a “reasoned” manner, with statutory duties and other aspects of a now very wide range of public policies in climate change, energy and environment matters.

Some possibilities come to mind, two raised during Inspection, one submitted post Exam closure, and one new, concerning the desalination plant for SZC operating.

- (1) First is the project’s likely initial very heavy carbon footprint from construction. This now needs to be revised by the added burden of two water desalination plants – one for construction, one for 80 years’ operations, plus an additional (third) beach (MLF). We expressed doubt to the Inspectors about the dDCO carbon deficit and contribution figures, reflecting that many features of SZC do not reflect the HPC experience in any case: the “SZC same as HPC” comparator catechism is misleading. SZC needs a special access road, two big greenfield Park & Ride construction sites, a Traffic Management Centre, a large rail yard and railtrack improvements – not forgetting the likely but undisclosed

sourcing of special high grade aggregates from the West Country to Suffolk's coast. The widely understood poor quality of Suffolk infrastructures also needs to be evaluated for carbon deficit miles and fuel efficiency, aside from whether local roads can cope with this massive project already utilised by competitor energy developments.

The second announced delay in building HPC suggests that the carbon footprint of likely construction delays also needs to be factored in to SZC's initial carbon footprint metric. Overall, is there any reason, in experience, why SZC, in its actual conditions and setting, should not suffer equal if not greater delays than HPC has already experienced? Covid challenges may not be the full explanation of HPC delivery problems. Hopefully they should not be available to obscure a clear risk analysis of likely SZC construction carbon deficits from a comprehensive list of sources.

- (2) Second is a substantial legal development which engages with the basic provision on sustainability in PA2008, namely the duty to contribute positively to climate change action. The legal development is that the 2035 climate change macro target has now been given legal force by the Government. Not only is SZC likely, if built, to fall well outside this legal target date before contributing low carbon electricity, but by then criteria for carbon reduction are likely in any case to have been tightened. In so saying, we have no wish to second-guess Government policies or expert opinion from climate change authorities. We do, however, suggest that the precautionary principle be applied in giving planning weight under IROPI reasoning to SZC's likelihood of making a proportionate reduction in UK carbon production in the energy sector.
- (3) The third would be the public interest in Minsmere. It can be regarded as a heritage and natural national and indeed international asset. Here we note that this doctrine was decisive in the Navitas Bay case and more recently at Stonehenge, and further featured in Aquind.
- (4) Fourthly, achieving good design, this latter being arguably broader and more generic than matters of architectural aesthetics. Our view is that

the SZC project has been poorly designed throughout, and that the EPR is also a poor design. The concept of design might be further applied to cover financial design. We look at this matter below in comment on the recent change to the dDCO benefit/transfer of ownership formula.

3 The dDCO and future ownership Here we note the welcome removal in the dDCO of EDF autonomy to sell off a majority interest in Sizewell C without a primary decision by the SoS. We raised this matter with the Inspectorate and noted that EDF gave no timeline indication for implementing their strategic corporate decision. Our concern was about subsequent managerial control and responsibility for this massive, long life project.

This EDF financial strategy, announced in EDF UK annual reports, led the Inspectorate to accept that the funding of SZC was a more important matter of planning concern than simple proof of ability to meet compulsory purchase obligations. In part, the sheer extent of EDF's commitments (Deeds of Obligation) justified this Inspectorate interest. The new ceiling of £150,00 per kilometre for B1122 road restoration is a small example. The issue of governance and control of the project in turn took on substantial weight.

Our public interest concern in funding matters also focussed on the RAB funding model chosen by EDF which we suggested raised new issues. We noted the Government's decision to institute a RAB levy regime expressly for the prospective new UK nuclear industry, rather than all low carbon energy sources, or simply building on existing energy levy instruments.

The essential point we wish to make is that EDF's decision to sell off a majority interest in SZC takes on greater importance should IROPI be invoked for HRA reasons. With the future ownership issue in the SoS's hands, alongside his/her IROPI duties, the status of the likely funding model of RAB, private investors and maybe Government monies would engage with the primary duties in PA2008. All funding matters would fall under IROPI reasoning and PA2008 duties. The RAB nuclear levy, for instance, despite having a legislative basis, would need to show itself positively contributing to the achievement of climate change targets now enshrined in law. Private investors needing certainty for their corporate risk assessments would naturally follow the stringency of this high hurdle of public interest.

Procedurally, there is also a substantial regulatory channel through the ONR about managerial capability and funding in the issuance of an operators licence. A single well-financed corporation might arguably promise managerial stability and capability. But multiple ownership is a very different matter. EDF's decision may well result in a congeries of pension funds, private domestic or international investors, RAB levy payers with, incidentally no voice offers what can only be described as a high risk prospect.

Our point is that IROPI and the PA2008 can be seen as raising the standard of ONR licensing and SoS decision making. In turn, it may well prove to be the case that a stable and secure SZC project will need much more public money and commitment under IROPI than under ordinary planning considerations. A RAB levy might need to be higher than otherwise, especially since its funds would presumably be available on equal grounds to other new nuclear projects and maybe also in due proportion to their contribution to overarching public interests.

This view that IROPI might raise higher funding standards for the project needs to set against the known background of new nuclear projects. For the record, we therefore rehearse some financial challenges which would need to be factored into any planning approval for this project, whether under the aegis of IROPI or, indeed, normal planning balance.

The continuing substantial stake of Centrica in EDF UK, and their inability to sell it off, provides a strong signal to the investment market. The lack of a CfD for SZC is a major competitive challenge. The weaknesses of a prospective RAB are evident: a legal challenge by renewable energy customers on grounds of consumer rights to buy renewable electricity would mean that EDF's own customers had to meet a much higher level of levy than if it were to be raised from all electricity consumers. EDF customers would quit.

A further matter arises: the recent Energy Security White Paper can be read as suggesting that Government will itself conduct an FID, presumably in addition to EDF's own corporate FID. What the FID for Government may well find is that there will be a considerable residual funding gap for this project, notwithstanding the presumption that pension funds or inward investors may be attracted only on condition of expensive Osborne /HPC type guarantees. Should that be the case, a Governmental FID would need to look at the size of guarantee funds needed. The Hinkley Point C funding formula, with full construction capital in place, still required a hefty guarantee package from

Chancellor Osborne. SZC, with a large funding gap and a license holder wishing to retain “no more than a minority share” will, we think, require a considerably greater financial security package from Government, even if a general RAB contribution comes on stream.

A further comment on EDF’s varied carbon reducing claims is relevant to its project finances. This concerns the purchase of carbon credits on the market, an activity EDF already declares – though not quantitatively - in its annual NDC. We doubt EDF can afford the cost of what would be a very, very large carbon offset purchase to even dent its carbon deficit from construction. We trust the Inspectorate will have looked closely at the various Net Zero/carbon reducing claims made in the dDCO. We drew this to the Inspectors’ attention, even if it only relates to EDF’s overall (UK corporate) NDC declaration.

Finally, a minor point but as a matter of public interest, we note that the recent £100m package of “support” for SZC from BEIS was a secured Treasury loan for what we think were cash flow needs. It suggests that EDF is already into the accumulation of project debt, albeit modest, even before the project has come to FID.

In summary, we suggest:

- 1 that PA2008’s sustainability duty on the SoS to achieve value for money in the context of climate change budgeting becomes a very substantial planning matter should IROPI be invoked. Better value for money alternative nuclear projects, and/or renewable alternative projects on more secure timetables would appear to be major elements in any assessment of “imperatives”. Second only, of course, to SZC’s likely negative climate change contribution in the threshold years as we have suggested above.
- 2 that the ONR’s licensing duties require managerial and financial stability and security as fundamental criteria for an operating licence. The transfer of benefit of ownership aspiration of EDF makes this an overarching issue of public interest.
- 3 that without benefit of a generous CfD for its prospective output, SZC will need to pass severe, long term market funding tests to attract long

term investors, even if ways and means can be found to construct the project.

- 4 that the overarching imperative of Government duty to reach Net zero 2050 and 78% reduction in CO₂e on 1990 figures by 2035 (now law) needs to engage with the Climate Change Committee's recommendation that value for money - public and private – should apply to all available low carbon technologies and projects. The conclusion we draw is that the Government's new Energy Security Strategy target for nuclear new build is subordinate in planning decisions to this imperative test.
- 5 Finally, noting that EDF have argued that they can construct SZC for 20% less than HPC – a truly remarkable productivity leap, as we have pointed out to the Inspectorate – we suggest that the likely construction cost at Sizewell, with so many adverse features of Suffolk infrastructure, stressed labour markets, water supply challenges and expensive, distant materials markets – is likely to substantially exceed that of HPC. The HPC project's poor financial record from the early stages of construction suggests that SZC is highly unlikely to meet a public interest value for money test.

4 The desalination plant Our preliminary look at desalination plant issues suggests that cost, longevity of operating life, marine ecology impacts and public standards of regulation are all issues. Of special note is their heavy permanent use of electricity. This needs to be factored into SZC's carbon footprint for operations, and, of course, construction in the first instance.

We add three observations: firstly that Suffolk East Council should not be the planning authority, even if they were to be capable of being a regulatory/discharging authority. The project is essential to the operations of the proposed EPRs. It follows that the ONR has a primary duty to consider this essential adjunct to the project.

Secondly, that there is evidently only already inadequate space for two EPRs and cooling ponds and waste storage on what was the original, small Sizewell C standard size PWR site. The desalination plant therefore needs an extra site/location, and it is a reasonable presumption it would need to be within the EDF estate. It therefore needs to count, for planning purposes, as a piece of national infrastructure.

Third is the industrial security issue: while the dDCO and ongoing ONR remit may be dealing with this highly important matter, under the shadow of the current Russo-Ukraine war and its energy infrastructure ramifications, now at crisis level, a desalination plant outside the existing proposed EPR site boundaries invites challenge. It would require a full existing nuclear site protection level, not least because of the strategic dependency of the national grid on the input of such a high output pair of EPRs.

5 Jobs & Skills On the assumption that the Inspectorate will have reported on and evaluated the various employment and skilling claims made by EDF for the project, our monitoring of Suffolk employment and skills issues shows that the size of the proposed Felixstowe/Harwich/Stowmarket-A14 freeport will dwarf, if not swamp the SZC project. The Freeport now claims a permanent workforce potential of 15,000 jobs, with a likely employment multiplier – and housing market impact – greater than and more locally valuable than the SZC construction site with its high labour force churn and eventual small permanent labour force. As an infrastructure planning issue, we suggest this might be considered as a combined and cumulative impact factor. While that may be an expert legal matter, the freeport project is a reality. We did draw the Inspectorate’s attention to it, before the 15,000 figure was available to us.

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