

From: SEAS Campaign: [info@suffolkenergyactionsolutions.co.uk](mailto:info@suffolkenergyactionsolutions.co.uk)

To: PINS Examination Team, for the attention of Rynd Smith, Lead Examiner

CC:

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Solicitors Regulatory Authority: [transparency@mail.sra.org.uk](mailto:transparency@mail.sra.org.uk)

Dr Therese Coffey MP PC: [REDACTED]@parliament.uk

Leader of Suffolk County Council: [REDACTED]@suffolk.gov.uk

Leader of East Suffolk Council: [REDACTED]@eastsoffolk.gov.uk

14 February 2021

Dear Mr Smith

### **Introduction: The Complaint**

1. This complaint is made on behalf of Suffolk Energy Action Solutions (SEAS).
2. It concerns efforts being made by Scottish Power Renewables (SPR) to prevent persons who would otherwise have a reason to object and provide support to groups and associations opposing SPR's application in respect of EA1N and EA2, from opposing the application for consent.
3. The nub of the complaint concerns the fact that in the course of concluding agreements with landowners, SPR is including a clause which makes agreement conditional upon the individual landowner concerned not opposing the application and withdrawing any evidence already given. The clause is as follows:

“The Grantor shall not make a representation regarding the EA1N DCO Application nor the EA2 DCO Application (and shall forthwith withdraw any representation made prior to the date of this Agreement and forthwith provide the Grantee with a copy of its withdrawal) nor any other Permission associated with the EA1N Development or the EA2 Development and shall take reasonable steps (Provided that any assistance is kept confidential) to assist the Grantee to obtain all permissions and consents for the EA1N Works and the EA2 Works on the Option Area (the Grantee paying the reasonable and proper professional fees incurred by the Grantor in connection with the preparation and completion of such permissions and consents).”

4. This clause has the effect of undermining the integrity of the planning process. Further, the object and effect of this clause is to substantially undermine the efforts of those opposing consent.
5. This clause contains a prohibition on making any representation regarding the application. The word “representation” is very broad. A person could not speak to a friend, or relative or neighbour about their concerns over the application. They could not speak to or support an association or organisation opposing the application. They could not speak to the press or an MP or a local authority planning officer. And it clearly prohibits a person from submitting evidence to the Examination.
6. It also means that if a person has already made a representation, including that given before

the agreement is signed, it must be withdrawn. So, a letter of complaint to an MP must be withdrawn. A complaint to a friend must be taken back. Any evidence given to the Examination must be withdrawn.

7. SPR will no doubt argue that this is a “normal commercial term”.
8. It is clearly normal to pay landowners for land otherwise subject to compulsory purchase, often in advance of the statutory purchase process occurring. It is also normal for a developer to pay a landowner for access to carry out appropriate test and surveys etc. Payments to secure these ends are directly related to the development.
9. But it cannot be argued to be legitimate, even if commonplace and commercial, for a developer to impose a condition upon the grantor of a right over land related to the development which is specifically designed to undermine the planning process. There is no proper connection between the two.
10. The clause set out above in effect: (i) prevents the giving of evidence to the inquiry; (ii) prevents the person concerned from supporting associations opposing the application by giving support; (iii) requires the person if they have already given evidence formally to withdraw that evidence and provide proof to SPR that this has been done.

### **Impact upon planning process**

11. There can be **no** justifiable planning basis for the making of payments and/or the imposing of conditions which undermine a statutory planning inquiry conducted in accordance with public law principles. If, for instance a person to criminal proceedings were to pay a witness to refuse to support the prosecution or to withdraw evidence this would amount to the crime of perverting the course of justice. If in civil proceedings a litigant paid an opposing witness to withdraw their evidence this might amount to contempt of court.
12. The present proceedings are statutory and governed by ordinary public law principles.
13. The Examining Authority is in charge of this process and has a duty in law to guarantee that it is fair, transparent and objective.
14. The effect upon those individuals and groups seeking to oppose this application is substantial. The volume of material that SPR has submitted, and continues to submit, very late on in the process, is enormous and imposes a near intolerable strain upon the resources of those who oppose the application. To mount opposition to this development requires considerable human and financial resources.
15. The DCO procedure is one which, by its nature, supports applicants. The effect has been to undermine the ability of legitimate objectors to put forward evidence and submissions, in particular by instructing and paying for legal and technical experts. This clause has had a chilling effect. Many individuals have stopped talking to our organisation. They do not reply to emails. They do not respond to calls.
16. The Examination Authority will know that those who are most affected by the proposed development, and accordingly in principle the most likely to wish to object, are also those most likely to be the subject of SPR compulsory purchase and other powers. By linking discussions over legitimate matters with payments to undermine the process, SPR maximises its ability to prevent opponents obtaining support and putting evidence before the

Examination Authority.

17. The Examining Authority cannot permit an applicant to use the leverage that it has in relation to the compulsory planning rules to undermine the investigation. It is unacceptable that this already difficult process should be made even more difficult by the deep pockets and financial muscle of the applicant.

### **The facts**

18. The information that forms the basis of this complaint concerns the case of Dr Alexander Gimson, who represents his mother, Mrs EP Gimson, [REDACTED], near Thorpeness and over whose land the cable trench may pass.
19. SEAS has been aware for some considerable time that potential opponents to the application have been persuaded, by the offer of substantial payments from SPR, to enter agreements which compel them to withdraw opposition and refrain from commenting in public. It is understood that a part of the payment which is then recorded in the formal agreement is attributable to the non-opposition clause set out above. But in any event, there can be no proper basis for developers suppressing evidence in this way.
20. Until Dr Gimson brought the attached documentation to the attention of SEAS, it has not been possible to make this complaint.
21. The Option Agreement that SPR seeks to have with Dr Gimson relates to land at [REDACTED], a property which is situated on the cliffs near Thorpeness.
22. Dr Gimson believes that the overall payments, which he has been offered under the Option Agreement, amount to thousands of pounds. But quite regardless Dr Gimson objects to the agreement upon the basis that it is conditional upon him not being able to oppose the application. Dr Gimson is a vociferous opponent of SPR's proposed Onshore development plans and has spoken twice at the Examination Hearings, on 21 and 22 January 2021. Under the agreement he would have to withdraw that evidence and provide support for SPR even though its application will, if consented, severely impact his elderly mother's home.
23. Dr Gimson is determined not to be silenced.

### **Next Steps**

24. The consenting process is now moving towards its latter stages. SEAS is of the view that the integrity of the process has already been badly compromised. We ask you to respond to this complaint as a matter of urgency. We invite the Examination Authority to take the following steps:
  - 24.1. Convene a special hearing to enable all affected parties to put their case on this matter.
  - 24.2. Take immediate steps to investigate fully what has occurred.
  - 24.3. Inform SEAS and all other parties of the steps it intends to take to investigate.
  - 24.4. Place its decision on this complaint on the PINS EA1N and EA2 website.

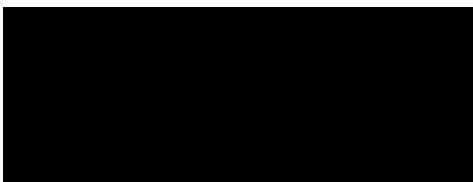
## **Conclusion**

25. Those who oppose the application have no equality of arms with SPR, whose war chest appears unlimited. The ability of opponents to contest the process has been substantially hindered by the withdrawal and non-cooperation of persons who otherwise would have been active supporters and funders. Financial and human resources are strictly limited and massively overstretched.
26. This inability is exacerbated by the fact that SPR's application keeps changing and mountains of new, complex, material is lodged on a more or less rolling basis and on occasion at the eleventh hour.
27. Our complaint is therefore a very practical one. SPR's policy undermines the ability to represent those who oppose the application and undermines the integrity of the statutory planning process.
28. We therefore await your urgent response.

## **The wider public interest**

29. This is an issue of public significance. It is our intention to refer this to the Secretaries of State who have overall statutory responsibility for the integrity of the planning process, and of course for the decision on the DCO application.
30. We also intend to refer the same material to The Rt Hon Dr Therese Coffey MP PC and ask her to make inquiries including asking relevant questions in the House of Commons.
31. Given that the contractual clause in question has been drafted by the legal advisers acting for SPR we intend further to refer the same material to the Solicitors Regulatory Authority to invite them to conduct an investigation into the facts and to decide whether, in the light of any findings they make, it is proper for legal advisors to promote the use of these clauses. If this practice is commonplace, then because of its effect which is to undermine a statutory investigation conducted in the public interest, it is an issue of high importance.

Yours sincerely



**Fiona Gilmore**

For and on behalf of

Suffolk Energy Action Solutions

**Please send your response to: [info@suffolkenergyactionsolutions.co.uk](mailto:info@suffolkenergyactionsolutions.co.uk)**