



Planning Inspectorate
Arolygiaeth Gynllunio

Hearing Transcript

Project:	Dogger Bank South
Hearing:	Issue Specific Hearing 3 (ISH3) – Part 2
Date:	8 April 2025

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00:00:05:23 - 00:00:21:16

The time is now 11:03. And I would like to welcome everyone back to this issue specific hearing for the Dogger Bank offshore wind farms. I'm now going to hand back to Mrs. Abrams, Miss Abramsky, who will continue with item four on the agenda.

00:00:23:15 - 00:00:24:17

Thank you, Mr. Sean.

00:00:27:11 - 00:00:38:11

So item four on the agenda, which is infrastructure and other uses. Could I firstly ask if the applicant would like to introduce anybody that they wish to speak on this agenda item.

00:00:43:03 - 00:00:49:26

And also for the applicant. I've known two people to my land, one of whom is definitely going to speak and one of whom might speak.

00:00:51:04 - 00:00:58:03

Uh, Justin Burstein, uh, lead expert for turbine interactions, happy to be referred to as Mr. Burstein.

00:01:00:24 - 00:01:03:01

The development project. Well.

00:01:07:25 - 00:01:08:16

Thank you.

00:01:10:17 - 00:01:15:27

I know we have other parties, um, who have already introduced themselves, who wish to speak on this item as well.

00:01:18:05 - 00:02:01:24

Um, so this agenda item will focus on weight class. The examining authority have read all the submissions on weight class from the applicants and interested parties. Thank you for these detailed responses. The examining authority notes the applicant's position on this matter, but, however, wishes to take the opportunity to stress that it is under a duty to thoroughly examine matters which have been raised before them, particularly where this relates to complex or contested matters. The examining authority requested that the applicant submit the weight loss assessment, which was referred to in the first iteration of is chapter 16 with reference app 130 in October 2024, and disappointingly, this has not been provided.

00:02:02:07 - 00:02:11:08

Nor have the applicants provided information which the examining authority sought regarding the potential effects of weight loss in response to the examining authorities. The first written questions.

00:02:13:11 - 00:02:36:14

Notwithstanding the applicant's position on weight loss. The examining authority will need to report a report on it to the Secretary of State. And at present, we have a lack of information to respond to the

concerns raised by interested parties. As a result, it is therefore important that we get the answers to the questions that we ask and any follow up or additional information be provided in a timely manner to an agreed deadline.

00:02:39:27 - 00:03:03:13

If, after today's hearing, we still lack the information to be able to report on this matter, then the examining authority may need to consider either extending the examination to get that information, or, if the issue remains outstanding at the close of examination, reporting on it as such to the Secretary of State, States, who in turn may then need to delay their decision whilst they request the information that could have been provided during the examination.

00:03:05:15 - 00:03:27:26

The examining authority wish to stress the importance of ensuring that any additional substantive information on weight loss, such as weight loss assessments, need to be submitted into the examination by deadline for to ensure that all parties have sufficient opportunity to review it and provide comments on it before the close of examination. I will now turn to the questions that I have on weight loss.

00:03:31:06 - 00:03:36:15

This first section will focus on the relevance of weight loss to MPs. Ian three.

00:03:38:24 - 00:04:22:27

In your responses to XQ one with reference rep 327 you confirm that you do not consider that other offshore wind farms are of relevance to paragraphs 2.8196 to 2.8 .203 73. Of MPs. Ian three. But you do consider that interactions with other offshore wind farms are a relevant consideration for the examining authority and Secretary of State. Can I can just confirm that my understanding is correct, that you consider interactions with other offshore wind farms are an important and relevant consideration for the examination of the application, which would be captured under section 104, 2d of the Planning Act 2008.

00:04:30:04 - 00:04:51:23

What we've said is that we think the correct interpretation of three is that the whole sequence, or our headline position, is that the whole sequence of other offshore infrastructure and activities was not written with the intention to include offshore or other offshore wind farms within its scope.

00:04:53:21 - 00:05:41:06

There's an alternative view that applies the relevant policies more forensically. I know some do and some don't, depending on precisely how each paragraph is written. But as a backstop, we acknowledge that it's always open to the Secretary of State that something is important and relevant, even if there isn't specific, um, policy on it. In the end, one, four and three and we've acknowledged that there is a custom and practice, um, which we have followed along with other offshore wind farms of including information as regards the interaction between proposed offshore wind farm and existing offshore wind farms and.

00:05:44:09 - 00:06:07:25

There is significant information on that in front of this examination. Chapter 16. Um, but we are taking a position, as you know, in relation to where await assessment. Uh, might or might not sit within that, uh, overarching position.

00:06:10:20 - 00:06:11:10

Thank you.

00:06:13:03 - 00:06:20:22

And would Waycross, in your view, form an important and relevant consideration under section 104, 2d of the Planning Act?

00:06:23:06 - 00:06:25:03

It's something that, um.

00:06:30:24 - 00:06:57:17

Is what exactly is being considered that it was capable of being that if you look at the approach that she adopted, not palatable. Um, so we acknowledge that that, uh, that is, um, the position that was taken there. And yes, we have acknowledged that it is capable of being an important and relevant consideration. Exactly how you approach it is another matter.

00:07:07:04 - 00:07:07:27

Thank you.

00:07:09:24 - 00:07:29:27

Can the applicant set out how does your stance specific specifically that you do not consider that offshore wind farms are included within the ambit of paragraphs 2.8.19 6 to 2.8 .203 of MPAC and three compared to other examinations, and determined development consent orders for other offshore wind farms.

00:07:33:08 - 00:07:34:11

Give me those numbers again.

00:07:37:05 - 00:07:38:08

Of the MPs.

00:07:42:29 - 00:07:45:12

Did you ask for the MPs paragraph numbers again?

00:07:45:22 - 00:07:46:11

Yes, please.

00:07:46:18 - 00:07:51:29

Yeah. 2.8.19 6 to 2.80 .203.

00:08:03:15 - 00:08:04:00

So.

00:08:07:10 - 00:08:24:13

I think there are two parts to your question. What is our interpretation of how those paragraphs should apply? And then I think you're asking how we see we have seen that operate on other offshore wind farm decisions.

00:08:25:16 - 00:08:56:14

Well, I think you set out your position quite clearly in your written submissions today on how you think that applies. But if you want to provide further information or additional information over and above that which you've already submitted, then please do. But it was more my question was more about the comparison to other examinations and how they have examined or how they've proposed their stance. The applicants of those have made their stance on other offshore wind farms. I was primarily focusing on.

00:08:57:22 - 00:09:02:24

Okay, obviously. So Julian Boswell, obviously

00:09:04:12 - 00:09:11:06

we are conducting or we're participating in this examination of this application. Um,

00:09:12:27 - 00:09:13:18

there are.

00:09:16:07 - 00:09:47:08

I have taken an interest, but we have taken an interest in what has happened on other applications. And, uh, the implication of your question is that you have as well. Um, so I, I'm just slightly wary of your question because there there is so much going on. I'm slightly I am slightly wary of, um, of how to summarize it and the fact that there is quite a lot of detail. So with those caveats, Um.

00:09:48:00 - 00:10:32:03

Let's go through the different schemes. So the we've got in order, I suppose Mona is the first application. And I think the part of the problem is that each of these applications, that the positions have evolved over a period of time. So I think Mona has a headline position at the beginning that says that it doesn't think that way. Contents are inside Pia. Um, and then I think it evolves towards or also takes a position that in any event, it isn't the the wind farms involved, which I think over 40km away were not close and that were a weight assessment could not be justified on any basis because of the sheer distance.

00:10:32:21 - 00:11:08:25

Um, almost regardless of what point you wanted to take on the EIA and that on an application of the, uh, the, the, the NPS, it was not close. I think it's also fair to say that sort of within their overall position is an ongoing concern about whether, um. That the law was correctly decided so as to include, uh, apply these, um, these provisions to, uh, to, to offshore to offshore wind. Um, Morgan, uh, has got, I think, a similar approach.

00:11:09:15 - 00:11:46:15

They are also um, they also said at the very beginning that they didn't consider it was within the scope of EIA that if you look at the actual applications, again, don't have time to go through all of them. But there are multiple applications where effects are not within the peer or the environmental. Um, statement stage. Morgan has uh, also, um, taking the position that none of the relevant windfarms are close, that one of the wind farms is closer Than the case in relation to Mona.

00:11:47:07 - 00:12:34:09

Um. Morecambe are not as close to the detail of Malcolm, but again, they've taken the position that that the wind farm question, which I think is a very similar distance to, to the closest of ours, is not is not, is not close. Um, so I think the, the themes are that there has been significant, um, questioning of either whether EIA, um, is within the ambit of EIA and then, um, how we go, whether also a sort of multi track position on um, whether the NPS applies to offshore wind, um, though not suggesting that assessments as between existing and new offshore shouldn't be conducted at all either.

00:12:34:11 - 00:13:08:26

Other topics are within the scope. Um, and then a uh sort of Present your position in. Certainly in the case of Moana, Morgan and Morgan. None of them have provided Wayne assessments and also provided Wayne assessments into all three. I think certainly in some manner at Morgan. And then the examination had the benefit of those, uh, assessments and the other projects commented on the assessments.

00:13:09:13 - 00:13:46:26

But I would stress that none of the applicants in that case were, um, I think they were. I can't recall above my head whether they were formally requested or not, but they certainly took a firm position that they did not need to provide an assessment. They also took a position on mitigation, um, that, uh, that appropriate mitigation was, was not available and would have a disproportionate impact. They also took a position on resisting any suggestion of an animal science requirement in the in the ultimate decision.

00:13:47:08 - 00:13:47:23

So.

00:13:51:02 - 00:14:02:12

Moving on. So to, uh, other projects, I think the other two projects that we need to talk about are biome estuaries and, um, uh, outer dowsing.

00:14:04:14 - 00:14:14:11

And in that case, so five estuaries, um, the active position on five estuaries was that, uh, weight effect was.

00:14:16:16 - 00:14:24:21

Not not required. Um, that that were just give me a moment to collect myself on this. Um.

00:14:26:29 - 00:15:02:13

We were asked whether we would provide. So RWA was asked whether it would provide a um, awak assessment, and we declined to do. RWA declined to do so on the basis that it was, um, not, uh, not appropriate. I think the headline position was that these paragraphs didn't apply, but that if that wasn't accepted, then, um, they advised to be pragmatic. Should should take the lead. And then there's a whole argument that you're familiar with to put into this examination would apply.

00:15:02:15 - 00:15:41:20

So I'm not proposing to repeal that. Um, there we had a quite a different factual position because East Anglia two. Um, so there were projects that you could, in theory could have raised wage issue, which didn't raise wage issue. The one the only project which didn't raise the work issue for me. The two. They, um, they are not interested that they're not constructed and they're not in construction. Um, and, uh, so they did put in, um, a wake Weight assessment, and the applicant in that case commented on it.

00:15:42:01 - 00:15:56:18

Um, there's probably a strand in relation to greenhouse gas that I should I'm going to come back to it. That's all right. So you haven't specifically asked me about that, but I guess it does fall within the overall rubric, unless you want me to deal with that completely separately if you've got another question on that.

00:15:56:21 - 00:16:00:06

Yes. If we could deal with that later, that would be helpful. Thank you.

00:16:00:18 - 00:16:32:02

Okay, fine. So just so we have already acknowledged and other projects I've also acknowledged just to make one point, but, um, uh, the net impact on the net consideration of weight loss is a relevant, um, factor in that, but it's very much a minor secondary secondary one that was coming to that but backed by degrees. So as far as the ministries, uh, is concerned, they hadn't included weight effects in their peer or environmental statement.

00:16:32:09 - 00:17:04:16

It came up, as I say, in the examination, only because of East Anglia two, which is a non non constructive project. Um, and uh the applicant in that case took took um took position that week. Assessment was was was not required. Um and that um any sort of requirement could could could not be justified. It did comment on the some aspects of East Anglia to take effect assessment that that that puts in.

00:17:05:05 - 00:17:23:15

So that leaves I think the dowsing. So anti Damascene is the examination to close most recently. Um and that again there was an evolution in its position whereby um it took the view that.

00:17:25:23 - 00:17:27:03

It took the view.

00:17:29:05 - 00:18:14:04

Its, its headline position was that it aligned itself with Mona and open in relation to sort of resisting the the application of the M3 to offshore wind farms. If invited to the Council, not to get into that in

the basis that that would be resolved by the Secretary of State. Um, well, in advance of the, uh, decision on anti dowsing because of the timing of the respective decisions. And then it's sort of secondary position was that if the, if the paragraphs, not just the ones you agree to, but the whole suite of offshore infrastructure paragraphs did apply, then it had um, a, uh.

00:18:14:18 - 00:18:48:11

Oh. Forgive me. I've just been corrected and it hasn't closed. It closes on Thursday. Its final main deadline was on Friday, so I don't think these submissions have been published yet. Um, so the, um, um, going back to The run of that position. So they did not consider that their original position was that weight assessment was not required. I think that probably is their their their continuing position, their headline position.

00:18:49:06 - 00:18:51:29

Um, they stressed that

00:18:53:17 - 00:18:54:02

the.

00:18:57:12 - 00:19:31:11

They made a particular point, stressing that 2.8. 345I know that's not one of the policies. Use paragraph to specifically flag cannot on any analysis apply to other offshore wind farms because it talks about other industries. And that's the one that has policy about, um, avoiding or minimizing disruption or economic loss. Um, and however they did go on, they did submit, um, a weight effects assessment on what I believe would have been without prejudice basis.

00:19:31:13 - 00:20:02:14

Is. Then there was a dialogue between themselves and, um. Was it in particular? Uh, then I know that Equinor had come in more recently in relation to the sharing and extensions. Um, and then there was some further sort of iteration of that weight assessment that was submitted relatively recently that was accepted to be independent by all the parties.

00:20:02:16 - 00:20:35:08

So I think it was more of a it was more of a it was adopting more of a generic approach. And I think that was, um, with assumptions that that had been accepted and that the authors and their approach were being accepted as independent. And, um, but it had been put in, I think, but not without prejudice basis as to whether it was required at all. Um, and then the, And the dancing's position was that there was, um.

00:20:35:18 - 00:21:20:11

Well, certainly in the light of the outcomes of that, but we were looking at sort of give or take 1% of impact at that is greatest on, um, the, uh, the, the, the affected projects that there was no justification for an hour or more time restriction and absolutely no justification in policy, uh, terms for any kind of compensation provision. Um, and so also to put in a, um, also put in protective provisions, uh, arguing for um, uh, an so compensatory approach, the so-called commuted sum.

00:21:20:23 - 00:22:01:16

Um, yeah. And I think it is possible that a refinement of that will have gone in on Friday, and there was an indication that they were supporting, um, that line, uh, from from Boston. And so I think the going back to the sort of applicability of the three paragraphs that you've highlighted, I guess the reminder there is that the headline position was that they didn't apply, but that if they did apply, um, that when you then applied them, they did not, uh, they did not, um, justify mitigation.

00:22:01:27 - 00:22:41:09

Um, and that they certainly didn't justify financial compensation. So as you can imagine, that's covering multiple other examinations. It's possible that I haven't gone every nuance of that. Precisely correct. Um, and I'm a bit nervous about, um, having just said all of that, trying to be helpful, what that does or does it set us up for in terms of, um, trying to to summarize the, uh, position accurately, if I've got some things slightly, um, wrong or possibly misunderstood.

00:22:41:13 - 00:22:50:04

So on the basis that I could have taken two hours to give you that answer, um, and I predicted myself to have along that was I'll stop that.

00:22:51:20 - 00:23:30:17

Thanks. Mr.. I appreciate the the summary. It is very helpful. And obviously, if on reflection, there are any, uh, misinterpreted details, you can obviously submit that at the next deadline to correct any of that. But I do appreciate the, the overview that you've given there. Um, so you obviously, um, explained or alluded to the, um, the follow up position that you have, um, in terms of the applicability of N3 and the paragraphs that we've mentioned. Um, and if the examining authority or Secretary of State concluded that weight loss effects were relevant to the assessment of effects on other offshore infrastructure and users.

00:23:32:18 - 00:24:01:23

And the examining authority. Secretary of state agreed that it was necessary to employ a pragmatic approach, as you've suggested, in accordance with paragraphs or paragraph 2.8.3 for two of MPs and three. Could you set out for me how you would have complied with paragraph 2.8.344 to work with the impacted sector to minimise negative impacts and reduce risks to as low as reasonably practicable, and how we would report on that to the Secretary of State.

00:24:05:02 - 00:24:06:03

For the applicant?

00:24:11:00 - 00:24:16:00

I think we've we've explained this in writing already, but I'm happy to summarise that position.

00:24:21:14 - 00:24:40:16

If this applies as between offshore wind farms. Then it's fundamental that we go back to the context and the context, because that is very much, um, relevant to a pragmatic, um, approach.

00:24:43:00 - 00:25:24:00

The context is that everybody that lived in Tehran before and everybody that was potentially affected by Iran for this being, is being to ground for projects. South, east, West knew what the rules were.

They were very well publicised. There was considerable rolling engagement, as is normal by the ground state. And, uh, this is always in the background, um, in the context of the design of the new licensing round. And as you know, because it's in front of the examination, um, there was a buffer distance, um, laid down as part of that process of The heart belongs to me.

00:25:24:09 - 00:25:24:26

And.

00:25:27:01 - 00:26:00:03

The applicants in this case have respected that resistance and that all the other around all the projects. There's one other project that is relatively close to that, but the distance as well. Um, and uh, the that in terms of the expectation to work with the impacted sector to minimize negative impacts, that has already been addressed through the Crown Estate process. Everybody in this industry has understood that perfectly well.

00:26:00:21 - 00:26:31:20

Um, everybody in this industry knows that when you design an offshore wind farm, you designed to maximize your own, um, annual electricity production, you do not take any consideration of your impact on other projects in that in that way. And people like Mr. Burstein on my left, who were doing this kind of thing. Day in, day out. There are many such people across all the other relevant developers and consultants that specialize in this.

00:26:31:24 - 00:27:06:16

When you're designing off building bombs, you do so to maximize your own energy. And you do that because that's the business as usual approach. Because as we may all, as I suspect we're going to get onto, if you try to do it any other way, it simply doesn't work. There are no mitigation, so-called mitigation steps available that make any sense, uh, either in terms of the interests of the project or in terms of the interests of, of the industry, there are disproportionate, substantially disproportionate impacts.

00:27:06:25 - 00:27:50:08

There are multiple secondary considerations around if you're supposed to now do that, which nobody's ever done before, literally nobody's ever done before, except in very sort of high level crude terms around buffer distances is applied through through the ground state. If you're now expected to do that, what are the precise rules of the game, please? How does how are you balancing that consideration against other design and layout considerations? What are the rules in terms of whether you're still trying to achieve the same capacity? And on and on and on? There are no rules for this game, and the reason for that is that this game shouldn't be being played at all, and it was never intended to be played through the planning system.

00:27:50:10 - 00:28:21:18

If there is an intention to bring in a change of this kind, there have to be brought in outside the planning system and that may or may not be. Um, there are some indications of that. It's under active consideration by bi, by the government. And so we'll have to see whether they choose to do that. What we can't have is what is trying to be happening here, which is to try to force through an inappropriate mechanism. Consideration of all of of of this question.

00:28:21:24 - 00:28:56:08

And so in terms of sorry, going back to your paragraph 2.8.3.344, um, to work with the impacted sector to minimize impacts. It's already been done. And the work with emergent minimize is inappropriate. Um, in any event on on these impacts. So there's always a balance to be struck. The Crown state has an extremely sophisticated quasi regulator which understands the issues and is balancing those issues. It's set a 7.5km buffer distance, and everybody had the opportunity to comment on that.

00:28:56:12 - 00:29:28:14

We aren't aware that anybody was any industry player was criticizing that or lobbying for more. There was every opportunity to do that. All we are doing is what anybody, any, any developer going down around or process would have done, including, um, the, the, the Orsted who were Objecting here and objecting here. They had one Rand Paul project in similar circumstances to us. There's every reason to believe that they would.

00:29:28:16 - 00:29:44:16

They would be doing exactly what we are doing, which is to maximize the aim of our project and not to take into account the impact on other projects. Because, hey, that doesn't make sense. The that has never been the practice in the same string.

00:29:50:01 - 00:30:13:26

I thank you, Miss Boswell. Um, um, could I just, um, ask for, um, the input of, uh, Mr. Garden, um, representing the project at this point? Um, in your view? Have the applicants worked with you to or worked with the, um, your clients to minimize negative effects to as low as reasonably practicable?

00:30:15:25 - 00:30:55:02

I think. I mean, the short answer to that question is no. Sorry Robert Garden for for the Dogger Bank. The short answer to that question is no. Um, and I think we've set out quite clearly in the submissions to date how we think the policy applies. Um, we've referenced, obviously, the precedent in All in law. Um, but more recently and the only indication you do have of the current Secretary of state's thinking, the reference to to Clean Power 2030 and the action plan that was submitted in December, where this is recognised, um, as a kind of critical issue for the industry and where and where the precedent for more and the form of requirement there was, was secured.

00:30:55:04 - 00:31:29:06

I mean, there are quite a few points to unpack from from what was just said. I can I can go through those. I don't know if you have questions on them, particularly around, um, design and siting compensation and then ultimately how this is all all addressed. Um, but I think fundamentally our position is that without consideration of this, um, and it feels like it's not been considered today in terms of siting and designing. The approach has been to maximize AP of the project as just explained, without consideration of weight loss impacts. That does leave the only mitigation available as compensation.

00:31:29:23 - 00:31:32:01

And there's no other way around that.

00:31:35:24 - 00:31:37:18

Thank you. I'm sorry.

00:31:37:20 - 00:31:39:16

I'm sorry. You may have questions later.

00:31:39:27 - 00:31:48:25

Yes, I have got some questions later on. Um, mitigation and compensation. Um, so perhaps if we can sort of capture those at that point, that would be helpful.

00:31:49:01 - 00:31:49:23

Absolutely.

00:31:49:29 - 00:31:55:21

Thank you, Mr. President. Um, the same question to you regarding the Orcid IPS.

00:31:56:17 - 00:32:42:26

Thank you. Um, excuse me, Alex, for the for the Orsted IPPs. I mean, I think similarly to what Mr. Garden has just outlined, we've we've made our position clear in our in our written submissions about the application of policy and and stress, again, the need for a weight loss assessment to be undertaken. I mean, having opted for the strips on the outer doors examination that was that was just referenced. I think if I could just clarify how the process of that worked, it was the case that from the start of the examination, the Orcid IPS requested that the applicant undertake a weight loss assessment for all the reasons outlined that was only done by the applicant eventually at deadline for following which the Orsted IPS following well criticized that assessment due to various assumptions used and the modelling etc.

00:32:42:28 - 00:33:28:06

and submitted their own internal weight loss assessment at a deadline for a, which in turn led the applicant to eventually, as you as you alluded to later in the process at deadline five submits a an independent weight loss assessment, which actually lined up more closely with the Orcid IPS numbers in their internal weight assessment. So what I would just like to stress is, is, as you've seen from our submissions, the Orcid IPS position is that a weight loss assessment is required. That should be an Independent assessment. I'm not, you know, not intending to assert any criticism of the the applicant's assessment on the housing project to the applicants in this case, but it is clear that an independent assessor is the best placed person or entity to to undertake such such an assessment.

00:33:28:18 - 00:34:04:20

I'd just like to make one point in relation to, um, leasing round for projects if if I may, as it's just been touched on, there's a quote from the applicants response to EQC one IOU 1.12. And that response document is rep 3-027. And in that the applicants assert that, um, and I quote the resolution to the issue, that issue being weight loss is for the projects and the Orsted IPPs to accept that the question of weak effects was resolved through the Crown Estate's Round four leasing process and the 7.5km buffer which was fixed then.

00:34:04:22 - 00:34:37:07

They go on to say that this approach has generally been generally accepted by the offshore wind sector until the wholly unexpected outcome of the hourly Moor decision. Now the Orsted piece. And again, we can set this out in full in writing. But we disagree with the statement that this approach has been generally accepted by the offshore wind sector. Firstly, as we've touched upon, this assertion can't apply to leasing round for projects, given that all of them are currently facing weight loss based DCO objections and an understanding of the true extent of far field week effects.

00:34:37:09 - 00:35:13:11

So i.e. there their extension significantly beyond the buffers imposed in the leasing round for process was only from Orsted's perspective beginning to emerge after those buffers were established. And it's that lack of awareness at the time, rather than the fundamental existence of those buffers and an assumption that weight loss compensation would not be payable beyond those buffers. That explains the relative lack of planning disputes prior to the hourly more DCO examination and leasing round for projects. So there are some points there that, as I say, we can expand on in writing, but there is a disagreement with the with the applicant's position.

00:35:13:13 - 00:35:19:12

And similar to Mr. Gardner, I'm sure you've got further questions and and we have some some more points to make, but perhaps I can wait for those.

00:35:20:12 - 00:35:34:17

Appreciate that. Thank you. And just going back to, um, the question that I initially had, if that's okay, Mr. President. So in your view or your client's view, have the applicants worked with you to minimize negative effects to as low as reasonably practicable?

00:35:35:26 - 00:36:01:18

No, I should have I should have said from the outset that the yeah, the position is very much the same as Mr. Gardner. The short answer is no. And the Orcid IPS would be extremely happy to have a meeting with the applicants to discuss the general topic of weight loss, including with regard to assessments and the tried and tested approaches that are routinely employed to ensure and ensure adequate protections for for waked and waking projects alike. But in short, the answer is no.

00:36:02:10 - 00:36:08:10

Thank you, Mr. President. And and did the applicants want to respond on, um, either the points made by these IPS.

00:36:24:02 - 00:36:40:14

I'm not going to say much, because I think the points that have been made have already been made in writing, and our responses are already in writing. Um, I think the, um, so I don't want it to be said that if I don't reply, I'm somehow accepting. Um,

00:36:42:12 - 00:36:42:27

the

00:36:44:24 - 00:36:53:08

grateful to Mister President for the the greater detail for the explanation on what happened on that dowsing. Um,

00:36:55:03 - 00:36:56:01

I think the

00:36:57:25 - 00:37:35:15

I'm not sure we agree with that. Sort of. Well, I think we stand by our point about generally accepted in terms of weight loss has been around for a significant period of time. As far as a concern, we may want to respond in more detail on that. Um, I think the point of that, he said at the end, I was a bit thrown by the reference to tried and tested methods. I'm not. I'm genuinely not sure what he's referring to there. I think I would like to stress that the sheer distances involved from the all state projects, and all of them, are at least 40km away.

00:37:35:17 - 00:38:14:06

Some of them are over 100km away. And so, um, on any reading of N3, I don't think those can be said to be close, and therefore I don't think that force did have, um, a very strong position in terms of asking for a weight assessment, even on their interpretation of, of M3 and in terms of how one would be supposed to, because this is one of the fundamental problems with any suggestion of mitigation, which, um, with all and all, you had quite a simple situation.

00:38:14:08 - 00:38:47:15

You had one project, um, and its potential effect on one other project. Here we have multiple projects at multiple points in the campus. Um, how on earth would you, uh, take mitigation steps to satisfy, um, all of those different projects at different distances, at different points in the campus? And I think that's one of the fundamental flaws, uh, of, of any, um, uh, mitigation proposition.

00:38:48:03 - 00:39:19:17

And as far as, um, mitigation through financial compensation, as I'm sure Mr. Garden appreciates, that would be wholly without precedent. Um, there is nothing in the in in three of that policy terms, and I don't think there's any comparable example in the planning system. Of a new development being expected to underwrite the turnover of existing developments that that it may affect.

00:39:19:24 - 00:39:57:27

And there are literally any number of examples within the planning system of new developments, having financial impacts on other developments and other existing businesses. And if it were the case that the planning system had within it the potential for such financial um compensation to be required, it would be, uh, it would be one of the sort of it would be extremely well known to be the subject of endless debate and conferences.

00:39:57:29 - 00:40:11:00

All the rest of it. And that simply isn't the case. So what he is arguing for and what. Um, uh, the, um, the the Docker projects are arguing for us.

00:40:12:23 - 00:40:43:08

I mean, uh, posted are arguing for anyone. Sorry. Anyone? Um, just getting different projects slightly mixed up in my mind with the different with the the different examinations. Anyone who is seeking financial compensation, which of course real flats did in, in, in, in our law and that was rejected by the Secretary of state is trying to take the planning system into pretty much uncharted territory and there simply isn't. Um, there would need to be the clearest possible justification for that.

00:40:43:10 - 00:41:02:00

And there would need to be the clearest possible policy support for that. Um, and given the distances involved, including Dogger Bank A, we say that there is absolutely no basis for that. And when you're talking about projects that are 40km or over 100km away, it's even less justification. Bland.

00:41:04:17 - 00:41:13:15

Thank you, Mr. Russell. I just don't want to stray too much into mitigation or conversation just yet. But I know what you said there. Mr. Gardner, you've got your hand raised.

00:41:15:16 - 00:41:23:16

Yeah, I think my points probably do go to, to, um, mitigation and some of the points just raised. So I'm happy to, to wait till later in the agenda if that's okay.

00:41:23:21 - 00:42:04:01

Much appreciated. Thank you. Um, so just moving to my next query, notwithstanding the applicant's stance, that paragraph 2.8.197 of MPs n three does not apply to proposed development in the original version of ES chapter 16 with reference app 130. Paragraph 70 stated that wind farms located in close proximity have the potential to reduce the efficiency of the neighbouring project through weight classes, potentially reducing the annual energy production for each project Due to the close proximity of the projects to the Dogger Bank, a wind farm.

00:42:04:19 - 00:42:37:21

And potential annual energy production losses for Dogger Bank A was modelled. However, at deadline two and with reference rep 2058. The applicant stated that the word close has to be interpreted in the relevant context and that you. You did not consider that Dogger Bank A, B, or C are close in that sense. Could you provide further detail, including reference to any relevant precedent or case law? Why your interpretation of close appears to have changed between the first submission and deadline two.

00:42:39:17 - 00:43:19:02

I think the point is simply the close. The reason the word close is, is under discussion is because the where, the where, where it appears in the N3 and in that context, as for example, as other projects have said, both in relation to Morgan and in relation to Morgan, that with similar distances involved they do not consider that to be close. Within the context of N3 and, and I think the key driver for that is or an important aspect of that is the point that I've already flagged and that you're very familiar with, that.

00:43:19:04 - 00:43:40:13

We have respected the 7.5km buffer distance, which didn't take Wak effects into account, along with other things that were set by a sophisticated quasar regulator in the form of the Crown Estate. So the reason that that this word close is, is.

00:43:43:12 - 00:44:17:17

Is in play because it is linked to the suggestion that if it's close, there should be an assessment. So you can either get to the conclusion that an assessment isn't justified through the roof that it isn't close. Or you can step back and ask. Greater considerations in terms of whether you know what would awake assessment actually achieve if if there is no you don't normally do assessments just for the sake of them. There has to be a path towards some meaningful outcome.

00:44:17:23 - 00:44:31:24

If it's the case that there is no credible mitigation available, that would make sense in policy or practical terms. That would be another reason why you wouldn't want to to go, to go down that, to go down that route.

00:44:34:29 - 00:44:55:00

Okay. I think I just want to understand. So you described within the first version of the of the, of chapter 16, Dogger Bank, a being in close proximity of the proposed development. Are you saying that you do not consider that now to be the case.

00:44:57:27 - 00:44:58:12

Well.

00:44:58:19 - 00:45:13:25

It's 7.5km away. When you use a word like close, it depends on what the context is. And so in the context of weight effects and bearing in mind the Crown Estate buffer distance, we say that it is not close.

00:45:28:29 - 00:45:50:12

In your responses to the deadline, two submissions which with reference rep 3028. You state that the applicants complied with the Crown Estate's buffer distance for round four of 7.5km, which is a fundamental point in front of this examination. Can you explain in more detail why you describe this as a fundamental point?

00:45:52:09 - 00:45:54:17

Describe it or why I describe it.

00:46:01:01 - 00:46:02:21

Um, because.

00:46:05:17 - 00:46:06:07

Because.

00:46:08:09 - 00:46:09:24

The core task of.

00:46:13:25 - 00:46:36:06

That is examining authority. Yeah. It's obviously fully accept that you have to consider the information in front of you. Apply the guidance, make a recommendation to assist the Secretary of State in making a decision pursuant to 104, section 104. And in doing so, there are a range of, um, uh,

00:46:38:02 - 00:47:16:20

considerations that you have to draw together in, in your report, and you have to weigh that up and make your recommendation. And what is the the fundament, the reason that the 7.5km is fundamental is because a core point has a core sort of site selection and sort of potential impact and interaction point has been addressed in advance prior to the the planning system, as it were, when those bids were met.

00:47:17:14 - 00:47:51:03

Um, that that clearly predated the planning system and when that seabed licensing ground was designed. So the reason that it's core is because I think it goes, for example, to if if weight effects are in front of this examination only if they were only on the on the basis of sort of the relevant and important sort of test, then it is highly relevant. And it is important that the Secretary of State and the panel take into account why that buffer distance was set.

00:47:51:10 - 00:48:33:13

Who set it? And what reliance has been placed on that aid by applicants, like the current applicants, and be by other potentially affected, um, uh, projects. And so it sets an absolutely fundamental context. Then if if you are appreciating that when the we've taken a position on whether the offshore industry, um, policy applies to offshore wind, then the second the sort of uh, secondary position is if it does, it should be acknowledged Secretary of state.

00:48:33:15 - 00:49:05:21

Now if um then you then you'll then you have to adopt a more forensic sort of application of, of the, of the, of the policies. And so there because you are dealing with things within the same asset class so that these these policies are dealing with multiple other offshore industries. So how we how we interact with aggregates, there's going to be one approach to pragmatism there, how we how we integrate the oil and gas and other how we interact with carbon capture proposals.

00:49:05:23 - 00:49:40:12

Enough here. When you've got an offshore wind farm interacting with other offshore wind farms, it's no surprise that there would be special considerations that apply to that, particularly when you're you're dealing with what is a free general resource, namely the wind. No one owns the wind and no one has a legal right to wind. And no, that and Mr. Garden has buried this all its worth in the 24th edition of the leading textbook, which is parkland.

00:49:40:29 - 00:50:14:02

That's on torts. Um, it is said and and there is reference to an old case that is not a nuisance to prevent free access of air to another man's land, although it may cause some damage, for example by building so as to cut off winds from a windmill. Now that's a case as old as 1862 that is still in the 2023 edition of the leading textbook on tort, which include nuisance that is still the staple of the current law.

00:50:14:21 - 00:50:48:04

Um, so going back to your your question about why is that separation distance fundamental? It's fundamental to an application, a pragmatic approach. Um, it's also particularly when you take into account the point that I stress that out of dowsing made. And I'm going to briefly reiterate, um, the section. So paragraph 2.8 by three, four, five, um, which is comes immediately after the one we were pressing on the earlier about minimizing negative impact.

00:50:48:06 - 00:51:03:03

As such, a Secretary state should be satisfied that the site selection and site design of a proposed offshore wind and offshore transmission has been made with a view to avoiding or minimizing disruption or economic loss, or any adverse effect on safety to other offshore industries.

00:51:05:05 - 00:51:39:05

You know, even if even if overall there is a potential for the wording to apply to offshore wind, that couldn't be clearer. Other offshore industries, in other words, not the industry that is being talked about, namely offshore wind. And that affects, um, paragraph. I suggest that affects paragraph 2.8.34 for the prior paragraph that you were inviting Mr. Garland and Mr. President to talk about as well. So in terms of minimizing disruption or economic loss, I mean, minimize is a strong word, isn't it? Minimize economic loss.

00:51:39:07 - 00:51:40:14

How do you do? Well,

00:51:42:10 - 00:52:15:25

you know that that's quite a that's quite a tricky concept in and of itself. Um, but that paragraph does not apply on any reading of this three. It does not apply because it's talking about other offshore industries, not offshore wind. And that sorry, I'll finish this. That takes us back to the 7.5km buffer distance. The Crown state has an expert quasi regulator, has a deep understanding and an absolutely central role in relation to the offshore wind sector in England and Wales.

00:52:16:01 - 00:52:45:20

Set down that distance as in part taking into account when in fact it gave the industry every opportunity to lobby. It included an example of the formal Q&A of the bidder, meetings that were held, a series of business meetings which all industry participants were encouraged to to participate in. Um, and they were not lobbying. As far as we know, there's been every opportunity for people to say they did lobbying and didn't get it, didn't get an outcome. They were not logged in to increase that distance.

00:52:48:26 - 00:52:52:28

Thank you, Mr. Boswell. Um, Mr. President, you've got your hands up first.

00:52:54:03 - 00:53:28:14

Thank you, Alex Rosen, for the slopes. I mean, there are several points made there, some of which will obviously come back to you in in writing on. But my hand went up when we were talking about the 7.5km buffer. And I just like to draw attention to appendix one of the Orcid IPS, um, responses to

the applicant's responses to relevant representations. So Rep one, dash 086 and appendix one of that document is the Crown Estates themselves, in response to a question from the examining authority directed to them in the outer housing examination.

00:53:28:18 - 00:54:00:22

And that says the Crown Estate acknowledges that inter farm wak effects can extend beyond these buffer distances, i.e. beyond the 7.5 km buffer. That's been discussed so much this morning. It then goes on to say that the Crown Estate notes that the spatial and temporal variability of wind speed means that it is complex to accurately predict the Wak impact on nearby wind farms, which may depend upon factors beyond distance, for example, prevailing wind direction and wind farm layout. So you have quite a pertinent quote from the Crown Estate themselves there on this matter.

00:54:00:24 - 00:54:37:29

I'd just like to make another point on on weak assessments in the context of Alta dowsing examination, if that's all right. And that is that what the Orsted IPPs did in that situation. And we have a similar situation here, is that originally all seven of the Orsted IPPs were objecting on weight loss grounds, and following the assessments that were eventually done, certain Orsted IPPs withdrew their objections on weight loss only because of the deemed lack of significance of those effects. Now, I'm not without seeing such an assessment. I can't promise that a similar thing would happen here, but it's another reason for the applicant to undertake such an assessment because a similar outcome may be reached.

00:54:40:21 - 00:54:45:01

Thank you, Mr. Chesterton. And, um, Mr. Gordon, you've got your hand up, too.

00:54:46:09 - 00:55:16:23

Yeah. Mr. Gordon, for the Dogger Bank IPPs, I was going to similar to Mr. Treasure and draw your attention to that submission that we had appended to our written representation at deadline one. Um, I think the the other point I would like to raise is that the Crown Estate are being referred to as a quasi regulator. I think they sum their role up best in their submission to your question one as being a specialist real estate developer. Now they have set this buffer, but as Mr. Dresden recognises, that that is very much, um, there for the purposes of leasing.

00:55:16:25 - 00:55:39:07

And they recognise that there may be impacts beyond that, wak effects beyond that. Um, again, there are points that were raised that we can come back to later. I think the, the final point in relation to the right to wind. No, no. Where have we said there's a right to wind and we're not in a debate about nuisance. We're in a debate about setting, um, compliance with national policy statement that was designated a little over a year ago.

00:55:41:21 - 00:55:42:27

Thank you, Mr. Gordon.

00:55:46:00 - 00:55:50:05

I'm just going to move on to, uh, precedence. So.

00:55:54:03 - 00:55:57:11

Could I briefly respond on a couple of points that have just been made?

00:55:57:15 - 00:55:58:02

Yes.

00:55:58:19 - 00:56:20:18

So on the Crown Estate statement, I'm obviously very familiar with that statement. So nobody disagrees that events go beyond a 7.5km. It's all about striking a balance. That's where they struck that. That is a very important. And that's a very important point. Um,

00:56:22:09 - 00:56:54:10

Mr. President, reference dropping. Um, uh, wakey. Thanks for dropping their concerns on the housing. Again, we're talking about projects that were very considerable distance away. And again, we've got very considerable distance. There's a certain unreality to the notion that there is much to discuss about projects over 100km away. Um, there's nothing to discuss meaningfully about projects that are over 100km away.

00:56:55:00 - 00:57:27:20

Um, and so, you know, no one needs an assessment to draw, um, consideration or concern about projects over 100km away. There is no need for the group to have productive relations or, God forbid, um, uh, compensation. And on the I agree with Mr. Um, Gordon that we're not talking about losers. It's just that I did, and that's why I've only made passing reference to the fact that there isn't a legal right to clean wind.

00:57:28:04 - 00:57:37:28

He said, oh, that's an unsupported statement that they said in one of their replies. That was an unsupported Satan. I agree, so I'm now supportive.

00:57:40:22 - 00:57:44:16

Thank you, Mr. Boswell. Mr. Gardner. I see your hands raised.

00:57:46:11 - 00:58:02:15

Yeah. Mr. Gardner, for the project. It's just a point I know on distances, and I think Mr. Boswell is referencing purely the Orsted IPS projects when he raises this. But with Dogger Bank A, we are talking of distances of eight kilometres, Dogger Bank B and so 17km. So.

00:58:20:05 - 00:58:22:18

We've got a connection problem there from Mr. Garden.

00:58:25:00 - 00:58:28:21

We'll come back to Mr. Garden if he has additional points which he wishes to make.

00:58:35:13 - 00:58:46:08

So we'll just move on to precedence. Could I have the applicant's view briefly on the role that precedents play in DCO examinations?

00:58:48:14 - 00:58:50:18

Connection problem there for Mr. Garden?

00:58:53:00 - 00:58:56:21

We'll come back to Mr. Garden if he has additional points which he wishes to make.

00:59:03:13 - 00:59:05:25

So we'll just move on to precedents.

00:59:10:29 - 00:59:12:05

You hear me?

00:59:14:08 - 00:59:14:23

Junior.

00:59:16:11 - 00:59:19:29

We've got Mr. Gordon frozen on our screen, and you've got the same.

00:59:20:08 - 00:59:24:21

We've got the same? Yes. We'll come back to Mr. Garden if he wants to make additional points.

00:59:25:18 - 00:59:26:08

Okay.

00:59:27:14 - 00:59:40:15

Um, do we need to know that he's still got the two points? If not the same thing. I'm just mindful that since he's so closely engaged in this discussion on do we not need to be sure that he's able to hear us?

00:59:49:02 - 00:59:54:07

We understand that he has dropped out completely. So if you just give us a few moments, we'll try and get him back reconnected.

01:01:05:15 - 01:01:09:11

Hello. We're just trying to contact, uh, Mr. Garden now.

01:01:09:26 - 01:01:21:12

Um, but I think we just need to adjourn briefly for free for five minutes while we try and reconnect with Mr. Garden. So, um, I'm just suggesting that we take a short five minute adjournment.