

FAO: Kath Haddrell  
The Planning Inspectorate  
Room 3/13  
Temple Quay House  
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Bristol BS1 6PN

Your reference

Our reference

BDDS/NW/84367/120009  
UKM/46347113.1

19 November 2012

Dear Sirs

**IPC REFERENCE NUMBER: TR030001**

**APPLICATION FOR DEVELOPMENT CONSENT BY ABLE HUMBER PORTS LIMITED FOR THE PROPOSED MARINE ENERGY PARK ("APPLICATION")**

**INTERESTED PARTY: C.GEN KILLINGHOLME LIMITED ("C.GEN") AND C.RO PORTS KILLINGHOLME LIMITED ("C.RO") (REFERENCE 1001 553210015532)**

We are writing regarding the additional funding information ("Funding Document") submitted by Able on 29 October 2012 following the Compulsory Acquisition Hearing held on Wednesday 17 October 2012.

Unfortunately, we were not aware that this information had been uploaded on the AMEP webpage and it was not straightforward to locate it. For this reason, we are only submitting comments now.

*Able's Assets*

1. The Funding Document submitted to the Planning Inspectorate still does not clarify, or set out sufficient detail as to Able's financial position, and whether it can meet its obligations and liabilities.
2. The Funding Document does not clarify if Able owns any assets other than the freehold land on which AMEP is to be built. If the only asset Able possesses is the land reserved for AMEP, it cannot raise funds by selling that land, and therefore has little ability to meet those obligations and liabilities.
3. The letter from Ernst and Young (24 October 2012) included in the Funding Document explains that the accounts of Elba Group Limited ("Elba Group"), the ultimate Holding Company for Able, show net assets of £370 million. However, the majority of these are investment property and land, which are presumably not liquid assets that could be disposed of/mortgaged to meet development and compensation costs for AMEP. The Funding Document does not provide any information about how much, if any, or in what proportion, those assets are held by subsidiaries, either Elba Securities Limited, or Able, or any other company in the Elba Group. Able has also not provided any accounts, of the Elba Group or Able itself. Without such

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necessary information, Able cannot demonstrate that it has adequate funding available to it to enable it to carry out the development and meet any claims for compensation for compulsory acquisition within the statutory period following the order being made, or to meet claims for blight notice.

4. It is not reasonably likely to be the case that the asserted net assets of the Elba Group are all available to Able.
5. It remains the case that the assets of Able, and its parent companies, remain insufficiently explained. This is a serious deficiency, particularly given that all of these companies are registered off-shore.

#### *Compensation Heads*

6. C.RO and C.GEN are concerned regarding the statement of liabilities that Able has provided in the Funding Document (letter from DDM Agriculture, 22 October 2012). The statement of liabilities only covers the estimated acquisition of land and does not seem to sufficiently take into account other compensation liabilities and heads of claim, including, but not limited to, injurious affection.
7. Whilst C.GEN and C.RO understand that it is not possible to value every potential claim, adequate funds must be available to meet claims. The fact Able confirms that funds in excess of £1.735 million are reserved, does not provide sufficient certainty that Able will have adequate funds to meet compensation liabilities because the quantum of claims will not be limited to land acquisition. For example if C.RO and C.GEN are unable to use the Railway, which is integral to their businesses located on land affected by the Order, they would be entitled to make claims for injurious affection, which may be substantial.

#### *Elba Group's Parent Company Guarantee*

8. It is assumed that the Elba Group (and Elba Securities Limited) is reluctant to enter into a parent company guarantee prior to the commencement of the authorised development. For previous orders for development consent, in particular The Rookery South (Resource Recovery Facility) Order 2011, the IPC required Covanta Rookery South Limited's (the undertaker) Delaware registered parent company to put in place a parent company guarantee prior to the close of the examination. This was notwithstanding the existence of a planning obligation to put in place a parent company guarantee prior to commencement of the authorised development.
9. The situation here is analogous: an offshore/foreign registered company with assets unconnected to the development site, has a subsidiary who is promoting a development without (or certainly without evidence of) assets held by that subsidiary to meet the costs of the development including compensation liabilities. As a result it would seem anomalous for the same requirement not to be applied in this instance. There is no reason for Elba Group and relevant parent companies not to put in place such a guarantee and it is notable that Able has not offered to do so, despite asserting that it follows precedent.



*Lack of accounts to be provided*

10. In the same way, the Planning Obligation by Undertaking proposed to incorporate the parent company guarantee, does not provide that the Elba Group has to provide accounts to North Lincolnshire Council ("Council") either prior to entering into the parent company guarantee or throughout the lifetime of the guarantee. This was required at Rookery.
11. The ability of the Council to assess the strength of security provided by the parent company guarantee is compromised if no accounts are available. It is also a matter of public record, and of satisfying those affected by the development that a guarantee is indeed effective. It is the evidence in the accounts on which the security of the parent company guarantee rests. Without the accounts, the Council cannot be sufficiently certain that there is adequate security prior to the commencement of the authorised development nor during the lifetime of it.

*Next steps*

12. Accordingly, our clients consider that in order for the Panel - and thereby the Secretary of State - to be satisfied that the requirements of the Department for Communities and Local Government *Planning Act 2008 Guidance related to procedures for compulsory acquisition* February 2012 in particular paragraphs 33 and 34, have been met, you should require:
  - 12.1 the Elba Group's accounts to be provided in order to ascertain its assets, including those of its subsidiaries, and confirmation of those assets (and cash) that are held by Able;
  - 12.2 confirmation that the Elba Group and Elba Securities Limited give a parent company guarantee prior to the close of the examination; and
  - 12.3 the inclusion in the Planning Obligation by Undertaking of an obligation for the parties thereto (Elba Group and other relevant parent companies) to provide accounts for the Council prior to entering into the parent company guarantee and on every anniversary thereafter.

Without such information, the position as to the availability of funds remains very unsatisfactory.

I look forward to your response.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'DLA Piper UK LLP', written in a cursive, stylized script.

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