

**APPEAL REF: APP/EPR 573**

**Environmental Permit Ref: EPR/HP3228XT**

**Hinkley Point C Water Discharge Activity Environmental Permit**

Appeal against the non-determination of an application to vary permit Ref EPR/HP3228XT to remove conditions requiring the installation and operation of an Acoustic Fish Deterrent (AFD).

**CASE MANAGEMENT CONFERENCE SUMMARY - 24 March 2021**

**The Environment Agency (the Agency) is encouraged to draw the attention of interested parties to this Note, including posting a copy on its Sharefile site.**

1. This note supplements the Inspector’s pre-conference note, dated   
   15 March, and where relevant, updates the position regarding the procedural approach to this appeal.
2. The Inspector appointed to conduct the Inquiry will be Mike Robins MSc BSc(Hons) MRTPI.
3. The Inquiry is scheduled to open at 10.00am on **Tuesday 8 June 2021** and, following discussions with the main parties, will be held as a virtual event on the Microsoft Teams Platform. Once the Inquiry is open, it will run on the same lines as a face to face event, adopting the same protocols and etiquette as are normal in the Inquiry room.
4. A virtual event has been shown to be an effective, fair and open method for the hearing of cases and does allow for parties to engage either by video or telephone link. It is important that all those wishing to take part ensure that their contact details are made available to the Case Officer, who will be Kevin Gordon; he can be contacted on [kevin.gordon@planninginspectorate.gov.uk](mailto:kevin.gordon@planninginspectorate.gov.uk) .
5. Initially it was anticipated that up to 8 sitting days might be required, but following discussion it was agreed to programme an additional day, Monday   
   21 June, for overrun, or for parties to discuss and complete closing addresses. A day will be agreed between the three advocates for closing statements later in that week, this should be communicated to the case officer by **1 April 2021**.
6. The case has been recovered by the Secretary of State (SoS) for the Department for Environment Food and Rural Affairs (Defra). This means that the Inquiry will inform a comprehensive Report presenting recommendations for the final determination by the SoS. I would remind advocates of the need for comprehensive written closing submissions, which will be central to the presentation of their party’s cases in the Report.

**Appearances**

1. The Blue Marine Foundation (Blue) have been confirmed as a ‘Rule 6’ party, With ‘Rule 6 status’, they will be sent copies of the documents sent to us by the other main parties, will be entitled to appear at the Inquiry and to cross-examine other parties. Very helpfully, Blue will be representing a range of other bodies interested in this case.
2. Appearances for the main parties were confirmed as follows:

Appellant Stephen Tromans QC, who will be calling:

Dr Manus O’Donnell (Overview and background) Dr Simon Jennings CEFAS (Entrapment and Fish populations) Tim Goodwin (Ecology, SAC, SPA, Ramsar, effects on integrity)

Agency

Richard Moules of Counsel, who will be calling:

Dr Karen Edwards (Overview and LVSE Intake) Dr Jerome Masters (EAV, Migratory and Salmonids) Adam Waugh (Fish Assemblage, Scale of Assessment) Charles Crundwell (Shad Assessment) Chris Bell (Eel Assessment)

Blue

Brendan Moorhouse of Counsel, who will be calling:

Steve Colclough (Ecological impacts, up to date assessments and uncertainties)

1. A number of interested parties indicated a wish to address the event. I would remind all that you should confirm your request to appear to the case officer before the event, and below I have set out a provisional programme for attendance.

**Notifications**

1. The Inspectorate will provide the wording for the site notice, setting out what is required in the notification letter, including the necessity for parties to register in advance if they wish to ‘attend’ or participate in the Inquiry, and details on how interested parties can participate, including access by telephone from a land line for those without access to a computer or smart phone. The notifications should also include reference to the Inquiry library, held by the Agency on their Sharefile website.
2. Inquiry notifications should normally be issued up to 3 weeks in advance of opening. However, given the virtual format of the Inquiry and the need to register in advance, as much notice as possible should be given to allow interested parties time to consider whether they wish to participate.
3. It was agreed that the Agency would work with the appellant to erect site notices containing the same information at locations around the site. To avoid any confusion, the Notices should be posted on the same day that the letters of notification go out – the parties will need to liaise on that. Once posted, a plan is to be submitted to the Case Officer, confirming the locations of the Notices, with photographs of each. The notices must not be removed before the Inquiry takes place.

**Main Considerations**

1. Following the case management conference, it was clear that discussions are ongoing in relation to an agreement on the range of matters needing to be addressed, although there was general agreement from the main parties that central to the case was an appropriate assessment. Therefore the main issue is proposed to be:

* whether it can be concluded beyond reasonable scientific doubt that the variation of the Permit and removal of the AFD would not have an adverse effect, either alone or in combination with other projects, on the integrity of protected sites and species.

1. Some interested parties expressed concerns, which included matters such as the past actions of the appellant, the reasoning behind the proposed variation and the consultants involved. I must emphasise that this case relates specifically to the proposed variation of the Permit to remove conditions related to Acoustic Fish Deterrents (AFD). While I note some obvious overlaps with the licensing functions of the Marine Management Organisation and the existing Development Consent Order, as well as other permissions, this is not the forum to revisit those consents or the principal of the overall development.
2. Nonetheless, further concerns were raised that alternative approaches to mitigation be considered, and I note that the appellant has identified expert evidence to be provided on this matter.
3. I have also noted the concern that a focus on the species associated with the protected sites could be limiting in terms of understanding the breadth of the effect that the removal of the conditions may cause. As discussed at the conference, I would suggest that such matters are addressed by the appellant, insofar as they consider them to be relevant to determination of the case.

**Dealing with the Evidence**

1. I strongly encourage the Agency and appellant to continue to engage with and agree a Statement of Common Ground (SoCG) to inform the proofs of evidence, and to include Blue in that process. The importance of good SoCGs, or more to the point statements of uncommon ground, will be critical in this case in terms of providing a focus for the Inquiry. It was agreed that a draft would be submitted by the appellant to the Agency and Blue by **29 March 2021**. A final SoCG should be submitted with the Proofs of Evidence.
2. It was agreed that the majority of the evidence to be brought to the Inquiry was to be of a technical nature and best suited to the formal examination and cross-examination process. While noting some advantages of a topic based approach, there is no obvious relationship between the matters to be addressed by individual witnesses and my direction at this point is that the evidence will be taken on the basis of individual party submissions; an indicative programme is set out below.
3. Following discussions, the Agency confirmed their intention to produce draft and Scott Schedules, in a proportionate tabular form, to develop party’s cases for the matters to be addressed. These can be very helpful and it was agreed that they would be living documents to be developed from the Proofs of Evidence.
4. The main parties agreed to confirm required timescales and produce a draft programme for the Inquiry, this would include a session for discussion on a varied permit were the appeal to be allowed. There is no prejudice implied in either myself or the parties opposed to the variation considering such matters. It is necessary that the Report reflects on options were the appeal to be recommended for dismissal or to be allowed. I have confirmed that if disagreement over the wording or approach to such a variation of the Permit remains, then this should be clearly set out to inform a round table discussion at the Inquiry.
5. As discussed, the evidence of the appellant will also need to address the other matters raised by interested parties, where relevant.
6. The opportunity for interested parties to submit representations to the Inquiry was following notification of the appeal, and almost 70 responses have been received by the Inspectorate. Natural England (NE) suggested at the conference, as did Natural Resources Wales (NRW), that they wished to be involved in the Inquiry but presenting their representations in writing. I have responses from NE, dated 27 October 2020 and from NRW dated 27 October 2020 and 18 February 2021. If either party wish to make further representations, I would recommend that they contact the case officer setting out their reasoning and this will be considered.
7. I would emphasise that there is no need for any further submissions in writing from interested parties, all those made during consultation on the application and following notification of the appeal are available to the Inquiry. However, this does not limit your opportunity to make representations at the Inquiry itself and I have set out how you can do this elsewhere in this note.

**Core Documents/Inquiry Library/hard copies**

22. It was reported that a template for the Core Documents is in development and will be provided by the Appellant to the other main parties by **31 March 2021**. It is important that this is agreed to inform the Proofs of Evidence and ensure a consistent reference base. In light of the technical matters and heavy reliance likely to be made on acronyms, I have appended a draft Glossary, which I would request is maintained alongside the Core Documents. This is not an exhaustive list and I would expect all parties to contribute to its completion as a resource to assist all those engaging with the documentation in this case.

23. The Core Documents should comprise only those documents to which you will be referring in your evidence. Where any documents on which it is intended to rely are lengthy, only relevant extracts need to be supplied. However, such extracts should be prefaced with the front cover of the relevant document and include any accompanying relevant contextual text.

24. Any legal authorities on which you intend to rely will each need to be prefaced with a note explaining the relevance of the document to your case, together with the propositions on which you are seeking to rely, with the relevant paragraphs flagged up. On this matter, it was agreed that a written summary of legal submissions shall be submitted, following agreement between the main parties. This shall be submitted by the **25 May 2021**.

25. It was agreed that all Inquiry documents, including the Core Documents would be hosted on the Agency’s Citizen Space website. However, in response to a suggestion post meeting that their Sharefile system would be a more accessible and flexible option, I have agreed that this should be the basis for the Inquiry documents, as follows:

<https://ea.sharefile.com/d-s98fa7883bbc849d582e2a58355717715>

1. The library is to include all appeal documents, including the Core Documents, plus the proofs and appendices, together with any rebuttals etc. It is expected that all necessary documents will have been submitted in advance of the Inquiry. Any additional documents can only be handed up to the Inquiry with the Inspector’s permission. Only if accepted, will they be sent to the case officer ‘hosting’ the event, so that they can be forwarded to the Inspector and can be placed in the library web site from where they will need to be available to be shared and viewed by all parties.
2. This process does not replace or override any actions that the Agency may wish to take to make the information available for consultation purposes or the public register.

26. I may need some documents in hard copy; at this point this would comprise the Proofs of Evidence. The case officer will advise on details for their collection, if required, in due course.

**Inquiry Running Order/Programme**

1. I am conscious that there were a number of concerns raised by interested parties and bodies, as well as requests to be involved in the Inquiry. This is a public Inquiry and I have indicated that I will be content to receive relevant representations from interested parties. It would be my intention to take the majority of such representations on the first day of the Inquiry, but with some flexibility if there are difficulties for parties to be able to attend.
2. Accordingly, I have set out below a suggested initial running order and party involvement:

This may be subject to change based on the final submitted cases, and I confirm that the Agency will support production of an agreed draft programme by the **28 May 2021**.

|  |  |
| --- | --- |
| **Topic** | **Parties** |
| Opening Announcements | Inspector |
| Opening Statements | Appellant, Agency, Blue |
| Statements by Interested Parties/Organisations as required | Interested Parties |
| Environment Agency Case | Agency  5 Witnesses |
| Blue Marine Foundation Case for Severn Estuary Interests | Blue  1 Witness |
| Appellant’s Case | Appellant  3 witnesses |
| Proposed Permit Variation | Agency, Blue, Appellant |
|  |  |
| Closing Statements | Agency |
|  | Blue |
|  | Appellant |

Witness involvement shall include evidence in chief, cross-examination, Inspector’s questions and re-examination.

Exceptionally, it was agreed that a site visit was neither practicable nor required in this case.

**Costs**

1. No application for costs has been foreshadowed. If any application is to be made, the planning practice guidance makes it clear that, as a matter of good practice, they should be made in writing to the Inspector before the Inquiry.

**Timetable for submission of documents**

1. The main Statement of Common Ground signed by both the Agency and the appellant, and involving Blue is to be submitted no later than **11 May 2021**. Relevant Scott Schedules by **1 June 2021**.
2. All proofs of Evidence are to be submitted no later than **11 May 2021.** These can be submitted electronically; hard copies should be available **25 May 2021**.

1. The Agency is to make sure a copy of the Inquiry notification letters, and a list of those notified is sent in to PINS no later than **21 May 2021**, along with photographs of site notices.
2. Time estimates for party’s cases are to be submitted by the **21 May 2021** to inform a draft programme to be submitted by the **28 May 2021**.
3. There is no reference in the Rules or the Procedural Guide to supplementary or rebuttal proofs and PINS does not encourage the provision of such. However, where they are necessary to save Inquiry time, copies should be provided no later than **25 May 2021**. It is important that any rebuttal proofs do not introduce new issues. As an alternative to a rebuttal, it may be that the matter could more succinctly be addressed through an addendum/ additional SoCG.

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| 1 April 2021 | Advocates to confirm day wc 21 June for Closing Statements. |
| 29 March 2021 | Submission of Draft SoCG |
| 31 March 2021 | Submission of Draft Core Document list |
| 11 May 2021 | Deadline for submission of:   * all proofs, * Statement of Common Ground |
| 21 May 2021 | Deadline for submission of:   * copies of the Inquiry notification letters and a list of those notified * photographs of site notices * Time estimates shared between parties |
| 25 May 2021 | Deadline for submission of:   * any necessary rebuttal proofs * Legal submission summary * Hard Copy Proofs of evidence available |
| 28 May 2021 | * Draft Inquiry programme |
| 1 June 2021 | * Submission of Scott Schedules |
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| Tuesday  8 June 2021 | Inquiry opens 10.00 am |
| Tuesday  15 June 2021 | Inquiry resumes week 2 |
| Monday  21 June 2021 | Reserve day |
| Date tbc | Closing Statements |

**Mike Robins**

INSPECTOR

25 March 2021

**DRAFT GLOSSARY**

|  |  |
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| AA | Appropriate Assessment |
| AFD | Acoustic Fish Deterrent |
| ALARP | As low as reasonably practicable |
| APEM | Research Contractor |
| CEFAS | Centre for Environment Fisheries and Aquatic Science |
| CWS | Cooling water system |
| DCO | Development Consent Order |
| EA | Environment Agency |
| EAV | Equivalent Adult Value |
| FIAT | Feature Impact Assessment Templates |
| FRR | Fish return and recovery system |
| HPC | Hinkley Point C |
| HRA | Habitats Regulations Assessment |
| ICES | International Council for Exploration of the Sea |
| LVSE | Low Velocity Side Entry |
| MMO | Marine Management Organisation |
| NE | Natural England |
| NRW | Natural Resources Wales |
| ROV | Remotely Operated Vehicles |
| TB | Technical Briefs |
| PoE | Proof of Evidence |
| Ramsar | A convention addressing the designation of wetland sites |
| SAC | Special Area of Conservation |
| SoC | Statement of Case |
| SPA | Special Protection Area |
| SPF | Spawning Production Foregone |
| SSB | Stock Spawning Biomass |
| QIA | Quantitative Impact Assessment Model |
| WDA | Water Discharge Activity |
|  |  |
| Entrained | Biota passing through screens to discharge |
| Impinged | Biota trapped by screens and returned via FRR |
| Entrapment | Total of impinged and entrained biota |
| Demersal | Fish living on, or near the bottom |
| Epibenthic | Organisms living on or near the bottom sediments |
| Pelagic | Fish living away from shore or bottom |
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