Scottish Power Renewables (SPR) are using “gagging” clauses in their agreements with landowners

By Louise Fincham

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During the recent development consent order hearings (DCO), the Suffolk Energy Action Solutions group (SEAS) brought to the attention of the inspectors the fact that Scottish Power Renewables (SPR) are using “gagging” clauses in their agreements with landowners involved in the planning process for their offshore wind farms, EA1N and EA2. These clauses offer financial incentives to individuals and groups to withdraw objections and/or desist from objecting to their plans. As things currently stand SPR want to land huge cables on the fragile and protected coast at Thorpeness; the cables will then be dug into trenches up to 64 metres wide for 9km through AONB land, farmland, past villages and finally ending up at the medieval village of Friston where they will connect to substations on a building site that will be the size of Wembley Stadium.

SPR claim that these gagging orders are “*normal commercial arrangements*”; we do not believe this is the case but it does appear that they are becoming more common. Research into the way opposition to HS2 was silenced uncovered the fact that HS2 limited had no less than 350 such agreements in place, including agreements with several local councils. The BBC Moneybox programme aired on the 13th March 2021 described the scandal of property

developers insisting on purchasers signing NDAs before the builders would rectify defects in the properties.

A review by our own government, led by former construction minister, Nick Raynsford, concluded that these agreements “had a corrosive sense on the part of the public, that planning is no longer protecting their interests” and “*undermined public trust in major infrastructure projects*”.

Development consent and planning hearings are distorted if those who might reasonably be expected to object are quietly silenced and given financial incentives to withdraw opposition. The gagging clauses are so tightly worded that if, for example, an individual had previously objected to a development and then withdrew that objection, he/she would be forced to lie or stay silent if the planning inspectors were to ask why their objection had been withdrawn.

In the case of SPR, individuals speak of being pressurised and bullied into entering into negotiations and agreements. Quotes from some of the letters sent to the ExA include:

“*I believe that the actions of SPR in requiring NDAs dissipates the true extent of the opposition to SPR’s plans and it is therefore a substantial flaw in the DCO process*”

“*The rule of law requires and provides a right of free speech. The DCO process is being undermined by these attempts to curtail that right and the resulting shift in the balance of power in favour of the developers with greater*

resources further disadvantages the local communities affected by the application."

"*Many of those pressurised to sign option Agreements still strongly object to the application and must be allowed to put their views to the Enquiry*."

"*…you should be aware of the intimidating tactics employed by SPR from the outset. At one of our meetings in our village hall Friston during the consultation period, a family living along the proposed cable corridor was brought to tears describing how SPR had been treating them."*

SPR tried to get letters that had been written to the planning inspectors withdrawn. We will not withdraw our letter of complaint; we stand by it completely. The gagging orders are contained within Heads of Terms and Option Agreements that SEAS have read. During the hearings SPR claimed that SEAS were making false assertions that were bordering on the "*vexatious"*. SPR went on to say that they would like the "*full facts*" to be considered before the ExA came to any conclusions about SEAS claim. We would certainly like to see the "*full facts*" but SPR has notably failed to give any material or produce any documents to the ExA. Additionally, SPR now say that that this information does not have "a*ny relevance to the Examination*."

SPR has told landowners that the granting of development consent is a "*foregone conclusion*" and that if they do not sign agreements now, they will be offered paltry amounts through compulsory purchase arrangements in the

future. It cannot be true to say that development consent is a "*foregone conclusion*", a point brought home to all of us in the recent case where a judicial review overturned a planning decision in the case of the Vanguard windfarm in Norfolk. It is quite frankly insulting to the hard work done by the planning inspectorate to suggested that a decision is a "*foregone conclusion*".

These David and Goliath fights between developers and rural communities are hard enough. Endless rounds of "consultations" and hearings stretch the extremely limited resources of those who oppose them to the absolute limit. Companies like SPR employ teams of lawyers, land agents and PR companies to try to stifle opposition. If you add into the mix the use of gagging provisions to silence opposition then it is true to say that our planning system is broken and no longer fit for purpose. There can be no justification for making payments or imposing conditions which undermine a statutory planning inquiry conducted in accordance with public law principles.

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