



Government Legal Department

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Your ref: JXL/LXR/LXE
Our ref: Z2003107/NUT/JD3

23 March 2020

Dear Sir or Madam

Response to letter before claim: Energy National Policy Statements

1. We write in response to your letter dated 2 March 2020.

The proposed Claimants

2. Mr Dale Vince, Mr George Monbiot and the Good Law Project Limited.

The proposed Defendant

3. The Secretary of State for Business, Energy and Industrial Strategy is responsible for energy policy within Government and as such would be the appropriate Defendant. We do not consider it necessary to name any other Secretary of State, or any other party, as Defendant or Interested Party to the proposed claim.

The details of the matter being challenged

4. Under the Pre-Action Protocol for Judicial Review a letter before claim should contain the date and details of the decision, act or omission being challenged, a clear summary of the facts and the legal basis for the claim. Your letter does not do this. Instead its stated purpose is to 'ask' the Secretary of State:
 - a. *'...whether he thinks it is now appropriate to review all or parts of each of the National Policy Statements for Energy Infrastructure (EN-1 to EN-6) (the "Energy NPSs") pursuant to section 6(1) of the Planning Act 2008'*and, if he thinks it appropriate to do so,
 - b. *'...to confirm that the Energy NPSs will be reviewed forthwith.'*

Response

5. As you are no doubt aware, the Government consulted on its approach to a new nuclear NPS in 2017 which will necessarily have to be taken through the legislative and parliamentary process before it can be

Gilad Segal - Head of Division

Gary Howard - Deputy Director, Team Leader Planning, Infrastructure & Environment



designated. As regards the remaining Energy NPSs, the Government is already actively considering whether it is appropriate to review all or parts of them and that process began before, and independently of, the litigation which resulted in the Court of Appeal's judgment in *Plan B Earth v Secretary of State for Transport* [2020] EWCA Civ 214. Given the broad and complex nature of the issues involved in energy development, officials in the Department for Business, Energy and Industrial Strategy are required to give careful consideration to a number of matters before advice can be provided to the Secretary of State to enable him to take a decision on whether or not it is appropriate to carry out such a review.

6. I can confirm that once a decision whether to review the Energy NPSs has been made this will be published and/or communicated to you in writing. Until this happens it would be premature for your clients to issue a claim. Any claim issued prematurely will be resisted in the strongest possible terms.

Section 13 of the Planning Act 2008

7. You state the proposed claim is not ousted by section 13 of the Planning Act 2008. However, as stated above, you have failed to identify the decision, act or omission which you wish to challenge. It is not therefore possible to respond to this part of your letter at this stage.

Disclosure

8. Your letter asks that the Secretary of State makes '*full and frank disclosure, as he is required to do, of matters relevant to the decision under challenge in this letter*'. However, as already stated, you have failed to identify any 'decision under challenge'. It is not therefore possible to respond to this part of your letter at this stage.

Funding

9. I confirm the proposed Defendant does not dispute that the subject matter of the proposed claim would fall within the definition of 'Aarhus Convention claim' in CPR Part 45.

Alternative dispute resolution

10. It is noted that your clients are willing to engage in alternative dispute resolution. Whilst the proposed Defendant is not opposed in principle to ADR, he considers that your claim is premature. In any event, he considers it more suitable to seek to resolve and/or narrow any disputed issues in the usual way and in accordance with the Protocol.

Address for further correspondence and service of court documents

11. Court documents must be served at the address at the head of this letter quoting our reference Z2003107/NUT/JD3. Routine correspondence may be sent electronically to the email address below.

Yours faithfully

Niall Toru

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