



Department
of Energy &
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Dear Mr Newman

**PLANNING ACT 2008
APPLICATION FOR A NON-MATERIAL CHANGE TO THE HINKLEY POINT
C (NUCLEAR GENERATION STATION) ORDER 2013**

1. I am directed by the Secretary of State for Energy and Climate Change (the "Secretary of State") to advise you that consideration has been given to the application (the "Application") which was made by NNB Generation Company Limited (referred to in the Application as EDF Energy) (the "Applicant") on 26 January 2015 for a non-material change to the Hinkley Point C (Nuclear Generation station) Order 2013 ("the 2013 Order") under paragraph 2 of Schedule 6 to the Planning Act 2008 (the "2008 Act").
2. The original application for development consent under the Planning Act 2008 was submitted to the Planning Inspectorate by the Applicant on 31 October 2011. Development consent was granted on 19 March 2013 for the construction and operation of a European pressurised reactor (EPR) nuclear power station with a generating capacity of 3260MW at Hinkley Point in Somerset.
3. The Applicant applied for a change to the 2013 Order to allow changes to a number of service buildings as follows: 9 new or relocated structures proposed to further the safe operation of the plant; 9 structures to be increased in size; 15 structures to be moved from their consented location as a consequence of the above proposed changes, for security reasons, to enable the safe sitting of the new structures and to facilitate heavy duty vehicle traffic movement around the site; and 6 structures to be removed. No changes are proposed to the tallest buildings or to the overall site footprint.

Summary of the Secretary of State's Decision

4. The Secretary of State has decided under paragraph 2(1) of Schedule 6 to the 2008 Act to make non-material changes to the 2013 Order, so as to authorise the changes as detailed in the Application. This letter is the notification of the Secretary of State's decision in accordance with regulation 8 of the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulation 2011 (as amended) ("the 2011 Regulations").

Consideration of the materiality of the proposed change

5. The Secretary of State has given consideration as to whether the application is for a material or a non-material change. In doing so the Secretary of State has had regard to paragraph 2(2) of Schedule 6 to the Planning Act 2008 which requires the Secretary of State to consider the effect of the change on the development consent order as originally made.
6. There is no statutory definition of what constitutes a "material" or "non-material" change for the purposes of Schedule 6 to the Planning Act 2008 and Part 1 of the 2011 Regulations.
7. So far as decisions on whether a proposed change is material or non-material, the "Government response to the consultation on making changes to Development Consent Orders" (November 2014)¹ ("the Government response") document makes the following points. *First*, it is not possible to set out precise, comprehensive and exhaustive guidance on whether a change is material or non-material. *Second*, that there are 3 matters which in many instances would provide a good indication of whether a proposed change would be more likely to be a material change, namely (a) whether an update would be required to the Environmental Statement (from that at the time the original development consent order ("DCO") was made) to take account of likely significant effects on the environment; (b) whether there would be a need for a Habitats Regulation Assessment ("HRA"), or a need for a new or additional licence in respect of European Protected Species ("EPS"); and (c) whether the proposed change would entail compulsory acquisition of any land that was not authorised through the existing DCO. *Third*, that although the above matters were capable of being good indicators of the position, none of them (either alone or cumulatively) would be determinative of the material/non-material issue under paragraph 2 of Schedule 6. Each case must depend on thorough consideration of its own circumstances.
8. The Secretary of State has considered the 3 matters in (a), (b) and (c) above:
 - a) The Secretary of State notes that the Applicant has provided further environmental information with the Application and found no positive or negative changes to the significance of any environmental impacts

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/370425/Govt_response_to_consultation_on_changes_to_Development_Consent_Orders.pdf

assessed for the 2013 Order, or new environmental impacts, due to the Application. The Secretary of State does, however, note changes to the specific landscape/visual impacts given new and relocated buildings. This is considered further below at paragraphs 25-27. Overall the Secretary of State is content with the Applicant's conclusion that there will be no change to the environmental impacts assessed for the 2013 Order. Consequently, there is no need to update the environmental information originally assessed for the 2013 Order.

- b) The Secretary of State does not consider that there is a need for a new HRA or EPS licence under the Conservation of Habitats and Species Regulations 2010. There are no changes proposed in the Application that are likely of themselves or cumulatively to have a new significant effect on a European site not already considered for the 2013 Order, or add to the likely significant effects already identified for European sites. In particular, the Secretary of State has considered potential impacts of the development, after any changes, on Barbastelle bats – which are a protected feature of the Exmoor and Quantock Oakwoods Special Area of Conservation (“SAC”). The Secretary of State considers that the proposed changes would not change the availability of foraging habitat or disrupt movement through commuting corridors or pathways. Therefore, no changes are needed to the existing assessment, of no adverse effects on protected sites. Consequently, there is no need for a new HRA.
- c) The proposed changes would not require the compulsory purchase of any land that was not so authorised by the existing DCO. Consequently, this question does not raise issues of materiality.

9. The Secretary of State notes further that the Applicant invited the consideration of three further considerations:

- The context of the proposed changes;
- The boundary of the authorised works; and
- The *Wheatcroft* principle – whether treating a proposed change as non-material would be unfair in that it might limit, for instance, consultation with an interested party on the proposed change.

10. The above factors were not specifically part of the considerations set out in the Government repose of November 2014, but the *Wheatcroft* principle is mentioned in *Advice Note 16* issued by the Planning Inspectorate in July 2015 on making changes to DCOs. Taking them into account as part of the consideration for this project, the Secretary of State considers that none of the considerations undermines the conclusion(s) reached on the CLG questions, see paragraphs 8a) – 8c). Accordingly, the factors in paragraph 9 do not lead to the conclusion that the proposed changes should be considered material.

11. The Secretary of State has therefore concluded, on the basis of the above, the proposed changes are appropriately categorised as non-material changes (for the purposes of paragraph 2 of Schedule 6 to the 2008 Act). The Application has therefore been handled in accordance with Part 1 of the 2011 Regulations.

Consultation and Responses

12. In accordance with the requirements of regulation 7(1) of the 2011 Regulations, parties required to be notified by that regulation were notified of the application on 11 February 2015. Consultation ran until 23 March 2015.
13. The application was made publicly available on the Planning Inspectorate's website on the 5 February 2015, such that there was opportunity for anyone not notified to also submit representations to the Planning Inspectorate.
14. Six representations were received and considered from: the Office of Nuclear Regulation; English Heritage; Sedgemoor District Council; West Somerset Council; the Environment Agency; and, Natural England. All stated that they had no objection to the application. The Environment Agency noted that the potential impact of forebay design changes on fish survival through the cooling water and fish recovery and return systems was being considered in relation to requirement CW1 of the 2013 Order but that they had no objection to the Application.
15. The Secretary of State has considered the representations received in response to the consultation and does not consider that any further information needs to be provided by the Applicant or that further consultation of those already consulted is necessary.
16. Finally, the Secretary of State has reviewed earlier statements made in relation to the development and considered whether the Application requires wider consultation. Having considered these matters, the Secretary of State has concluded that the Application does not require a wider consultation than that required by Regulation 7(1) of the 2011 Regulations.

Environmental Impact Assessment

17. The Secretary of State has considered whether the Application would give rise to any new significant effects or materially different effects when compared to the effects set out in the Environmental Statement for the development authorised by the 2013 Order.
18. The Secretary of State is satisfied that the 'Supporting Environmental Information' provided is sufficient to allow her to make a determination on the Application. In addition the Secretary of State has considered the responses to the consultation received from Natural England and the Environment Agency.

Transboundary screening

19. Under Regulation 24 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended), the Secretary of State has considered whether the proposed development is likely to have a significant effect on the environment in another European Economic Area (EEA) State. In the application for the development consent granted on 19 March 2013,

the Secretary of State concluded that there were no likely significant effects on the environment of another EEA state. In respect of the current Application, as set out above, the Secretary of State has concluded that there is no change to the environmental impacts considered within the existing Environmental Statement. Consequently, the Secretary of State has concluded that there would not be likely significant effects on the environment of any other EEA state whether the Application is considered of itself or cumulatively with the environmental effects already considered for the development consent of 19 March 2013.

20. The Secretary of State has also considered whether there may be potential impacts on European sites in other EU Member States, known as transboundary sites, from this Application. As the Secretary of State has reached a conclusion that there will be no Likely Significant Effects on UK European sites (over and above those already assessed in the Secretary of State's HRA for the development authorised by the 2013 Order) the Secretary of State also concludes that there is no route whereby sites in other EU Member states may be impacted by this Application.
21. The Secretary of State therefore concludes there is no need for transboundary consultation with other EEA states.

Habitats

22. The Secretary of State considered the relevant and important policies in respect of the United Kingdom's international obligations as set out in the Conservation of Habitats and Species Regulations 2010 (as amended) ("the Habitats Regulations") which transpose the Habitats Directive (92/43/EC) into UK law. The Habitats Regulations require the Secretary of State to consider whether the Application would be likely, either alone or in combination with other plans and projects, to have a significant effect on a European site, as defined in the Habitats Regulations. If likely significant effects cannot be ruled out, then an Appropriate Assessment must be undertaken by the Secretary of State pursuant to regulation 61(1) of the Habitats Regulations to address potential adverse effects on site integrity. The Secretary of State may only agree to the Application if she has ascertained that it will not adversely affect the integrity of a European site.
23. The Secretary of State notes that the HRA carried out for the Hinkley Point C development as authorised by the 2013 Order concluded that the Project will not have an adverse effect on site integrity based on the inclusion of certain mitigation requirements in the DCO and conditions in the relevant EA permits. The Secretary of State has considered whether there would be any additional likely significant effects on European designated sites over and above those assessed for the development authorised by the 2013 Order.
24. The Secretary of State has considered the 'Supporting Environmental Information' submitted with the Application and is satisfied that there is sufficient evidence to conclude that allowing the changes set out in the Application to the development authorised by the 2013 Order will not result in additional likely significant effects above those previously assessed and as such an Appropriate Assessment is not required.

Visual Impact

25. The Secretary of State notes that the Applicant carried out an assessment of the landscape and visual impact of the proposed changes, as part of the Application, from representative viewpoints at short, medium and long range from the consented development. The Applicant highlighted that the most significant of the proposed changes in terms of potential visibility related to the following five buildings: Emergency Response Store (new building 13m high); Raw Water and Portable Water Supply (within the 2013 Order as an underground structure, now part of it is to be above ground and 8m high); EDF Site office relocated (increase in height from 10m to 15m); Removal of one contaminated tools storage building (13m high); Relocated contaminated tools store (increase in height from 13m to 15m).
26. The Applicant concluded that whilst some of the new and relocated buildings and some of the buildings with an increased height could be seen from the viewpoints, there would be no materially different impact at any of the viewpoints from that already assessed as part of the consented development. The Secretary of State has found no reason to disagree with the Applicant's assessment. The Secretary of State notes that all the additional and relocated buildings are lower than the tallest buildings already consented within the existing DCO (the Reactor Building 64m and Turbine Hall Building 46m) and that the visual and landscape impact of the proposed changes were considered by her officials during a visit to the site on 19th May 2015.
27. The Secretary of State considers that the changes proposed in the Application do not amount to additional landscape or visual impacts resulting from the Application above those assessed already as part of the development consent contained in the 2013 Order.

General Considerations

Equality Act 2010

28. The Equality Act 2010 includes a public sector "general equality duty". This requires public authorities to have due regard in the exercise of their functions to the need to eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Act; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not in respect of the following "protected characteristics": age; gender; gender reassignment; disability; marriage and civil partnerships²; pregnancy and maternity; religion and belief; and race. This Secretary of State is satisfied that there is no evidence of any harm, lack of respect for equalities, or disregard to equality issues in relation to this Application.

² In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

Human Rights Act 1998

29. The Secretary of State has considered the potential infringement of human rights in relation to the European Convention on Human Rights by the Application. The Secretary of State notes that the proposed change would not require any further compulsory purchase of land and is satisfied that the grant of changes would be incompatible with any human rights as enacted into UK law by the Human Rights Act 1998.

Section 40(1) of the Natural Environment and Rural Communities Act 2006

30. The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006, has to have regard to the purpose of conserving biodiversity, and in particular to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when granting development consent. The Secretary of State is of the view that the Report considers biodiversity sufficiently to accord with this duty.

Secretary of State's conclusions and decision

31. The Secretary of State noted that no person has disputed the acceptability of the proposed changes to the development consent contained within the 2013 Order. The Secretary of State notes that the changes proposed are to adopt lessons learnt from the Fukushima Daichii nuclear site following the earthquake in March 2011, improve compliance with revised UK safety requirements, adopt the best practice and learning following the construction of Flamanville in France and Taishan in China, and to take account of EDF's own design and optimisation studies. She notes, further, that the changes would not result in any new adverse impacts on the environment or on property interests. The Secretary of State considers that the changes proposed are small when considered in context of the development authorised by the 2013 Order and for the reasons set out above that it is appropriate and advantageous to authorise the proposed changes as detailed in the Application.

32. For the reasons given in this letter, the Secretary of State considers that there is a compelling case for authorising the proposed changes to the 2013 Order as set out in the Application. The Secretary of State is therefore today making the amending Order requested by the Applicant subject to a number of minor modifications set out below.

Modifications to the Order

33. Minor drafting changes have been made to the Order as submitted by the Applicant. These have been to improve the drafting and compliance with guidance on Statutory Instruments. The changes made have not altered the effect of the Order as submitted.

Challenge to decision

34. The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached at the Annex to this letter.

Publicity for decision

35. The Secretary of State's decision on this Application is being notified as required by regulation 8 of the 2011 Regulations.

Yours sincerely



Giles Scott
Head of National Infrastructure Consents and Coal Liabilities

ANNEX

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 (5) of the Planning Act 2008, a decision under paragraph 2(1) of Schedule 6 to the Planning Act 2008 to make a change to an Order granting development consent can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the Planning Court during the period of 6 weeks beginning with the day after the day on which the Order is published. The Amending Order as made is being published on the date of this letter on the Planning Inspectorate website at the following address:

<http://infrastructure.planningportal.gov.uk/projects/south-west/hinkley-point-c-new-nuclear-power-station/?ipcsection=overview>

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655)