



Department for
Business, Energy
& Industrial Strategy

Carly Vince
Chief Planning Officer
EDF Energy NNB
The Qube
90 Whitfield Street
London W1T 4EZ

**Department for Business, Energy &
Industrial Strategy**
Level 3, Orchard 2
1 Victoria Street
Westminster
London SW1H 0ET
T: 0300 068 5678
E: beiseip@beis.gsi.gov.uk
www.gov.uk/beis

Your ref:

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Dear Ms Vince,

PLANNING ACT 2008

APPLICATION FOR A NON-MATERIAL CHANGE TO THE HINKLEY POINT C (NUCLEAR GENERATING STATION) ORDER 2013

1. I am directed by the Secretary of State for Business, Energy and Industrial Strategy (“the Secretary of State”) to advise you that consideration has been given to the application (“the Application”) which was made by EDF Energy NNB (“the Applicant”) on 30 January 2017 for a change which is not material to the Hinkley Point C (Nuclear Generating Station) Order 2013 (“the 2013 Order”) under section 153 of, and 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 and was granted development consent on 19 March 2013. Consent was granted 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. The 2013 Order was subsequently amended by The Hinkley Point C (Nuclear Generating Station) (Amendment) Order 2015. The Hinkley Point C (Nuclear Generating Station) Order 2013 as amended by The Hinkley Point C (Nuclear Generating Station) (Amendment) Order 2013 is referred to hereafter as “the Hinkley Power Station Order”.
3. The Applicant is seeking consent for a change to the Hinkley Power Station Order to allow:
 - the removal of the Bridgwater C accommodation campus from the scope of the Project;

- the provision of four additional accommodation buildings to provide an increase of 136 bed spaces within the Bridgwater A site, with an additional 66 car parking spaces and motorcycle and bicycle spaces;
- alterations to the changing rooms adjacent to the sports pitches on the Bridgwater A site, to a portable cabin form; and
- the provision of photovoltaic cells within the Bridgwater A site.

Summary of the Secretary of State’s Decision

4. The Secretary of State is satisfied that the change requested by the Applicant is not a material change to the Hinkley Power Station Order, and has decided under paragraph 2(1) of Schedule 6 to the 2008 Act to make a non-material change to the Hinkley Power Station Order so as to authorise the changes 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) Regulations 2011 (as amended) (“the 2011 Regulations”).

Consideration of the materiality of the proposed change

5. The Secretary of State has given consideration to whether the Application is for a material or non-material change. In doing so, he 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 (“DCO”) as originally made.
6. There is no statutory definition of what constitutes a 'material' or 'non-material' amendment 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, guidance has been produced by the Department for Communities and Local Government, the “Planning Act 2008: Guidance on Changes to Development Consent Orders” (December 2015) (“the Guidance”)¹, which makes the following points. First, given the range of infrastructure projects that are consented through the 2008 Act, and the variety of changes that could possibly be proposed for a single project, the Guidance cannot, and does not attempt to, prescribe whether any particular types of change would be material or non-material. Second, there may be certain characteristics that indicate that a change to a consent is more likely to be treated as a material change, namely:
 - (a) whether an update would be required to the Environmental Statement (from that at the time the original DCO was made) to take account of likely significant effects on the environment;

¹ <https://www.gov.uk/government/publications/changes-to-development-consent-orders>

- (b) whether there would be a need for a Habitats Regulations Assessment, or a need for a new or additional licence in respect of European Protected Species;
- (c) whether the proposed change would entail compulsory acquisition of any land that was not authorised through the existing DCO; or
- (d) whether the proposed changes have a potential impact on local people and businesses.

Third, that although the above characteristics indicate that a change to a consent is more likely to be treated as a material change, these only form a starting point for assessing the materiality of a change. Each case must depend on thorough consideration of its own circumstances.

8. The Secretary of State therefore began his consideration of the materiality of the proposed variation by considering the 4 matters lettered (a), (b) (c) and (d) above:

- (a) The Applicant supplied a document entitled 'Application Statement' ("the Supporting Statement") which provides further environmental information which concludes that the construction of four additional accommodation buildings, modification of the changing rooms, the inclusion of the photovoltaic cells and related works will not have any new significant effects or materially different effects from those already assessed in the original Environmental Statement for the Hinkley Power Station Order. In the light of the analysis supplied by the Applicant and the responses to the consultation, the Secretary of State concludes that an update to the Environmental Statement is not required.
- (b) The Secretary of State has concluded that, given the nature and impact of the changes now proposed and the advice of Natural England, there is not likely to be a significant effect on any European site. Therefore, the Secretary of State is satisfied that an Appropriate Assessment is not required. Furthermore, in respect of European Protected Species, the Secretary of State is satisfied that the proposed changes do not bring about the need for a new or additional licence as the amendments sought are not anticipated to give rise to any new or different effects from an ecological perspective.
- (c) The proposed changes do not result in any change to the compulsory acquisition provisions of the Hinkley Power Station Order. Consequently, this question does not raise issues of materiality.
- (d) The potential impacts on local people and businesses are no greater than those that arise from the development permitted by the Hinkley Power Station Order.

9. The Secretary of State therefore concludes that none of the specific indicators referred to in the guidance, or other relevant considerations, suggest that this proposed change is a material change. He has also had regard to the effect of the change, together with the previous changes made to the 2013 Order by the Hinkley Point C (Nuclear Generation Station) (Amendment) Order 2015, and considered whether there are any other circumstances in this particular case which would lead him to conclude that the proposed change is material but has seen no evidence to that effect.
10. The Secretary of State is therefore satisfied that the change proposed in the Application is not material and should be dealt with under the procedures for non-material changes.

Consultation

11. The Applicant publicised this Application in accordance with regulation 6 of the 2011 Regulations and on 30 January 2017 consulted the persons specified in regulation 7 of the 2011 Regulations in the manner prescribed. The deadline for receipt of representations on the Application was 10 March 2017.
12. The Application was made publicly available on the Planning Inspectorate's website on 30 January 2017, such that there was opportunity for anyone not notified to also submit representations to the Planning Inspectorate.
13. Eight representations were received and considered from: the Environment Agency, Sedgemoor District Council, Somerset County Council, Bridgwater Town Council, Natural England, Somerset Drainage Boards Consortium and two private individuals. The Applicant responded to the representations on 18 May 2017.
14. 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.

Consultation Responses

Environment Agency

15. The Environment Agency had no objection or comments to make on the proposed amendment.

Natural England

16. Natural England confirmed that the proposed changes would not result in any likely significant effects on any protected species and designated sites and landscapes and therefore had no objections to the proposed changes.

Somerset County Council

17. Somerset County Council (“SCC”) responded to say it had no objection in principle to the changes sought by the Application, but raised concern regarding the traffic access arrangements to the Bridgwater A site and requested the Applicant to provide the traffic sensitivity analysis which allowed them to conclude that there would be little impact from the requested changes. SCC also stated that additional parking at the site, as well as motorcycle and bicycle parking spaces, would be required to ensure that spaces that would have originally been provided for in both Accommodation sites would not be impacted. SCC also stated that there is a need for a cycling facility linking the site to encourage residents to cycle when making non-work trips.

Sedgemoor District Council

18. Sedgemoor District Council (“SDC”) responded to say it had no objection in principle to the changes sought by the Application, but made the following comments and raised the following concerns:
- £70,000 from the Housing Contingency Fund to be paid to the Council within one calendar month of the non-material change Application being approved;
 - an updated Accommodation Strategy to be submitted to and approved by the local planning authorities;
 - before the occupation of the four additional accommodation buildings, the payment of the £88,000 flood defence contribution must be paid;
 - the provision of a cycle path along the front of the site, to the rear of the houses on Bath Road, or an alternative ‘online’ cycle facility to be agreed with Somerset County Council, as the highways authority, in consultation with the Council;
 - a detailed assessment of the visual and heritage effects on Sydenham Manor be undertaken and a robust mitigation plan to avoid any potential adverse effects on Sydenham Manor be submitted to and approved by the local planning authorities;
 - a revised landscaping plan to be submitted (including additional tree planting along the northern and northeast boundary of the Bridgwater A site) in line with the mitigation plan referred to above;
 - a new requirement to complement BRIA15 (Post-operation) whereby EDF Energy would submit details one year before end of use of the site, detailing the existing infrastructure and any plans for retention, removal or adaptation, for approval by the authority. SDC states that they would expect any proposals to retain buildings to be the subject of a planning application to the local planning authority;

- insufficient information has been provided in the supporting documents submitted with the Application to discharge requirements BRIA2 (Ecology) and BRIA5 (Landscape Works);
- further information was required in respect of the proposed photovoltaic array in the north of BRIA;
- further information and justification is required in respect of the proposed changes to the site levels;
- requirement BRIA17 (Contamination) has not yet been discharged;
- there is no provision in the DCO requirements for a management and/or disposal plan for Sydenham Manor to be submitted to and approved by the local planning authorities;
- the operational period exceeds 'business as usual' temporary periods and as such greater weight should be given to the impact on the locality and wider place shaping policies and plans for the duration of the consent; and
- the details for the quantum and duration for the wider North East Bridgwater sports pavilion and pitches were not provided within the Application, and that these details should be agreed with the determination of the Application.

Bridgwater Town Council

19. Bridgwater Town Council ("BTC") responded to say it had no objection in principle to the changes sought by the Application, but requested the provision of a footpath/cycleway along the frontage of the former BCL site (i.e. the Bridgwater A site) and a link to the Kingsdown connections, which should incorporate a link to the rear of Bath Road.

Somerset Drainage Boards Consortium

20. Somerset Drainage Boards Consortium ("SDBC") responded to object to the proposal on grounds that further detail on the impacts of the proposed changes on surface and foul water drainage were required in order to determine whether the changes would result in an increase in flood risk, and whether they comply with the Drainage Board's bylaws.

Responses from Private Individuals

21. Two residents of Bath Road objected to the changes based on loss of privacy and visual impacts. One of the individuals also raised concern over the impact of the changes on traffic as well as objections to works that are currently being carried out under the Hinkley Power Station Order.
22. The Secretary of State is satisfied that the Applicant's response of 18 May 2017 addressed most of the concerns listed above. The Secretary of State notes that SDC's response of 16 June 2017 did not raise any further concerns or issues. No other parties provided any further comments or raised any objections relating to the changes sought by the Application

following the Applicant's response. The Applicant's response is publicly available at:

<https://infrastructure.planninginspectorate.gov.uk/projects/south-west/hinkley-point-c-new-nuclear-power-station/?ipcsection=docs>

The Secretary of State has considered some of the concerns in more detail in this letter below.

Consideration of Concerns and Objections Raised in the Consultation Responses

Cycle Path

23. In their representations, SDC, SCC, BTC and Sedgemoor Action Group for the Environment stated the need for a cycle path along the front of the Bridgwater accommodation site and to the rear of Bath Road. One private individual objected to the proposal of a cycle path on the basis of property security concerns. As part of the original application, the Applicant concluded a section 106 agreement with SCC, as the lead transport authority, which requires the Applicant to fund the development of a cycle strategy for the area. The Secretary of State also notes that a cycle path to the rear of Bath Road was considered as part of the original application for the 2013 Order and it was not considered appropriate as there is insufficient space between the existing properties and the accommodation campus. This remains the case. The proposed consolidation of the accommodation campuses will decrease the spread of development within the town and will not increase the overall accommodation numbers. Therefore the Secretary of State can see no reason to alter the conclusions made in the original decision.

Traffic

24. SCC and a private individual raised concerns about the impact of the changes on traffic. SCC requested the Applicant to provide the technical report referred to in their Application Statement document which concluded that the impact of the consolidation of the Bridgwater A and Bridgwater C site on traffic flows would be small and could be accommodated within the spare capacity of the site access junction. In their response of 18 May 2017, the Applicant attached the technical report and confirmed that there would be the same frequency of bus services at the consolidated Bridgwater A site. SCC did not provide any further comment on the Applicant's response or the technical report. The Secretary of State is satisfied with the Applicant's conclusion that the changes will not result in material impacts on traffic flows above those already assessed for the Hinkley Power Station Order.

Visual Impact and Loss of Privacy

25. In relation to the objections from the two residents of Bath Road which is situated in the southern part of the development site, the Secretary of State notes that the changes to the site will take place in the northern and eastern parts of the site, and no alterations have been proposed to the southern part of the site adjacent to the rear of the properties on Bath Road. Any additional visual impact from Bath Road will be insignificant.
26. Similarly the additional impact on Sydenham Hall will be minimal. Although Sydenham Hall is to the north of the development site, the impact of the development of the whole site was considered in the Environmental Statement. This concluded that as a result of screening and the previous use of the site as a cellophane factory there would only be minor adverse impact. This was not disputed in the consideration of the original application.
27. The Secretary of State therefore agrees with the Applicant that there will be no significant change in the impact on Bath Road or Sydenham Hall.
28. The Secretary of State has also considered the objection from one of the residents of Bath Road in relation to the impacts of work currently taking place on the accommodation site. These are works that are being conducted under the Hinkley Power Station Order for which the impacts and mitigation were assessed as part of the examination of the Order before development consent was granted. Therefore this objection, which relates to development already approved, is not relevant to the changes being sought under this Application.

Water Drainage and Flooding

29. The Applicant responded on 18 May 2017 to the concerns raised by SDBC and provided further information on why the proposed changes did not give rise to any new or different effects from a flood risk, surface water and hydrology drainage perspective. SDBC did not provide any further comment or raise any concerns following the Applicant's response. Given the nature and impact of the changes proposed and having had regard to the Environment Agency's response to the consultation which confirmed that it did not object or have any comments to make on the proposed changes, the Secretary of State is satisfied that the changes will not result in any material impacts above those already assessed for the Hinkley Power Station Order.

Environmental Impact Assessment

30. 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 Hinkley Power Station Order.

31. The Secretary of State is satisfied that the Supporting Statement provided by the Applicant is sufficient to allow him to make a determination on the Application.
32. The Secretary of State has considered the information provided and the views of consultees. The Secretary of State agrees with the Applicant's conclusions that there will not be any new or materially different likely significant effects when compared to the effects set out in the environmental statement for the development authorised by the Hinkley Power Station Order and as such considers that there is no requirement to update the Environmental Statement.
33. As there are no new significant environmental impacts as a result of the proposed changes, the Secretary of State does not consider that there is any need for consultation on likely significant transboundary effects.

Habitats

34. The Secretary of State has 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") and the Offshore Marine Conservation (Natural Habitats & c.) Regulations 2007 (as amended) ("the Offshore Habitats Regulations"), which transpose the Habitats Directive (92/43/EC) into UK law. The Habitats Regulations and the Offshore Habitats Regulations require the Secretary of State to consider whether the development 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 he has ascertained that it will not adversely affect the integrity of a European site.
35. The Secretary of State has considered the Supporting Statement submitted with the Application, alongside the advice of Natural England and is satisfied that the Application will not have a likely significant effect on any European site over and above that already assessed in the Appropriate Assessment for the 2013 Order. The Secretary of State considers that the changes requested do not have the potential to impact on proposed designated sites. The Secretary of State is satisfied that there is sufficient evidence to conclude that allowing the change set out in the Application to the development authorised by the Hinkley Point Power Station Order will not have a likely significant effect upon any European sites; and a further Appropriate Assessment is therefore not required.

General Considerations

Transboundary Impacts

36. The Secretary of State has considered whether the changes sought will have any potential impacts on European Sites in other EU Member States. As there will be no Likely Significant Effects on any UK European Sites (over and above those already assessed for the Hinkley Power Station Order), the Secretary of State has concluded that there is no route whereby sites in other EU Member States may be impacted by the changes.

Equality Act 2010

37. The Equality Act 2010 includes a public sector equality duty. This requires a public authority, in the exercise of its functions, to have due regard to the need to (a) eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic (e.g. age; gender; gender reassignment; disability; marriage and civil partnerships;² pregnancy and maternity; religion and belief; and race) and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
38. The Secretary of State has had due regard to the need to achieve the statutory objectives referred to in s149 of the Equality Act 2010, and is satisfied that there is no evidence that granting this Application will affect adversely the achievement of those objectives.

Human Rights Act 1998

39. The Secretary of State has considered the potential infringement of human rights in relation to the European Convention on Human Rights, by the development. The Secretary of State considers that the grant of development consent would not violate any human rights as enacted into UK law by the Human Rights Act 1998.

Natural Environment and Rural Communities Act 2006

40. 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 Application considers biodiversity sufficiently to accord with this duty.

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

Secretary of State's conclusions and decision

41. The Secretary of State notes that in order that the Applicant can construct and operate the development efficiently and effectively, it has concluded that it is necessary to remove the Bridgwater C accommodation campus from the scope of the project and to alter the Bridgwater A site by including four additional accommodation buildings, 66 additional car parking spaces along with motorcycle and bicycle space, altering the changing rooms adjacent to the sports pitches and to provide photovoltaic cells within the Bridgwater A site.
42. The Secretary of State has considered the ongoing need for the development. The Secretary of State notes that the Overarching National Policy Statement for Energy (EN-1) and the National Policy Statement for Nuclear Power Generation (EN-6) both set out that for the UK to meet its energy and climate change objectives, there is an urgent need for new electricity generation plants, including new nuclear power. The Secretary of State considers, therefore, that the ongoing need for the project is established.
43. The Secretary of State has considered the nature of the proposed changes, noting that they would have no additional significant environmental effects, and the benefits of the changes in facilitating the deployment of the development. He concludes that the proposed changes are not material and that it would be appropriate and advantageous to authorise the proposed changes as detailed in the Application.
44. For the reasons given in this letter, the Secretary of State considers that there is a compelling case for authorising the proposed change to the Hinkley Power Station Order as set out in the Application. The Secretary of State is therefore today making the amending Order requested by the Applicant.

Modifications to the draft Order proposed by the Applicant

45. Minor drafting improvements have been made by the Secretary of State to the draft Order proposed by the Applicant. These changes do not materially alter the terms of the draft Order.

Challenge to decision

46. 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

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

Yours sincerely,

Emily Bourne
Director of the Energy Development Unit

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:

<https://infrastructure.planninginspectorate.gov.uk/projects/south-west/hinkley-point-c-new-nuclear-power-station/?ipcsection=docs>

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)