



Department
of Energy &
Climate Change

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Dear Mr Dollinger

**PLANNING ACT 2008
PLANNING CONSENT APPLICATION – PROPOSED PALM PAPER 3 COMBINED
CYCLE GAS TURBINE POWER STATION**

Introduction

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 report dated 18 November 2015 of the Examining Authority, Martin Broderick (“the ExA”), who conducted an examination (“the Examination”) into the application (“the Application”) dated 22 September 2014 by Palm Paper Limited (“the Applicant”) for a Development Consent Order (“the Order”) under section 37 of the Planning Act 2008 (“the 2008 Act”) for the Palm Paper 3 Combined Cycle Gas Turbine Power Station (“the Development”).
2. The Examination of the Application began on 18 February 2015 and was completed on 18 August 2015. The Examination was conducted on the basis of written evidence submitted to the ExA, two issue-specific hearings, an open floor hearing and site visits.
3. The Order, as applied for, sought development consent under the 2008 Act for the construction and operation of a Combined Cycle Gas Turbine (“CCGT”) Power Station with a thermal capacity of up to 162MW, a gross electrical output of up to 60MW and an output of up to 130 tonnes of steam per hour which will

operate as a Combined Heat and Power (“CHP”) plant. The proposed Development would be located at the site of the Applicant’s existing paper mill; therefore the Applicant is not seeking any compulsory purchase powers through this Application.

4. The Development would be located in the administrative boundary of the Borough Council of King’s Lynn and West Norfolk (“BCKLWN”) approximately 2.5km to the south of King’s Lynn town centre.
5. The Development consists of the following:
 - one gas turbine within a turbine hall;
 - one steam turbine within a turbine hall;
 - two electricity generators and two transformers within a compound;
 - a heat recovery steam generator;
 - a main stack for discharge of flue gas;
 - 4-8 banks of hybrid cooling towers;
 - condenser equipment and auxiliary cooling equipment;
 - a demineralised water treatment facility;
 - gas-insulated switchgear;
 - a pipe bridge including pipes and cables for electricity, steam, condensate, and raw water, connecting the CCGT building with the paper machine building;
 - a control room and laboratory;
 - surface water management systems;
 - lighting columns and lighting;
 - temporary construction site offices;
 - surfaced area on site for the parking of construction vehicles, plant and machinery;
 - open and covered storage of construction materials and equipment;
 - and
 - workshops for the assembly and testing of equipment.
6. Published alongside this letter is a copy of the ExA’s Report of Findings and Conclusions (“the Report”). The ExA’s findings and conclusions are set out in sections 4 - 7 of the Report, and the ExA’s recommendations are at section 8.

Summary of the ExA’s Recommendation

7. The Secretary of State notes that the ExA’s report included findings and conclusions on the following principal issues:
 - Design, layout and visibility;
 - The Order;
 - Economic and social impacts;
 - Environmental Impact Assessment including its adequacy, cumulative effects and climate change;
 - Other environmental issues including health impact, air quality, flooding, noise, lighting, dust and vibration, and water quality and supply;

- Habitats, ecology and nature conservation;
 - The historic and archaeological environment;
 - Operational effects; and
 - Transport and traffic.
8. The ExA recommended that the Secretary of State grants development consent for the Development in the form set out in his Report [ER 8.1.1].

Summary of the Secretary of State's Decision

9. The Secretary of State has decided under section 114 of the 2008 Act to make, with modifications, an Order granting development consent for the proposals in the Application. This letter is a statement of reasons for the Secretary of State's decisions for the purposes of section 116 of the 2008 Act and the notice and statement required by regulation 23(2)(c) and (d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 ("2009 Regulations").

Secretary of State's Consideration

10. The Secretary of State has carefully considered the Report and all other material considerations. The Secretary of State's consideration of the Report is set out in the following paragraphs. All numbered references, unless otherwise stated, are to paragraphs of the Examination Report ("ER". Paragraph numbers in the Report are quoted below in the form "ER x.xx.xx" as appropriate).
11. The Secretary of State has had regard to the National Policy Statements referred to in paragraph 13 below, the Local Impact Reports ("LIR") submitted by BCKLWN and Norfolk County Council ("NCC"), the relevant local plans and to all other matters which she considers to be important and relevant to her decision as required by section 104 of the 2008 Act. The Secretary of State also confirms for the purposes of regulation 3(2) of the 2009 Regulations that she has taken into consideration the environmental information as defined in regulation 2(1) of those Regulations. In making her decision, the Secretary of State has complied with all applicable legal duties on her and has not taken account of any matters which are not relevant to her decision.
12. Except as indicated otherwise in the paragraphs below, the Secretary of State agrees with the findings, conclusions and recommendation of the ExA as set out in the Report, and the reasons for the Secretary of State's decision are those given by the ExA in support of his conclusions and recommendation.

Need for the Proposed Development

13. The Secretary of State has had regard to the Overarching Energy National Policy Statements ("NPS") EN-1 Overarching NPS for Energy and EN-2 NPS for Fossil Fuel Electricity Generating Infrastructure. After considering the ExA's comment in paragraphs ER 3.2.10 and ER 8.0.1, the Secretary of State is satisfied that the Development is in line with, and supports, the Government's policy objectives set out in EN-1 and EN-2.

14. In addition, the ExA notes that the Development will contribute to meeting the need for energy capacity and, in doing so, will bring benefits to the area in terms of economic activity [ER 8.0.2]. The Secretary of State agrees with the ExA's conclusions in these matters.

Water Framework Directive

15. Issues relating to the Water Framework Directive were considered during the Examination. In particular, the Environment Agency ("EA") and Natural England ("NE") have confirmed [ER 4.31.6 to 4.31.7] that the predicted aerial emissions from the proposed development will not hinder the return of the River Nar to 'Good Ecological Status and Potential', as the features of the River Nar SSSI are not considered to be sensitive to changes in aerial emissions. The ExA concluded [ER 4.31.9] that the water quality and resource issues have been addressed adequately and meet the requirements of EN-1. The Secretary of State agrees with the ExA's conclusions in these matters.

Ecology and Biodiversity

- a) Habitats Regulations Assessment

Regulation 61 of the Conservation of Habitats and Species Regulations 2010 ("the Habitats Regulations") requires the Secretary of State to consider whether the Development is likely to have a significant effect, either alone or in combination with other plans and projects, on a European site, as defined in the Habitats Regulations. If likely significant effects ("LSE") cannot be ruled out, then an Appropriate Assessment ("AA") must be undertaken by the Secretary of State to address potential adverse effects on site integrity. The Secretary of State may grant development consent to the Application only if the Secretary of State has ascertained that it will not adversely affect the integrity of a European site.

The ExA, with support from the Planning Inspectorate's Environmental Services Team, prepared a Report on the Implications for European Sites ("RIES") [ER 5.0.7], based on the No Significant Effects Report ("NSER") submitted with the Application and information submitted throughout the Examination by both the Applicant and other Interested Parties. The RIES presented the Applicant's evidence and assessed whether the Development is likely to have a significant effect on European Sites. The Secretary of State notes that the ExA concluded that the Applicant undertook an extensive, precautionary and rigorous Habitats Regulation Assessment ("HRA") evaluation, supported by additional information requested during the examination [ER 5.9.1]. The ExA's overall findings and conclusions in relation to the Habitats Regulations are found in section 5 of the Report.

The Secretary of State notes the undisputed conclusion [ER 5.9.2] that the Application will not have a LSE on the following three European sites: the Wash and North Norfolk Coast SAC; the Wash SPA; and the Wash Ramsar. The Secretary of State agrees with this conclusion.

The Secretary of State notes that the ExA identified three European sites for which LSE could not be ruled out (Roydon Common and Dersingham SAC, Roydon Common Ramsar site and Dersingham Bog Ramsar site) due to aerial emissions alone and in-combination with other plans and projects [ER 5.9.3].

The Secretary of State also notes that as a result of the provision of the additional in-combination aerial emission information supplied by the Applicant, the ExA concluded [ER 5.9.5 and 5.9.6] that the conservation objectives of the Roydon Common and Dersingham Bog SAC, Roydon Common Ramsar site and Dersingham Bog Ramsar site will not be significantly affected by the Development as its predicted nitrogen and acid deposition will be so minute that it will not have any appreciable effect on their return to favourable conservation status, and there is sufficient evidence to conclude that the Development alone and in-combination would not have an adverse effect on their integrity.

The Secretary of State has considered the RIES alongside the representations made by the statutory nature conservation body, NE and the EA. She notes that NE agreed with the Applicant throughout the examination that there would be no LSE on the interest features of the three sites identified by the ExA; Roydon Common and Dersingham SAC, Roydon Common Ramsar site and Dersingham Bog Ramsar site, either alone or in-combination with other plans or projects, due to aerial emissions [ER 5.4.19, 5.4.30, 5.4.31, 5.5.5]. This is because the air quality assessment undertaken by the Applicant showed that the levels of pollutants (sulphur dioxide, nitrogen deposition and acid deposition) that the Development would contribute were insignificant compared with those from other sources, and that they made very little difference to the existing overall levels.

This was based on advice and guidance from the EA and the air quality technical advisory group ("AQTAG"), which is made up of air quality experts from NE, the EA and Natural Resources Wales ("NRW"), which has developed screening criteria to identify whether a development would have a LSE. The predicted aerial emissions from the proposed Development fall below the threshold levels in the screening criteria, for LSE alone or in-combination with other plans and projects.

The Secretary of State recognises that the ExA did not agree with this approach [ER 5.4.21, 5.5.11] and was of the view that the evidence presented in the examination did not allow the conclusion that there would be no LSE on Roydon Common and Dersingham Bog SAC, Roydon Common Ramsar and Dersingham Bog Ramsar, as a result of the aerial emissions from the Development alone and in-combination with the aerial emissions from other plans or projects in the vicinity. This was because even though the predicted aerial emissions from the Development are below the threshold, they would be contributing to air quality exceedances which are already occurring at these European sites, due to existing high levels of pollutants. The ExA was also concerned about the validity of

using the EA and AQTAG guidance for considering development consent as it had been developed to be used to assess Environmental Permits.

It is for the Secretary of State, as competent authority, to complete the AA. The Secretary of State has therefore considered the information provided in the RIES and other relevant documentation to consider whether adverse effects on the integrity of the Roydon and Dersingham SAC, Roydon Common Ramsar site and Dersingham Bog Ramsar site can be excluded.

The three European sites are currently in unfavourable condition, and contain features which are sensitive to air quality. NE has stated that the existing large air quality exceedances will hinder the recovery of the features which the sites are designated for; however, these exceedances are “almost entirely due” to pollution originating from existing sources, and that the existing pollution alone is likely to result in a significant delay to the achieving of favourable conservation status [ER 5.7.15]. Any additional impacts resulting from the in combination contribution from the proposed Development and other proposed developments in the area would be insignificantly small by comparison to existing levels, and any additional delay to the recovery of the site would also be insignificantly small, and therefore could not be considered to constitute a likely significant effect [ER 5.7.18].

The Secretary of State therefore concludes that adverse effect on the integrity of the Roydon and Dersingham SAC, Roydon Common Ramsar site and Dersingham Bog Ramsar site can be excluded.

b) Effects on other protected Sites and Species

There are no European protected species affected by the Development as none have been recorded during the ecological surveys undertaken by the Applicant [ER 4.14.10]. NE concludes that the proposed Development is unlikely to affect any protected species within, or adjacent to the Development site, and the Secretary of State agrees with these conclusions.

Other Matters

Combined Heat and Power

16. There is a requirement in EN-1 that thermal generation stations applied for under the 2008 Act should either include combined heat and power (“CHP”) or contain evidence that opportunities for it have been explored.
17. The Secretary of State notes that the proposed Development is a CHP plant, and therefore the requirements set out in EN-1 have been met.

Carbon Capture Readiness

18. As set out in EN-1 and EN-2, all commercial scale fossil fuel generating stations with a capacity of 300MW or more have to be 'Carbon Capture Ready' ("CCR"). Applicants are required to demonstrate that their proposed development complies with guidance issued in November 2009¹ or any successor to it.
19. The Secretary of State confirms that the CCR requirements do not apply in this instance as the Development will operate at a capacity of a nominal gross electrical output of up to 60MW.

Gas Pipeline

20. The Secretary of State notes that the Application does not seek consent for the construction and operation of gas connection infrastructure, and that the Applicant intends to obtain this separately through an application for planning permission under the Town and Country Planning Act 1990 to the Local Planning Authority, BCKLWN. The Secretary of State also notes that at the close of the examination, no planning permission had been submitted to BCKLWN. The Secretary of State has considered the signed Statement of Common Ground ("SoCG") agreed between the Applicant and BCKLWN, and notes that BCKLWN has confirmed that it saw no environmental impediments to the granting of planning permission [ER 4.11.3]. The Secretary of State has therefore concluded that there are no reasons to believe that planning permission for the gas connection would not be granted.

Environmental Permit

21. The Secretary of State notes that in order for the Development to operate, a variation is required to the existing Environmental Permit ("EP") which was granted by the EA to the Applicant in 2009. The Secretary of State understands that the Applicant submitted an application for the variation of the EP to the EA which was accepted on 11 August 2015; and that this application remained undetermined at the close of the Examination. Taking into consideration the EA's representation confirming that it has not identified any issues which would preclude the granting of the EP, and because the EA did not raise any concerns with the Applicant's assessment of the impact of the Development's air emissions, the ExA concluded that there has not been any evidence presented that suggests that the granting of the EP would be withheld [ER 4.13.13]. The Secretary of State agrees with the ExA's conclusion that there is no reason to withhold development consent on this ground.

Civil and Military and Aviation and Defence Interests

22. The Secretary of State notes that the ExA has considered the need for aviation obstacle lighting in relation to the representation made by the Civil Aviation Authority ("CAA"). The flue emissions stacks, at 80 metres, would be below the 150 metre-threshold for the statutory requirement for lighting of onshore obstacles covered by article 219 of the Air Navigation Order 2009. However,

¹ Carbon Capture Readiness A guidance note for Section 36 Applications URN09D/810
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/43609/Carbon_capture_readiness_guidance.pdf

given that the structure would be amongst the tallest in the immediate vicinity, the ExA has inserted paragraph (2) in Requirement 17 which necessitates that the main stack is fitted with aviation warning lighting [ER 4.15.5].

23. The Secretary of State also notes the consideration given by the ExA regarding the requirement for the flue emissions stacks to be promulgated and charted for aviation purposes, and that this is also addressed by Requirement 17 [ER 4.15.4].
24. The Secretary of State agrees with the ExA that civil and military aviation interests have been adequately assessed [ER 4.15.6].

Transboundary Impacts

25. A screening exercise for transboundary impacts was undertaken by the Secretary of State for Communities and Local Government (“SoSCLG”) for the purposes of regulation 24 of the 2009 Regulations. SoSCLG applied the precautionary approach set out in the Planning Inspectorate’s “Advice Note 12: Transboundary Impacts Consultation”, and took the view that the Development was not likely to have a significant effect on the environment of another EEA state. The Secretary of State agrees with this assessment.

General Considerations

Equality Act 2010

26. 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.

Human Rights Act 1998

27. The Order does not contain any provisions for compulsory purchase. The Secretary of State therefore considers that the grant of development consent does not engage the rights protected by the Human Rights Act 1998.

Natural Environment and Rural Communities Act 2006

28. 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

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

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

29. For the reasons given in this letter, the Secretary of State considers that there is a compelling case for authorising the Application, given the national need for the proposed Development and that the potential adverse local impacts of the Development do not outweigh the benefits of the scheme.
30. The Secretary of State notes that in addition to the Order, the Development would need an EP from the EA to ensure further protection for the environment by regulating emissions from the power plant during its operation. The Secretary of State notes that the Applicant will not be able to operate the power plant until EA are satisfied that stringent environmental conditions are met and that appropriate monitoring of environmental impacts will be required in the event that operation of the power plant does take place. The Secretary of State further notes that the Applicant submitted an application to the EA which was accepted on 11 August 2015. She also notes that the EA confirmed during the Examination that they were not aware of anything that would preclude the granting of an EP for the Development.
31. The Secretary of State has therefore decided to accept the ExA's recommendation in paragraph 8.1.1 of the Report to make the Order granting development consent and to impose the requirements recommended by the ExA, but subject to the modifications described below.

Modifications to the Order

32. The Secretary of State has decided to make modifications to the Order recommended to her by the ExA. The key modifications are set out below:
 - a. The Secretary of State has added a provision (see paragraph (2) of article 6) authorising Palm Power Limited, a subsidiary of the Applicant, to operate the generating station in order to reflect the Applicant's stated intention in its Explanatory Memorandum. The Secretary of State has consequently removed "Palm Power Limited" from the definition of "undertaker" in article 2(1), as this is no longer necessary solely to provide the authorisation now provided by article 6(2).
 - b. The Secretary of State has replaced "including" with "comprising" in paragraph 2 of Schedule 1 to provide certainty as to the development for which consent is being granted.
 - c. The Secretary of State has added the "design and access statement" to the list of documents in Requirement 4 of Schedule 2 in accordance with which the development must be carried out.

- d. The Secretary of State has included all provisions relating to the height of the development (previously included in article 3(2) and the table in Part 2 of Schedule 1 to the draft Order recommended by the ExA) in Requirement 19 of Schedule 2. Requirement 19 also makes it clear that the heights set out in the table are maxima.

33. In addition to the above, the Secretary of State has made various changes to the draft Order which do not materially alter its effect, including changes to conform with the current practice for statutory instruments (for example, modernisation of language); the removal of unnecessary material; changes in the interests of clarity and consistency; and changes to ensure that the Order has the intended effect.

Challenge to decision

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

Publicity for decision

35. The Secretary of State's decision on this application is being publicised as required by section 116 of the 2008 Act and regulation 23 of the 2009 Regulations.

Yours sincerely

GILES SCOTT

Head, National Infrastructure Consents and Coal Liabilities

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, 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 date when the Order is published (or, if later, the day after the day on which the Secretary of State's Statement of Reasons (the decision letter) is published). The Palm Paper Mill Generating Station Order 2016 as made is being published on the date of this letter on the Planning Inspectorate website at the following address:

<http://infrastructure.planninginspectorate.gov.uk/projects/eastern/palm-paper-3-ccgt-power-station-kings-lynn/>

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).