



Department
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Dear Sirs

PLANNING ACT 2008

**APPLICATION FOR DEVELOPMENT CONSENT FOR THE WHITE ROSE
CARBON CAPTURE AND STORAGE PROJECT**

1. Introduction

- 1.1 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 14 January 2016 of the Examining Authority, Elizabeth Hill (“the ExA”), who conducted an examination into the application (“the Application”) dated 21 November 2014 by Capture Power Limited (“the Applicant”) for a Development Consent Order (“the Order”) under section 37 of the Planning Act 2008 (“the Act”) for the White Rose Carbon Capture and Storage project (“the Development”).
- 1.2 The Application was accepted for examination on 17 December 2014. The examination of the Application began on 22 April 2015 and was completed on 15 October 2015. A number of hearings to consider aspects of the Application were held during the examination before it was completed.
- 1.3 The Order as applied for would grant development consent for the construction and operation of an electricity generating station with a proposed installed capacity of up to 448MW which would be coal-fired or coal and biomass-fired and have carbon capture and storage facilities fitted to capture the majority of the CO₂ emissions from the Development before transportation through onshore and offshore pipelines for onward transmission to a storage facility in the North Sea, each of which would be the subject of separate applications for consent. The Order would also grant permission for a range of related infrastructure including a within-site grid connection to an existing substation.

- 1.4 The Development, as applied for, would comprise the following principal elements:
- Site raising and preparation works to develop a platform for the generating station in order to mitigate flood risk and to create bridges and crossings over Carr Dyke for site access works, site raising and hardstanding for the laydown and construction areas;
 - The generating station comprising a boiler house, steam turbine, cooling water towers, flue gas treatment systems, a flue gas emissions stack, air separation units and carbon dioxide processing and compression facilities;
 - Laydown and construction areas for construction and maintenance;
 - Fuel intake, limestone and gypsum and fuel ash handling and transportation infrastructure, including connection with the existing Drax power station for the delivery of fuel and limestone for the combustion and flue gas desulphurisation process and the export of fuel ash for storage at Barlow Mound;
 - Fuel ash storage at Barlow Mound;
 - Underground connection to either a 132kV or 400kV electricity grid along the eastern side of the site to an existing substation located south east or an alternative option being a 132kV cable and associated infrastructure which links to an existing overhead cable to the north of the site;
 - Connections to existing cooling water, potable water and sewerage and related facilities;
 - Vegetation clearance and the creation of a new hardstanding area immediately adjacent to the existing jetty on the River Ouse for the unloading and storage of equipment and materials delivered by barge and parking and circulation space for vehicles transporting items from the jetty;
 - Underground diversion of an existing overhead 11kV electrical cable; and
 - Works to one of two existing substations to facilitate the grid connection.
- 1.5 In addition, the Order as applied for would permit a number of components related to the construction and operation of the Development.
- 1.6. Published alongside this letter on the Planning Inspectorate`s web-site is a copy of the ExA`s Report of Findings and Conclusions and Recommendation to the Secretary of State (“the ExA`s Report”). The ExA`s findings and conclusions are set out in chapters 4 and 6 of the ExA`s Report with the Summary of Conclusions and Recommendations in chapter 9.

2. Summary of the ExA`s Report and Recommendation

2.1 The main issues considered during the examination on which the ExA reached conclusions on the case for development consent were:

- a) Air quality;
- b) Biodiversity and habitats;
- c) Compulsory acquisition;
- d) Design, landscape and visual impact;
- e) Economic and social impacts;
- f) Flood risk;
- g) Noise, vibration and dust;
- h) Operational issues;
- i) Soils and geology;
- j) Traffic and transport; and
- k) Water quality and resources.

2.2 The ExA also considered the terms of the draft Order sought. For the reasons set out in the ExA`s Report, the ExA recommends [ER 9.1.6] that the Order should be made, as set out in Appendix A to the Report. (All numbered references, unless otherwise stated, are to paragraphs of the ExA`s Report (specified in the form, ER X.XX.XX).)

3. Summary of the Secretary of State`s Decision

3.1 The Secretary of State has decided under section 114 of the Act to refuse development consent for the Development. This letter is a statement of reasons for the Secretary of State`s decision for the purposes of section 116 of the Act and the notice and statement required by regulation 23(2)(c) and (d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (“the 2009 Regulations”).

4. The Secretary of State`s Consideration of the Application

4.1 The Secretary of State has considered the ExA`s Report and all other material considerations. The Secretary of State`s consideration of the ExA`s Report is set out in the following paragraphs. Except as set out below, the Secretary of State agrees with the conclusions set out in the Report.

4.2 In making her decision, the Secretary of State has had regard to the National Policy Statements referred to in paragraph 4.3 below, the Local Impact Report submitted jointly by Selby District Council and North Yorkshire County Council and to all other matters which are considered to be important and relevant to the Secretary of State`s decision as required by section 104 of the Act. In making the decision, the Secretary of State has complied with all applicable legal duties and has not taken account of any matters which are not relevant to the decision.

Need for the Development

- 4.3 The Secretary of State notes that the need for energy from fossil-fuel generation is set out in the Overarching National Policy Statement for Energy (EN-1) and the National Policy Statement for Fossil Fuel Electricity Generating Infrastructure (EN-2). These National Policy Statements (“NPSs”) also set out the matters that must be taken into consideration when determining applications for development consent for relevant infrastructure and how they should be weighed in the balance. Of particular relevance to the Application is EN-1 which states that new combustion plants, with a capacity at or over 300MW and of a type covered by the European Union Large Combustion Plant Directive which includes coal-fired generating stations, have to be constructed Carbon Capture Ready (CCR) and that new coal-fired power stations are required to demonstrate Carbon Capture and Storage (“CCS”) on at least 300MW of the proposed generating capacity.
- 4.4 The Secretary of State further notes that in her speech on 18 November 2015 on a new direction for UK energy policy¹ she stated that there would be a consultation in the spring of 2016 on when to close all unabated coal-fired generating stations, setting out proposals to close coal-fired plant by 2025 – and restricting its use from 2023. However, given that the Application is for an abated plant which would capture most of the CO₂ emissions at source, the Development meets the recently announced necessary criteria.

5. Consideration of the ExA’s Conclusions and Recommendations

Project Funding/Closure of Government’s CCS Commercialisation Programme

- 5.1 The ExA stated [ER 4.5.3] that the Development would need funding support from the Government’s CCS Commercialisation Programme. The same paragraph in the Report records that the Applicant stated that “the construction and operation of the proposal was heavily dependent on Government funding in that it would encourage other funding bodies to invest.” In a response to first written question 1.7 from the ExA during the examination, the Applicant also states that “There are no contingent funds to cover the absence of these Government-sourced funds.”²
- 5.2 It was confirmed on 25 November 2015 following the Chancellor of the Exchequer’s Autumn Statement that the £1bn ring-fenced capital budget for the CCS Competition would no longer be available. The decision meant that the CCS Competition was closed. On that day, the Chief Executive Officer of the Applicant stated that “[i]t is too early to make any definitive decisions about the future of the White Rose project, however it is difficult to imagine its continuation in the absence of crucial Government support”.

¹ <https://www.gov.uk/government/speeches/amber-rudds-speech-on-a-new-direction-for-uk-energy-policy>

² [http://infrastructure.planningportal.gov.uk/wp-content/ipc/uploads/projects/EN010048/Events/Deadline%20-%20-%2020-05-2015/Capture%20Power%20Limited%20\(13\).pdf](http://infrastructure.planningportal.gov.uk/wp-content/ipc/uploads/projects/EN010048/Events/Deadline%20-%20-%2020-05-2015/Capture%20Power%20Limited%20(13).pdf)

- 5.3 In the light of the above, the Secretary of State by way of a letter dated 12 February 2016 consulted the Applicant to determine its intentions in respect of the Development; how funding for the exercise of compulsory acquisition powers would be obtained in the light of the withdrawal of Government funding; and the status of the application for a variation of the existing environmental permit.
- 5.4 In a response dated 19 February 2016, the Applicant stated: “if a development consent order was made in respect of the White Rose CCS project, the Applicant would currently have insufficient funds to allow it to develop the White Rose CCS project and nor has the Applicant identified any potential alternative sources from which sufficient funds may be available”. The Applicant also stated that “it does not currently have the necessary funding to pay compensation to the affected parties in the event of compulsory acquisition powers being exercised following their grant in a development consent order in respect of the White Rose CCS project”. (The absence of funding for compulsory acquisition is dealt with in more detail below.)
- 5.5 Paragraph 4.7.6 of energy NPS EN-1 states that:

“Given this requirement to fit a technology which is at a relatively early stage of development, and therefore very costly, it is unlikely that any coal-fired plants will be built in the foreseeable future without financial support for CCS demonstration. However it is possible that developers may wish to submit applications in advance of securing funding. Any decision on a planning application for a new coal-fired generating station should be made independently of any decision on allocation of funding for CCS demonstration. This may mean, therefore, that planning consent could be given to more applications than will be able to secure financial support for CCS demonstration.”

That scenario envisaged multiple schemes possibly obtaining development consent prior to any decisions on the allocation of funding for CCS demonstration. However the Secretary of State considers the circumstances envisaged by paragraph 4.7.6 of EN-1 are no longer relevant because it is clear that no allocation of funding will be made.

- 5.6 Given the problem of funding the construction and operation of the Development, the Secretary of State considers that development consent should not be granted for the Development on the grounds that there is no available funding and no prospect of funding being provided.

Compulsory Acquisition

- 5.7 The Applicant has no land of its own and for the purposes of the Development has sought powers in the draft Order to compulsorily acquire land, rights in land, interfere with or extinguish existing rights in land and create new rights in land including the subsoil. The Applicant also seeks temporary powers over some land. Much of the land over

which these powers are sought is owned by Drax Power Limited, a company in the same group as one of the partners in the consortium that has proposed the Development.

5.8 Compulsory acquisition powers over land can be granted only if the Secretary of State is satisfied that certain conditions set out in the Act are met:

- the condition in section 122(2) is that the land is required for the development for which the development consent relates or is required to facilitate or is incidental to the development; and
- the condition in section 122(3) is that there must be a compelling case in the public interest for the land to be acquired compulsorily.

5.9. The Secretary of State notes that the Department for Communities and Local Government's ("CLG") "Planning Act 2008 Guidance related to procedures for the compulsory acquisition of land"³ ("the CLG Guidance") states that for the Secretary of State to be satisfied that there is a compelling case in the public interest for the land to be acquired compulsorily, the Secretary of State will need to be persuaded that there is compelling evidence that the public benefits that would be derived from the compulsory acquisition will outweigh the private loss that would be suffered by those whose land is to be acquired.

5.10 The CLG Guidance also sets out some of the factors to which the Secretary of State will have regard in deciding whether or not to include compulsory acquisition powers in a development consent order ("DCO"). These include that:

- All reasonable alternatives must have been explored;
- The proposed interference with the rights of those with an interest in the land is for a legitimate purpose and is necessary and proportionate;
- The Applicant must have a clear idea how it intends to use the land; and
- The Applicant must be able to demonstrate that there is a reasonable prospect of the requisite funds for acquisition becoming available.

5.11 The CLG Guidance also states that the Secretary of State must ultimately be persuaded that the purposes for which the DCO authorises compulsory acquisition are legitimate and sufficient to justify interfering with the human rights of those with an interest in the land affected.

5.12 On the basis of the examination, the ExA recommends [ER 7.9.11 and ER 7.9.14] that both compulsory acquisition and temporary possession powers should be granted if the Secretary of State is minded to grant development consent for the Development.

³ <https://www.gov.uk/government/publications/planning-act-2008-procedures-for-the-compulsory-acquisition-of-land>

5.13. However, in light of the post-examination events, the Secretary of State considers that the compulsory acquisition powers cannot be granted. First, the Secretary of State does not consider that there is a compelling case in the public interest for the land to be acquired compulsorily in circumstances where the Applicant states that it cannot fund the Development and does not have the necessary funding to pay compensation to affected parties in the event of the compulsory acquisition powers being exercised. She does not, therefore, think that the statutory condition in section 122(3) of the Act can be met. In addition, the requirement in the CLG Guidance to demonstrate that there is a reasonable prospect of the funds becoming available is clearly not met. Finally, the Secretary of State considers that the grant, in such circumstances, of powers of compulsory acquisition may be unlawful under the Human Rights Act 1998 (see paragraphs 5.14 – 5.18 below). Consequently, the Secretary of State has decided to refuse the Application.

Human Rights Act 1998

5.14 It is unlawful for the Secretary of State to act in a way that is incompatible with a “Convention right” (i.e. a right under the European Convention on Human Rights (“ECHR”) protected by the Human Rights Act 1998). The Secretary of State should not, therefore, make the Order if to do so would be incompatible with a Convention right.

5.15 The ExA sets out that the compulsory acquisition provisions in the recommended Order for the Development engage a number of Articles of the ECHR identified as:

- Article 6 (which entitles those affected by compulsory acquisition powers sought for the Development to a fair and public hearing of their objections);
- Article 8 (which protects private and family life, home and correspondence); and
- Article 1 of the First Protocol to the ECHR.

5.16 Article 1 of the First Protocol provides that “*every person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and the general principles of international law.*” The Secretary of State understands this to mean that compensation must be paid.

5.17 On the basis of the examination, the ExA concludes that granting compulsory acquisition powers for the Development would not interfere with Convention rights. It bases its views in relation to Article 1 of the First Protocol on the basis that [ER 7.8.40] “compensation would be paid”.

- 5.18 However, in light of the post-examination events referred to above, the Secretary of State disagrees with the ExA's conclusion in this matter. In view of the Applicant's statement that it does not have the necessary funding to pay compensation to affected parties, she considers that to make the Order granting powers of compulsory acquisition would be incompatible with Convention rights.

Environmental Permit

- 5.19 The Secretary of State notes that the ExA states that there is a need for an environmental permit covering the Development to be in place in order to mitigate a number of impacts arising from it. These principally relate to air quality and emissions impacts and water resources and waste management impacts. However, the Secretary of State also notes that in response to the Secretary of State's letter of 12 February 2016, the Applicant explained that it was not in a position to respond to questions about the permit application posed by the Environment Agency on 24 November 2015, and that on 6 January 2016 it had notified the Agency that the application to vary the existing permit would not be pursued. The Agency confirmed the withdrawal of the application by an e-mail dated 19 February 2016. In light of the rationale for refusing development consent set out above, the Secretary of State has made no further enquiries as to how air quality and emissions impacts and water resources and waste management impacts would be dealt with.

6. Other Matters

Transboundary Impacts

- 6.1 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 in another European Economic Area state. The Secretary of State agrees with this assessment.

Natural Environment and Rural Communities Act 2006

- 6.2 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 making a decision on whether to grant development consent. The Secretary of State is of the view that the Report considers biodiversity sufficiently to allow the duty in section 40(1) to be discharged.

Equality Act 2010

6.3 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 partnerships⁴; pregnancy and maternity; religion and belief; and race. The Secretary of State does not consider that her decision to refuse consent would have significant differential impacts on any of the protected characteristics.

7. The Secretary of State`s Conclusion and Decision

7.1 Whilst accepting that the ExA`s consideration of the issues raised during the examination of the Application is robust and well-reasoned, the Secretary of State is of the view that, for the reasons set out in this letter, namely that there is no available funding and no prospect of funding being provided and the powers of compulsory acquisition sought by the Applicant for the Development cannot be granted - it would not be appropriate to make an Order granting consent for the Development.

8. Challenge to decision

8.1 The circumstances under which the Secretary of State`s decision may be challenged are set out in the note in the Annex to this letter.

Yours sincerely

GILES SCOTT

Head of National Infrastructure Consents and Coal Liabilities

⁴ In respect of the first statutory objective (eliminating unlawful discrimination etc.) only

ANNEX

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, the refusal of an application for 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 day on which the Secretary of State's Statement of Reasons (the decision letter) is published on the Planning Inspectorate's website at the following address:

<http://infrastructure.planninginspectorate.gov.uk/projects/yorkshire-and-the-humber/white-rose-carbon-capture-and-storage-project/>

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to refuse the application for 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).