

# Preliminary Meeting Note

## Summary of Key Points Discussed and Advice Given

**Application:** Wrexham Energy Centre

**Reference:** EN010055

**Time & Date:** 10am, 19 July 2016

**Venue:** Redwither Tower, First Avenue, Redwither Business Park, Wrexham Industrial Estate, Wrexham, LL13 9XT

**Examining Authority:** Rynd Smith

**Planning Inspectorate:** Steffan Jones (Case Officer), Rachel Gaffney (Assistant Case Officer)

*This meeting note is not a full transcript of the Preliminary Meeting. It is a summary of the key points discussed and responses given. An audio recording of the event is available on the National Infrastructure Planning website.*

### Welcome and Introductions

Rynd Smith introduced himself as the Examining Authority (ExA), opened the Preliminary Meeting, welcomed those present and gave a brief outline of the proposed development (the Wrexham Energy Centre). The ExA explained that translation facilities were available throughout the meeting should any interested party wish to converse in Welsh; however any requests to speak in Welsh had not been received prior to the day's proceedings.

The ExA introduced the members of the case team from the Planning Inspectorate who were also present (Steffan Jones and Rachel Gaffney), explaining that Tracey Williams, Case Manager was unable to attend the day's proceedings however advised that any questions outside of the scope of the meeting should be directed to the case team present.

The ExA advised that a note would be produced of the meeting, and that the audio recording would be made available on the National Infrastructure pages of the Planning Inspectorate website. It was made clear that all hearings in the examination will be recorded and will be published on the National Infrastructure pages of the Planning Inspectorate website.

Interested Parties were reminded that the application before the ExA is part of a broader project with the following elements.

The primary element is the application to construct and operate a gas electricity generating station with an anticipated installed capacity of up to 299MW. This

falls to be considered as a Nationally Significant Infrastructure Project (NSIP) under the Planning Act 2008 (as amended) (PA2008) as it is an application for a generating station exceeding 50MW in installed capacity.

The consent regime established under the PA2008 in Wales does not allow an application to include development that is associated with but not directly part of the primary development. For this reason, a separate application has been made to Wrexham County Borough Council (WCBC) for works to connect the application proposal before me to the gas network, with a new pipeline running from the application site to Maelor Gasworks. However, the application in front of the ExA does contain proposals for compulsory acquisition powers in respect of land and rights over land that relate to the proposed gas connection.

A further separate application to connect the application proposals to the electricity distribution network has been submitted to the local distribution network operator (DNO), SP Energy Networks (SPEN). The applicant holds a connection offer from SPEN; the ExA explained this would be a matter that he would return to shortly. The ExA also noted that the applicant has made some changes to the documentation accompanying the application since the application itself was submitted; changes he would address shortly.

The ExA explained that it is his role to examine the application and make a report to the Secretary of State (SoS) for Business, Energy & Industrial Strategy (previously Energy and Climate Change) with recommendations for his decision. The ExA explained he has 6 months to examine the application followed by 3 months to consider and produce his report, and the SoS has a further 3 months to make his decision.

It was explained that the purpose of the Preliminary Meeting was to consider the process that will be followed in the ExA's conduct of the examination and how Interested Parties can become involved. The substance of the proposal would not be considered at the Preliminary Meeting as the merits or disadvantages of the scheme are for the examination itself, which does not formally start until the Preliminary Meeting has been concluded.

The was set out his draft examination proposals in his letter of 24 June 2016, which Interested Parties may also hear described as the Rule 6 letter (made under the Examinations Procedures Rules – Rule 6).

The ExA invited those present and speaking to introduce themselves:

- Kevin Hughes on behalf of Wrexham County Borough Council
- David Hatcher on behalf of Natural Resources Wales
- Richard Griffiths on behalf of Wrexham Power Limited (the Applicant)

Those present were reminded that when speaking to speak into the microphone and to clearly give names and the names of the organisation being represented each time, as an audio recording of the meeting was being made.

### **The Examination Process**

It was explained that under s87 (1) of the PA2008 it is for the ExA to decide how to examine the application, although the PA2008, examination regulations and government guidance also provide a framework within which the ExA must operate.

The Government has set out policy for NSIPs in a number of National Policy Statements (NPS). The primary NPS relating to this application (Overarching National Policy Statement for Energy (EN1) and the National Policy Statement for Fossil Fuel Energy Infrastructure (EN3), the latter containing specific policy on gas generation. The ExA explained that it was not his role to consider the merits of the relevant NPS, but to consider the merits of the project within the parameters of these policy statements, and that the PA2008 made it clear that in taking a decision the SoS 'must decide the application in accordance with any relevant NPS' (S104 (3)). The ExA clarified that this was subject to the proviso that the application must not breach legal obligations, particularly international obligations, and that the adverse impact of the proposed development would not outweigh its benefits.

It was explained that the process was to be inquisitorial and not adversarial, and that the role of the ExA would be to focus on evidence and justification, and not assertion. The ExA stated that whilst it was appropriate at the relevant representation stage for issues of concern to be listed, when submitting written evidence once the examination had started, any concerns need to be evidenced. The examination process would primarily be a written one, and the main body of evidence informing judgements and recommendations would come from submissions made by the Interested Parties (written representations, responses to written representations, local impact reports from local authorities, statements of common ground and answers to questions from the ExA). These representations or responses should set out the reasons for supporting or opposing the application, and provide reasons for disagreeing. The ExA explained that the ExA has a responsibility to probe, test and assess this evidence.

The ExA explained that there is scope for three types of hearings.

Any Interested Party may request an Open Floor hearing and if a request is made by the appropriate date in the examination, which would be accommodated. Subject to the ExA's powers to control the conduct of the hearing, all Interested Parties will have an opportunity to make oral representations about the application. If any Interested Party has strong views

and want to make sure that they are represented in this examination, irrespective of the other processes that the ExA carries out, they should think about attending to make their case at an Open Floor hearing. The ExA stated that he was aware that some people here are not planning professionals and have business to attend to in the working day. For that reason, the draft timetable suggests that the ExA will conduct an Open Floor hearing during an evening.

Issue-Specific hearings are designed to be focussed on a specific issue or related group of issues. The decision on whether to hold ISHs and on what to hold them about is the ExA to decide. They are held if the ExA decides it is necessary to ensure adequate examination of an issue (or to provide an interested party with a fair chance to put its case). The ExA explained that he had already decided to hold a first Issue-Specific hearing this afternoon, with the room open from 1-30pm and business starting at 2pm, to commence his examination of the draft Development Consent Order (DCO). The hearing notification, agenda and link to a schedule of issues arising from the draft DCO accompanied the ExA's letter of 24 June at annexes F, G & H.

Issue-Specific hearings are held on a without prejudice basis. The holding of an Issue-Specific hearing does not imply that the ExA has reached any judgements or conclusions about the matters that it covers. For example, the fact that the ExA is holding an Issue-Specific hearing on the draft Development Consent Order does not imply that he has made any judgement about whether or not the SoS should grant the DCO. However, whatever recommendation the ExA makes about this application, he is under a duty to present a DCO which is fit for purpose to the SoS, in the event that he should decide that consent should be made. On this basis, it is important that a technical and legal review of the DCO starts as early in the examination as possible. Interested Parties can participate in the afternoons and any other Issue-Specific hearing without prejudicing their general position. Even if an Interested Party is opposed to the application proposal they would not be compromising their position by engaging in the process during the Issue-Specific hearing on the draft DCO and suggesting modifications and amendments.

A third form of hearing relates to the Compulsory Acquisition of land and rights. A person who is affected by compulsory acquisition and objects has a right to be heard. The ExA confirmed that there is at least one such objection and therefore it is likely that he will hold at least one Compulsory Acquisition hearing.

Interested Parties were reminded that they entitled to be legally represented at any hearing if they so wish, or to seek professional support from other experts. However, hearings will be conducted by the ExA in a way that seeks to include all Interested Parties attending: there is no expectation that any Interested Party have to be legally or professionally represented.

As part of the examination process the ExA has already started to carry out site inspections. He explained that the purpose of these is to enable him to see features of the proposal within the context of the evidence put forward. Inspections may be both unaccompanied and accompanied.

Where the ExA can view the features that he needs to inspect from the public highway or public rights of way, he will normally carry out unaccompanied inspections. If the ExA needs to go onto private land or view private installations or if any Interested Party wishes to ensure that he have seen a particular view or feature by taking him to a particular place, then an inspection will need to be accompanied. Where this is the case, it is good practice for an inspection to be accompanied by representatives of the applicant, the local planning authority and relevant Interested Parties, so everyone can assure themselves that the ExA has not had any private conversations with any attendees. For this reason too, the ExA will never hear oral submissions or evidence during an accompanied site inspection: the only communication that can occur on site is of a factual nature, making sure that he is in the right place and seeing the right features.

The ExA informed everyone that he has already carried out an unaccompanied site inspection of the immediate setting of the application site and proposed gas connection route from public vantage points. The ExA has also viewed Wrexham Industrial Estate and visited Isycoed and driven most of the highways between the application site and the River Dee. He has walked on some public footpaths and has noted views towards the Wrexham Industrial Estate and the application site. As part of this process the ExA has visited a number of the representative locations identified in the applicant's landscape and visual impact assessment and has published a note of his first inspection on the National Infrastructure pages of the Planning Inspectorate website.

Interested Parties were reminded that within the draft examination timetable (Annex C) there are dates set aside for accompanied site inspections. The ExA declared he can foreshadow a need to gain access to the application site itself and that he would like to see the gas connection point at Maelor Gas Works. As both of these are on private land and one is a restricted installation, the ExA would need to be accompanied. The ExA would expect that there may be some health and safety and security requirements that might apply to the Maelor facility and these will have to be taken into account in making arrangements to visit that site.

The ExA proposes to carry out further unaccompanied inspections of Wrexham town centre, and of views to the application site from high land to the west and east of the River Dee.

The ExA considered it important that he make a brief remark about the recent referendum decision, as a consequence of which the UK will be commencing a process to leave the European Union (EU). This examination has some processes guided by European legislation, including but not limited to Environmental Impact Assessment (EIA) and Habitats Regulations Assessment (HRA). The process of leaving the EU does not commence in legal terms until the UK has invoked Article 50 of the Lisbon treaty by notifying the EU of its decision to leave, and is not complete until the exit arrangements have been negotiated and agreed, or in the absence of agreement, 2 years have passed since notice was provided. Where European law is given effect to by domestic legislation, such as the Habitats Regulations, these remain on the UK statute book until they are amended or repealed by the UK Parliament – and therefore these could well remain in force after the UK leaves the EU. The ExA will monitor any developments closely. However, the starting position for this examination is one of 'business as usual': the law in force at the relevant time is to be applied. Interested Parties should not be surprised if we continue to refer to European legal provisions that for the time remain in force.

Mr Briggs, interested party, requested the ExA confirm what is defined as 'National' in relation to the NPS and what should happen in the event of a break of the United Kingdom. The ExA confirmed that the need for electricity generation identified in the NPS applies to England and Wales. Any amendment to the NPS would be a public process, providing opportunity for comment on drafts of any amended NPS. The ExA stressed that the NPS is still the policy framework that applies in the current situation.

The ExA also stressed it important to include a brief remark about the Wales Bill currently before the UK Parliament, as it contains amendments to current legislation that are potentially relevant to this examination. The purpose of the Bill is to transfer a range of powers from the UK Government to the Welsh Government, including the power to determine applications for proposals such as the one before me. As the Bill currently stands, Schedule 6 includes a proposal for transitional arrangements which would mean that, if the Bill were to receive Royal Assent and become an Act at any point during this examination, the examination would continue and a report would still be made and a decision taken by the SoS under the PA2008 system. This aims to ensure that the applicant and Interested Parties in this examination don't find themselves having to change to a new process before the final decision is made. Because the Wales Bill is still before Parliament, the proposed transitional provisions are not law and they might be amended. However, the ExA assured Interested Parties that the Planning Inspectorate is maintaining a close watching brief over the progress of the Bill. The ExA recognised that should the advice that the just given to Interested Parties change because the Bill is amended, he will provide new advice as soon as practicably possible.

Richard Griffiths, on behalf of the applicant, confirmed a connection offer has been received from SP Energy Networks via email for the proposed electricity connection from the generating station to the Legacy sub-station, which is outside of the development consent process under PA2008.

Mr Briggs, Interested Party, requested confirmation from the applicant that the proposed connection was no longer between the generating station and a sub-station in Marchwiel. The applicant confirmed this.

The ExA explained there have been a few changes to documents submitted by the applicant.

The changes are:

- there is an updated Book of Reference (BoR) recording all of the land and interests affected by the compulsory acquisition proposals; and
- a revised Grid Connection Statement, explaining how the generating station would connect to the electricity distribution system.

Interested Parties were informed that the documents recording these changes are in the Examination Library – under the code OD (other documents) 1 – 7. A procedural decision at Annex E to the ExA's letter of 24 June 2016 records that he had accepted these changes into the examination.

The ExA noted that a substantial number of changes are proposed to the BoR as a result of the applicant making on-going diligent inquiries. The ExA intends to ask a written question to the applicant, seeking an explanation of how they have conducted their diligence process. The ExA need to be assured that the right people have been identified in the BoR, and therefore the right people are invited to participate in this examination. If changes are made to the BoR identifying people who have not been invited to participate in this examination as affected persons, he confirmed he will take steps to ensure that they are able to be drawn in to the examination process.

Mrs Harber, Interested Party, asked how the ExA will deal with the process of Applicant's due diligence. The ExA explained this is an obligation on the Applicant to go about the due diligence process, however the ExA will provide an opportunity for anyone affected by compulsory acquisition to address him, in writing or orally. The ExA identified it necessary for him to ask a question of the Applicant in order to provide them with an opportunity to explain the changes it has provided to its updated BoR.

There is a revised Grid Connection Statement, which in summary terms explains that SP Energy Networks has now offered an electrical connection to the

application proposal and that is intended to be an underground connection. The ExA has noted concerns from a number of Interested Parties about the possible use of pylons or poles for an overhead line connection. The ExA confirmed he will be writing to the applicant asking them to confirm his current understanding that an overhead line connection is no longer proposed. As the electrical connection is not part of the application before the ExA, this will be a contextual matter for the SoS to note, rather than a point on which any final decision will be made.

The ExA reminded all Interested Parties that this is formally a statutory inquiry (pursuant to Schedule 7 to the Tribunals, Courts and Enforcement Act 2007) and therefore it is important it is treated with due regard to its statutory status. There is potential for an award of costs to be made if one party's unreasonable behaviour causes another party to incur wasted expenditure. Costs are also available to those who object to compulsory acquisition if the SoS declines to confirm the applicant's request relating to their land (known as 'successful objector' costs), or if the applicant decides not to proceed with a compulsory acquisition request (where an objector is deemed to be a 'successful objector'). Department for Communities and Local Government (DCLG) costs guidance available through the Planning Inspectorate's website includes examples of potentially unreasonable behaviour, including issues such as not submitting evidence on time, withholding relevant evidence or delaying submissions for tactical reasons. It also explains how costs work in compulsory acquisition cases. The ExA did not wish to overstate the risk of costs applications, but asked Interested Parties please treat the examination seriously and expeditiously. The ExA's remarks should not be seen as anything other than a reminder of the applicable law and guidance and has every hope that we will be able to complete this examination and this will be the last time that he needs to draw anyone's attention to the position on costs.

### **Principal Issues**

The ExA stated that an initial assessment of principal issues had been set out in Annex B to the Rule 6 letter of 24 June 2016, around which the examination was likely to focus. He advised, as set out in the letter, that it was not comprehensive or exhaustive, but a broad list within which specific matters were likely to be covered.

The ExA asked if there were any comments or questions relating to the list of principle issues; none were given.

### **Draft Timetable**

It was explained that the purpose of this section of the meeting was to explain the draft timetable and consider representations on it.

The Applicant informed the ExA it wished to raise matters relating to the issue of the Planning Inspectorate's Notification of Hearings letter; a reference to the Responses to the ExA's Third Written Questions; and it also requested to impose a deadline upon itself to provide the ExA with a revised version of the draft DCO. The Applicant offered to provide the examination with a revised draft DCO for Tuesday 26 July 2016. This offer was accepted by the ExA who suggested a revised draft DCO should help inform the Written Representations from interested parties expected at Deadline 1. Written summaries of an oral case put at the afternoon Issue-Specific hearing would also be required by interested parties by the date above.

The Applicant also informed the ExA to provide a revised draft DCO on 20 September in advance of the Issue-Specific hearing of 28 September 2016. The ExA accepted the offer of receiving a revised draft DCO at this deadline. The ExA noted that the Local Impact Report (LIR) submitted by Wrexham County Borough Council (WCBC) is incomplete as some text appears to be missing from section '2.2 Transport Statement'. WCBC informed the ExA that it would provide a revised version, including the missing text, for Deadline 1 on 23 August 2016.

The Applicant informed the ExA that a Statement of Common Ground (SoCG) with Cadw will be provided to the ExA at Deadline 1, this is an addition to those SoCG identified in the ExA's Rule 6 letter of 24 June 2016.

The ExA explained that a Report on the Impact on European Sites (RIES) can be issued where there are likely significant effects on such sites. The Applicant has submitted an initial assessment that there are no such effects in its application documents (a No Significant Effects Report (NSER)). The ExA suggested there may be questions and comments arising from this or from related natural environment evidence during the examination process. If there are outstanding concerns that there are likely significant effects, then the ExA may prepare a draft RIES to catalogue these on a factual basis and issue this for comment on Monday 12 December 2016. The ExA's purpose in doing so is not to reach judgements about the merits of the application, but to be completely clear about what is agreed and what is still contentious in respect of European Sites and their protected characteristics. Comments on this would be required by the 4 January 2017. However, if there is general agreement by this stage in the application that the NSER report is sound and that there are no likely significant effects on European Sites, then a RIES may not be required and the ExA would issue advice to that effect.

Within the ExA's Rule 6 Letter of 24 June 2016, reference is made to responses to the ExA's third written questions. The ExA confirmed that this was a

typographical error within the examination timetable and would be removed from the next iteration of the timetable.

The ExA has timetabled dates for two subsequent Issue-Specific hearings on the draft DCO, those dates being Wednesday 28 September and between 22 and 24 November if required; following each of which the Applicant would be expected to provide revised versions of the draft DCO. Following the second Issue-Specific hearing and the Applicant's submission of a revised draft DCO, the ExA may publish its own draft DCO on Monday 12 December, with comments invited on this by Wednesday 4 January 2017 and responses to any comments a week later on Thursday 12 January 2015.

There are effectively two time blocks set aside for hearings on environmental and other matters, and compulsory acquisition should these be necessary on 28 to 29 September and 22 to 24 November 2016. Within this first block there is a time slot for the holding of an Open Floor Hearing should anyone request to be heard at such a hearing. Provisionally this will include time in the evening.

Mrs Harber, interested party, asked how persons would view certain examination documents, such as hearing agendas, should they not have access to the internet. The ExA explained that there is sufficient time to enable persons who don't have internet access to go to a library to access the internet and view the said documents; details of WCBCs library has been provided in the ExA's Rule 6 letter of 24 May 2016 to assist interested parties in this matter.

The ExA reminded interested parties that there is a duty on the Applicant to provide notice of hearings in order to provide interested parties to participate in the examination. The Applicant confirmed this and requested the ExA make an amendment to the examination timetable and provide more than 21 days' notice for the Notification of Hearings; this would ensure the Applicant would have the details of any hearing in good time in order to prepare its own notices which require publication in the press. It was confirmed the request will be given consideration and finalised in the examination timetable within the Rule 8 Letter. Chris Hughes, interested party, requested confirmation from the ExA as to whether there is provision for interested parties to make Written Representations once the deadline for them has passed. The ExA requested that all interested parties adhere to examination deadlines where possible. Chris Briggs, interested party, requested clarification on when it would be appropriate for him to request further information from the Applicant. The ExA confirmed that it would be most appropriate it be set out within Mr Briggs Written Representation for Deadline 1. Mr Briggs was informed he may also wish to request to be heard at an Open Floor hearing where he can address the ExA directly in order to raise those questions and concerns.

A date of Tuesday 27 September 2016 has been allocated for an accompanied site inspection (ASI), the ExA made clear that this will be required. Additional time is also available between 22 and 24 November 2016 should it be needed. Notification of any interested party's wish to attend an ASI and suggestions as to sites that they feel should be inspected should be made by 23 August 2016. Chris Briggs, interested party, noted the ExA had carried out an unaccompanied site inspection and a note of the inspection had been published on the National Infrastructure website. Mr Briggs asked the ExA whether he would carry out an inspection during the winter time due to the reduction of leaf cover at this time of year. The ExA confirmed he would do so, either accompanied or unaccompanied.

## **BREAK**

Upon resumption of the meeting, the ExA asked interested parties were content that the venue was adequate for an Open Floor hearing; no objections were raised.

The ExA explained that procedural decisions already made are set out at Annex E of his letter of 24 June 2016. These relate to the formal acceptance of material submitted by the applicant and other parties during pre-examination. The documentation has been published on the project web page. Any comments on these documents should be made as part of interested parties' written representations by Wednesday 23 August 2016.

In Annex E, the ExA has requested Statements of Common Ground (SoCGs) between the applicant, Wrexham Council and Natural Resources Wales (NRW). SoCGs should assist the ExA in his consideration of the issues on which he need to report. They should provide a focus and save time by identifying matters which are not in dispute or need not be the subject of further evidence. They can equally usefully indicate where and why there may be disagreement about the interpretation and relevance of information. The Applicant confirmed it will provide updates on SoCG throughout the examination should they not be finalised by Deadline 1.

Mr Briggs, interested party, requested clarification from WCBC on when a decision would be likely for the planning application for the gas connection. WCBC confirmed it is likely that the application would be going to committee in September 2016. The ExA requested WCBC provide a status update on the application in its written representation for Deadline 1.

Mrs Harber, interested parties, how local schools would participate in the examination considering the examination period is beginning as the schools shut for the summer holidays. The ExA declared he expects anyone who is sufficiently concerned about the application has made a relevant representation

and been received prior notice and been informed of the preliminary meeting; therefore the ExA consider it need not take any special measures in relation to school holidays.

The ExA closed proceedings by stating he would reflect on what has been said and plan to issue his Rule 8 letter following the Preliminary Meeting. He hopes to run a thorough, constructive, friendly and good-natured examination and looks forward to the co-operation and involvement of interested parties.