



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: qA1294638

Dr Jim Doyle
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20 October 2017

Dear Dr Doyle

PLANNING ACT 2008

APPLICATION FOR A NON-MATERIAL CHANGE TO THE HIRWAUN GENERATING STATION ORDER 2015

1. I have considered the application (the "Application") which was made by Hirwaun Power Limited (the "Applicant") on 14 July 2017 for a non-material change to The Hirwaun Generating Station Order 2015 ("the 2015 Order"), as corrected by The Hirwaun Generating Station (Correction) Order 2015 and amended by The Hirwaun Generating Station (Amendment) Order 2016, under paragraph 2 of Schedule 6 to the Planning Act 2008 (the "2008 Act").
2. The original application for development consent under the 2008 Act was submitted to the Planning Inspectorate by the Applicant in March 2014 and was granted development consent by the Secretary of State for Energy and Climate Change on 23 July 2015. Consent was granted for the construction and operation of a simple cycle gas fired peaking power generating station with a gross electrical output of up to 299 MWe at Hirwaun Industrial Estate, Rhonda Cynon Taf, Wales ("the Development"). On 21 December 2015, the Secretary of State for Energy and Climate Change made a correction order to correct errors in the 2015 Order. On 11 November 2016 the Secretary of State for Business, Energy and Industrial Strategy authorised changes to the 2015 Order, which alter some of the parameters and locations of various structures consented by the 2015 Order.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

3. The Applicant has applied to make further changes to the 2015 Order. The changes alter the sequencing of development to amend the timing of delivery of bat mitigation measures, provide the Applicant with flexibility to retain an existing building for bat mitigation rather than erect a new structure and enable the Applicant to agree the timing of bat mitigation works with relevant parties.

Decision

4. I have decided under paragraph 2(1) of Schedule 6 to the 2008 Act to make non-material changes to the 2015 Order, so as to authorise the changes as detailed in the Application. This letter is the notification of my 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. I have given consideration as to whether the Application is for a material or a non-material change.
6. There is no statutory definition of what constitutes a "material" or "non-material" change for the purposes of Schedule 6 to the 2008 Act and Part 1 of the 2011 Regulations. Paragraph 2(2) of Schedule 6 to the 2008 Act requires the Secretary of State, when deciding whether a change is material, to have regard to the effect of the changes on the development consent order as originally made. I note the changes do not relate to the power generating station itself and concern bat mitigation measures. I consider the effect of the changes on the 2015 Order as originally made is relatively small.
7. In addition, so far as decisions on whether a proposed change is material or non-material, the Department of Communities and Local Government's "Guidance on Changes to Development Consent Orders" (December 2015) document makes the following points. Given the range of infrastructure projects which are consented through the 2008 Act and the variety of changes which could possibly be proposed for a single project, it is not possible to attempt to prescribe whether any particular types of change would be material or non-material. Such decisions will inevitably depend on the circumstances of the specific case. However, the guidance states there may be certain characteristics which indicate a change to a consent is more likely to be treated as a material change. Four examples are given in the guidance as a starting point for assessing the materiality of a proposed change. These are:
 - (a) Whether an update would be required to the Environmental Statement ("ES") (from the time the original development consent order ("DCO") was made) to take account of new, or materially different, likely significant effects on the environment.
 - (b) Whether there would be a need for a Habitats Regulations Assessment ("HRA"), or a new or additional licence in respect of European Protected Species ("EPS").
 - (c) Whether the proposed change would entail compulsory acquisition of any land which was not authorised through the existing DCO.

- (d) The potential impact of the proposed changes on local people and business such as visual amenity, impacts on the natural and historic environment and impacts arising from additional traffic. Although the presence of the above characteristics indicate 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. Applications for changes to Development Consent Orders must be considered against the specific circumstances of each case.

8. I have considered the four matters outlined in (a), (b), (c) and (d) above:

- (a) I am satisfied the Applicant has given consideration to whether the proposed changes would give rise to any environmental effects which:
 - (i) are new, likely significant effects on the environment not identified in the ES for the consented project, or
 - (ii) are materially different, likely significant effects on the environment when compared with the environmental effects set out in the ES.

The Applicant notes any new bat mitigation structure would be small and of conventional construction so would have no wider landscape impacts or drainage/flood impacts. It would be sited to avoid any underground archaeology or contamination and would not have any significant construction or transport impacts. Therefore, no additional environmental effects will arise through the amendments to the DCO and there will be no difference to the conclusion of the ES. I agree and conclude no update to the ES is required as a result of the proposed amendments. I also note, following consultation on the proposed changes requested by the Applicant, no objections to the proposed changes to the 2015 Order were received and no challenge was made to the Applicant's position the proposed changes are non-material in nature.

- (b) Regarding Habitats Regulations Assessment ("HRA"), the Applicant considers the proposed changes would not result in a need to update the HRA as there is no change to the impacts on any sites of European importance. I agree with the Applicant, taking account of the nature and potential impact of the changes proposed. I also note NRW has no objection to the proposed changes and has not suggested an update to the HRA is necessary.
- (c) I note the proposed changes do not require any compulsory purchase of land.
- (d) I am satisfied the proposed changes would not affect local residents and businesses and note no objections were received to the Application.

9. On the basis of the above and, as I consider there are no other circumstances in this case which would mean the changes should be treated as material, I conclude the proposed changes are appropriately categorised as non-material changes for the purposes of paragraph 2 of Schedule 6 to the 2008 Act. The Application has therefore been handled in accordance with Part 1 of the 2011 Regulations.

Consultation and Responses

10. On 13 April 2017, the Welsh Ministers consented to allow the Applicant, in accordance with Regulation 7(3) of the 2011 Regulations, to only consult those consultees identified in the Applicant's letter, dated 29 March 2017, addressed to the Secretary of State for Business, Energy and Industrial Strategy. The consent was granted as the Welsh Ministers agreed with the Applicant there were no other persons or bodies likely to be affected by the proposed changes, which are narrow in scope.
11. In accordance with the requirements of Regulation 7(1) of the 2011 Regulations, relevant parties were consulted on the application on 13 July 2017. Consultation ran until 18 August 2017.
12. The Application was also published for two consecutive weeks in the local press, South Wales Echo, and made publicly available on the Planning Inspectorate's website, providing an opportunity for anyone not notified to submit representations to the Planning Inspectorate.
13. Representations were received from Brecon Beacons National Park, Natural Resources Wales and the Planning and Highways sections at Rhondda Cynon Taff County Borough Council. None of the representations raised objections.
14. I have considered all representations received and do not consider any further information needs to be provided by the Applicant or any additional consultation required before determining the Application.

Other Considerations

Equality Act 2010

15. 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 partnerships; pregnancy and maternity; religion and belief; and race. I am satisfied 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

16. I have considered the potential infringement of human rights in relation to the European Convention on Human Rights by the Application. I note the proposed changes would not require compulsory purchase of land and I am satisfied the grant of changes would not be incompatible with any Convention right protected by the Human Rights Act 1998.

Well-Being Future Generations Act

17. The Welsh Ministers must, in accordance with the Well-being of Future Generations Act ("the FG Act 2015"), carry out sustainable development. Therefore, in coming to my decision on the application, I have taken into account the ways of working set out 'SPSF1: Core Guidance, Shared Purpose: Shared Future – Statutory Guidance on the Future Generations Act 2015'.
18. I consider my decision accords with the sustainable development principle set out in the FG Act 2015. In accordance with section 3(2) of the FG Act 2015 and the well-being objectives of the Welsh Ministers, the decision will help towards achieving the objective of "delivering modern and connected infrastructure".

Conclusions and Decision

19. I consider the changes are acceptable when considered in the context of the established need for the Development as consented under the 2015 Order. I am, therefore, making the Amending Order requested by the Applicant.

Modifications

20. Clarification was sought from the Applicant regarding the inclusion of numbered work 2E(f) in new requirement 13(1) in Schedule to the 2015 Order. The Applicant considers this reference can be removed from the relevant paragraph. This minor drafting change has been made, it does not alter the effect of the draft Order as submitted.

Challenge to decision

21. The circumstances in which the Welsh Ministers' decision may be challenged are set out in the note attached at the Annex to this letter.

Publicity for decision

22. The Welsh Ministers' decision on this Application is being notified as required by regulation 8 of the 2011 Regulations.

Yours sincerely

Lesley Griffiths AC/AM

Ysgrifennydd y Cabinet dros yr Amgylchedd a Materion Gwledig
Cabinet Secretary for Environment and Rural Affairs

ANNEX

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118(5) of the Planning Act 2008, a decision under paragraph 2(1) of Schedule 6 to the Planning Act 2008 to make a change to an Order granting development consent can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the Planning Court during the period of 6 weeks beginning with the day after the day on which the Order making the change 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/wales/hirwaun-power-station/>

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)