



The Planning Inspectorate

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Mr Chris Girdham
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Your Ref:

Our Ref: EN010059

Date: 03 January 2014

Dear Mr Girdham,

Further to your email of 29 November 2013 and on the basis of the draft documents provided to us, please see our comments attached. The comments are without prejudice to any decision made under section 55 of the Planning Act 2008 (as amended) or by the Secretary of State on any submitted application.

To confirm, we have a meeting agreed for 15 January 2014 to discuss the comments below but if you have any queries in the meantime do feel free to contact us.

Regards
Tom

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Introduction

The majority of the comments below are on minor technical matters. We urge all applicants to ensure the accuracy of references to documents, and we have sought to highlight those that appear unclear at present.

1.0 Draft plans

1.1 In general, the plans appear clear at this stage subject to the clarifications below. More broadly, we note that we only have plans for one electricity connection and one gas route. At the meeting agreed for 15 January 2014, we would welcome an update to clarify the detail for the routes that will form part of the application, and how consultation has informed these choices.

1.2 On the Gas Route Land Plan there is a section marked 6c_GR which does not appear to match up with the Book of Reference; this instead shows 5c_GR.

1.3 On the Works Plans 1 and 2 there is a difference between what is displayed within the section Works. 2. On Figure 1 this is summarised as 2 and said to encompass 2A - 2F however on Figure 2 the location of 2D is outside of this area.

2.0 Draft consultation report

2.1 In general, it is noted that the draft consultation report remains partially complete, and you may wish to submit a further draft covering the statutory consultation. Two key areas to ensure clarity on are 1) which project description was consulted on at which stage and with who, and 2) where changes have been made, any further consultation that was considered and either carried out or considered unnecessary. The draft report provides a structure to ensure there is clarity on how the project has evolved, particularly proposed table 2.3, and we have some comments below based on the draft at present.

Structure and breaking down of the sections

2.2 The overall structure of the draft report appears to be clear and logical, with relevant chapters that break the report from the overview, followed by the outline of all pre-application consultation activities to summary of responses received from such consultation. We note that the draft report currently focuses on the summary of responses and its outcomes from non-statutory consultation, with the remainder to be completed in due course. We would be able to provide further advice on a revised version of the report once this section is complete.

2.3 Paragraph 2.5.1 of the draft report states that: '*the report meets the requirements set out in Part 5*'. The assessment under section 55 of the Planning Act 2008 (as amended) is specific in respect of various other sections, so it may be helpful to explain the primary purpose of the consultation report with reference to relevant sections of the Planning Act 2008, cross referring where appropriate.

2.4 Paragraph 2.4.3 of the draft report refers to 'Official Guidance' and lists DCLG Guidance and Advice Notes. For clarity, it should be noted that DCLG Guidance is a *statutory* guidance to which applicants must have regard to whereas Advice Notes are *non-statutory* advice that applicants are encouraged to consider carefully. It may be helpful to make that clear, perhaps by explaining that along with the statutory DCLG guidance, the non-statutory advice notes were also followed.

2.5 It appears that the numbering system used for the appendices is sometimes repeated for example Appendix 3B and 4B appear twice each. Appendix 3X and 3Y currently have the same title; it may be useful making clear that Appendix 3X lists those prescribed consultees as per APFP Regulations 2009, whereas Appendix 3Y list all those consulted under s42 in accordance with those regulations. The current title of Appendix 3Z is '*s42 prescribed consultees: section 46 notification to the Planning Inspectorate*', it should be noted that s42 and s46 have two different purposes. It is understood that this appendix will include the sample letter sent to the Planning Inspectorate under s.46 perhaps removing first part of the title would make that clear. It is also noted that sample of letter sent out under s42 and s47 are currently not on the list of appendices; we advise you to add and clearly label these within the report.

Project description

2.6 We note that the Project Description at section 2.2 of the draft report is yet to be included. As mentioned in 2.1, it is advisable to be clear with appropriate detail and to demonstrate the extent to which this description has been consulted on (cross referencing where appropriate). There should also be consistency between this description, and those in other documents particularly the Environmental Statement and the Development Consent Order.

List of abbreviations

2.7 It would be helpful to place these at the beginning of the report.

Non -statutory consultation

Section 3.3 Non – Statutory Consultation

2.8 Section 3 '*Description of Consultation activities*' currently sets the historic context of the site and refers to the other projects proposed in that area until the initial non-statutory consultation was carried out by the HPL. The first paragraph, 3.3.1, does not explicitly states that the consultation related to the proposed development by HPL. It may be helpful to make that clear perhaps by adding an introductory paragraph.

Summary of responses from non-statutory consultation

2.9 The non-statutory section provides a clear overview of responses received which are grouped by topics in the table.

Statutory consultation

Section 3.5 - Statutory Consultation

2.10 Paragraph 3.5.1 refers to 'statutory requirements'; where referred to 'statutory requirements' it may be useful adding '*of the Planning Act 2008 (as amended)*' for clarity.

2.11 In paragraph 3.5.49 the applicant states that: '*confirmation list of the Regulation 9 consultees was received from the Planning Inspectorate xxx which was too late to inform the developer's list of consultee*'. Regulation 9 lists should not have any effect on the applicant's consultation under s42 of the Planning Act 2008.

The applicant should make this clear in its consultation report. Regulation 9 lists are purely produced for EIA consultation purposes and not therefore for the consultation under s42 of the Act which is separate to EIA consultation.

Description of the project within section 3.5 Statutory Consultation

2.12 As mentioned in 2.1 above, the report would benefit from further clarity about which project descriptions were used at which stages of the pre-application process. It appears that proposed table 2.3 will provide this. At present, our understanding is that the description provided in the Environmental Impact Assessment scoping request was also used when consulting the local authority on the Statement of Community Consultation. Following that the description was updated and used for consultation. It is not clear whether this was the same for all statutory consultation (ie sections 42, 47 and 48 of the Planning Act).

2.13 Where the application has changed as a result of the statutory consultation, this should be clearly explained in the report (see pages 16 and 17 of the DCLG Guidance on the pre-application consultation), along with details of any consideration of the need for further consultation.

2.14 It would be useful to cross reference to the book of reference / provide the full list of s44 persons consulted under s42 statutory consultation. The list should cover everyone whose land would be subject to compulsory acquisition as a part of the DCO.

2.15 Paragraph 3.5.55 includes all the identified local authorities – for ease of use a bullet point approach would be helpful.

Responses to Statutory Consultation

2.16 It is noted that the summary of statutory consultation responses section is largely incomplete. It is important that this section of the report is clearly explained – please see Annex A to Advice Note 14 which sets out an approach the Planning Inspectorate would find helpful.

2.17 When referring to ‘consultation’ in the report; it will be helpful if that reference could be expanded to whether that was ‘non-statutory’ or ‘statutory’ consultation through the whole report.

EIA Consultation

2.18 It is noted that page 27 of the draft report includes section on EIA Consultation. It is helpful that EIA consultation is covered in the draft report; however it will be useful to make it clear that this is a separate consultation to the statutory consultation carried out under the Planning Act 2008.

2.19 Within the EIA Consultation section, it might be useful to explain the purpose of the Scoping Request in order to make it clear to readers, including the general public.

2.20 Paragraph 3.4.4 states that ‘*Scoping Report was submitted to the Planning Inspectorate on behalf of the Secretary of State*’. We understand that this is meant to be that the scoping report was submitted to the Planning Inspectorate who on behalf of Secretary of State issued the Scoping Opinion to the applicant.

- Appendix 3L – perhaps the title of the appendix could be more informative stating that this is ‘*The Regulation 9 list produced for the purpose of the EIA Consultation*’

Terminology

2.21 We note that pages 24 – 26 of the draft report refer to ‘*Technical Consultation*’. It is clear that the applicant carried out number of consultation exercises with key statutory consultees on a number of occasions before commencing its statutory consultation; however it maybe helpful to explain what is meant by ‘technical consultation’ and who are the ‘technical consultees’, perhaps replacing it with ‘non-statutory consultation with key stakeholders’ for clarity and consistency with the rest of the document. Where such consultation was non-statutory, it would be useful to demonstrate the extent to which you had regard to comments received.

2.22 The terms below would benefit from simple explanations:

- ‘*On-going optioneering*’, - see paragraphs 3.3.3 and 3.4.7.
- ‘*Another Watt Power project SoCC*’. - paragraph 3.5.15. In the interests of transparency, it would be helpful to clarify that our comments referred to the Progress Power scheme as these are in the public domain.
- ‘*Peaking plant*’ - paragraph 3.5.5.

2.23 Finally, paragraph 3.5.45 refers to ‘section 0’ – ensure that once the report is completed there are correct references.

Other

2.24 Paragraph 3.5.63 states that consultation packs were sent out by recorded delivery, perhaps list of those persons who the applicant sent out those packs would be useful as an Appendix.

2.25 General spell check, consistency of using the same shortcuts and terminology through the whole report. For example for check the use of ‘Statement of Community Consultation/‘SoCC/‘SOCC’; ‘statutory’ rather than formal, and ‘non-statutory’ rather than informal.

3.0 Draft development consent order and explanatory memorandum

PINS queries on draft DCO dated November 2013

These queries relate solely to matters raised by the drafting of the substantive DCO Articles and Schedules¹, and not the merits of the proposal. They are limited by the time available for consideration, and raised without prejudice to the acceptance or otherwise of the eventual application. They are provided to assist the preparation of the next iteration.

PINS queries on the draft DCO are set out in the following table. We would find it helpful if, when submitting the next iteration of the DCO (but not forming part of any application), a column is added to the table identifying how each of the queries has been addressed.

Q No.	General queries and issues	Applicant response
1.	As the draft DCO is to be an SI, it will need to comply with current SI practice in terms of content, layout and formatting. Can the applicant confirm that: (a) the draft DCO to be submitted with the application will be prepared using the SI template prepared by the Office for Public Sector Information, and (b) will follow current drafting conventions as outlined in the “Statutory Instrument Practice” manual prepared by the Office for Public Sector Information, including inclusion of up-to-date footnotes	
2.	Could the next draft DCO be provided as a Word version showing tracked changes from the November 2013 version (but not forming part of any application)?	
3.	Generally can a list be provided of all plans and documents that will require SoS certification, updated throughout the examination process (assuming the application is accepted)? Presumably the list of plans will correspond to the list in Requirement 4?	
4.	Where an article or requirement varies a Model Provision (MP), it would be helpful if the applicant could provide a tracked change version of that article or requirement so the extent of the variation is readily apparent to all parties.	
5.	Where the DCO contains novel provisions not in the MPs, can the Explanatory Memorandum (EM) identify whether or not there is any precedent for the provision, e.g. in Transport and Works Act Orders, and give full details?	
6.	Can the EM expressly state in all cases whether the provision differs from the corresponding Model Provision, identified by MP number. It is noted that in several cases the EM states that a provision is a MP, but in fact it is a variation of a MP	
7.	The Preamble to the draft DCO: (a) refers to s105 PA2008; any Order made will be under s104 as there are relevant NPS in effect; (b) there may be unnecessary references to some provisions of PA2008; for example ss122 and 123 merely provide limitations on the exercise of powers of compulsory acquisition which are provided as ancillary matters under s120. See e.g. the Brechfa order.	

¹ Not e.g. footnotes or introductory provisions

Q No	Article (A)/ Requirement (R)	Queries on DCO drafting	
8.	A2(1)	Can each plan referred to in the interpretation section be identified by a specific plan number e.g. “..the plan(s) numbered XXX certified as...” for clarity?	
9.	A2(1)	“authorised development” means...and any other development authorised by this Order”, what additional development is the DCO intended to authorise, over and above that specifically identified in Schedule 1?	
10.	A2(1)	“environmental impact assessment” - this phrase does not appear elsewhere in the draft DCO?	
11.	A2(1)	“footpath and footway” – this combined phrase does not appear elsewhere in the draft DCO?	
12.	A2(1)	“limits of deviation” – would this be more clearly expressed by dealing with each category separately e.g. “means (a) in respect of works numbered XX, the outer limits of the corresponding numbered area on the works plan, and (b) in respect of the linear works numbered YY the limits to either side of the corresponding numbered line as shown on the works plan”	
13.	A2(1)	“maintain” – what is the justification for this extended definition (e.g. alter, remove, reconstruct, replace and improve are outside the normal meaning of ‘maintain’) - have the activities in the definition all been covered by the ES?	
14.	A2(1)	“relevant planning authority” – what is meant by the term “applicable local planning authority”? This should be more expressly defined?	
15.	A2(1)	“undertaker” – is the phrase “as authorised from time to time” sufficiently precise? By whom and in what respect?	
16.	A2(5)	Would it be preferable for this sub-paragraph to be incorporated in the definition of “numbered work”?	
17.	A3(4)	As these items are to be authorised by the DCO, why are they not included in Schedule 2 (which already includes demolition)?	
18.	A4(2)	This paragraph seems to go beyond the maintenance of the authorised development and include pre-existing or new mains, sewers etc not necessarily included in the authorised development. As such, it should be a separate article?	
19.	A7(4)(b)	Should (ii) – (v) be recast to refer to <u>all</u> such claims having been either compromised, withdrawn, settled etc? As drafted it could be read that provided at least any one claim had been compromised etc, SoS consent is not required?	
20.	A9(1)	Should this be rephrased as “ <u>Each</u> means of access specified ...shall be maintained by...the undertaker for a period of 12 months from its completion....”?	

21.	A9(2)	Should this be rephrased as “ <i>Each means of access specified ...shall be maintained by...the undertaker for a period of 12 months from its completion....</i> ”?	
22.	A11(1)	The EM states that this is a MP, but: (a) it is more extensive in that it authorises prohibition of use or restriction. Is there any specific reason for this? (b) A11(7) is a guillotine provision not present in the MP; has the street authority been consulted on this arrangement? (c) Is A11(7) necessary in any event given the terms of A 39?	
23.	A17	Although the EM states that this Article follows the MP, it does not. What is the reason for adding “ <i>and may use any land so acquired...in connection with or ancillary to the authorised development</i> ”	
24.	A20	A20(1) just refers to the acquisition of rights; A20(2) refers to acquisition of wayleaves, easements or new rights; A20(3) refers to the date on which any new right is vested in the undertaker. There seems to be some inconsistency in precisely what may be acquired; e.g. whether wayleaves and easements are a separate category of right that does not trigger the compensation provisions in A20(4) and (5)?	
25.	A21	This Article is a modified form of the MP relating to private rights of way – (a) the earlier paragraphs refer to “private rights” – a general term, whereas the later paragraphs refer only to “private rights of way”; is this intentional? (b) the effect of the Article is to extinguish rights; how does this differ from the extinguishment of rights effected under A17(2) and A20(3) – why are two mechanisms needed?	
26.	A21(3)	Presumably (as with the MP) this paragraph should be restricted to land owned by the undertaker which is within the limits of the Order land?	
27.	A23(1)	As drafted, the paragraph envisages acquisition of airspace, not merely rights over it. Is this intended, or indeed possible?	
28.	A23(3)	As with the MP, this paragraph is limited to the acquisition of cellars, vaults or other constructions, where the undertaker is acquiring subsoil. Should there be equivalent or extended provision to cover circumstances where rights to airspace are acquired?	
29.	A24	Is this formulation entirely satisfactory for cases where rights over airspace are acquired?	
30.	A32(1)	(a) The Article provides a power to enter land, but there are none of the usual protective provisions e.g. for notice to owners. Why is this? (b) Is it really appropriate for the DCO to provide a power of entry to land outside the Order limits, as this provision appears to do?	
31.	A32(2)	Why is the requirement to pay compensation limited to damage to trees and shrubs, but not otherwise in respect of the exercise of the power of entry?	

32.	A34	This article follows the model provision, which incorrectly quotes the heading to s264; can the correct heading be included in the next draft?	
33.	A38(8)	Should this read: " <i>Where a person is no longer willing to accept the use of electronic transmission for any other of the purposes of this Order....</i> "	
34.	A38(10)	This paragraph is superfluous as the definition is already given in A2?	
35.	A39(1)	(a) How can this provision bind the consentor to do so in writing, as it purports to do? (b) Does this mean that an oral consent is to be ineffective, or that the 28 day guillotine will then apply, such that any conditions on the oral consent are circumvented? (c) What is the justification for a 28-day guillotine in respect of all the categories quoted in this paragraph? In particular is such a guillotine appropriate for private individuals?	
36.	A39(2)	Should this list read " <i>Schedule 11 has effect in relation to all consents <u>sought</u>, granted, refused or withheld in relation to requirements.</i> "?	
37.	Requirements	Can the EM please provide an explanation of the Requirements as well as the Articles please?	
38.	R1(1)	As relevant planning authority is defined in A2(1), does it need to be included here as well? Is the definition intended to be different, and, if so, why?	
39.	R2	What is the justification for an 8 year time limit?	
40.	R3	Is it intended that the various stages be implemented in sequence? If so, should this be stated in this requirement?	
41.	R4(3)	Is the last sentence redundant given the general requirement in R4(1)?	
42.	R8(1)	(a) Should this read <i>Stages 2 and 4 ...shall <u>not</u> commence ...</i> ? (b) Is there any reason for the different formulation of this requirement (" <i>Stages 2 and 4</i> " cf. " <i>Each of stages</i> ") (c) There is no provision requiring approved temporary fencing to be implemented?	
43.	R8(4)	Is this first sentence superfluous given that details of proposed permanent fencing etc will already have been approved prior to commencement of the authorised development?	
44.	R15 (sic)	(Contaminated land and water) Presumably this requirement will be re-numbered	
45.	R10(1)	Is there any reason for the different formulation of this requirement (" <i>Stages 2-5</i> " cf. " <i>Each of stages</i> ")?	
46.	R14	Presumably this requirement will be expanded to indicate e.g. type and location of noise measurements?	
47.	R15	Is there any reason for the different formulation of this requirement (" <i>Stages 2 and 4</i> " cf. " <i>Each of stages</i> ")	

48.	R16(3)	Should the reference be to Regulations 40 and 44 of the 2010 Regulations?	
49.	R17	(a) Presumably the reference should be to Work No 2, not Work No 1? (b) Why should the decommissioning strategy be limited to that Work?	
50.	R18	See query on A39(1). Also, is this requirement necessary given A39?	
51.	R19(2)	The words 'above' where they occur are superfluous?	
52.	Schedule 8	Can the EM explain and provide details of any precedent for the provisions of this Schedule please?	
53.	Schedule 11	(a) Can the EM explain and provide details of any precedent for the provisions of this Schedule please? (b) Has the relevant planning authority been consulted on the proposals in this Schedule, and with what result? (c) it is unlikely that the Secretary of State will agree to be bound by a strict timetable for appointment of a person to determine the appeal or for the procedure in or decision on such appeal, or constraints on the qualifications of an appropriate person for such an appointment. Can the next draft suggest alternative provisions?	

Advice may be given about applying for an order granting development consent or making representations about an application (or a proposed application). This communication does not however constitute legal advice upon which you can rely and you should obtain your own legal advice and professional advice as required.

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