



Meeting note

File reference	Ferrybridge Multifuel 2 (FM2) Power Station – EN010061
Status	Final
Author	James Bunten
Date	1 May 2014
Meeting with	Multifuel Energy Limited
Venue	The Planning Inspectorate Offices, Bristol
Attendees	<u>Multifuel Energy Limited (MEL)</u> Ashley Comerford - SSE Jonathan Sime - SSE Geoff Bullock – Dalton Warner Davis Richard Lowe - URS Nicky Virdee – SSE, Legal (conference call) <u>The Planning Inspectorate (PINS)</u> Tom Carpen – Infrastructure Planning Lead Andy Luke – Infrastructure Planning Lead Lynne Franklin – Legal Advisor Richard Kent – EIA Advisor James Bunten – Case Officer
Meeting objectives	To receive project update and to issue feedback on draft documents provided by the Applicant
Circulation	All above

Summary of key points discussed and advice given:

Following introductions, the Planning Inspectorate (PINS) advised on its openness policy that any advice given would be recorded and placed on the National Infrastructure Planning Portal website under section 51 of the Planning Act 2008 as amended (the 2008 Act). Any advice given under section 51 does not constitute legal advice upon which applicants (or others) can rely.

Project update, preparation of application and anticipated submission

The Applicant – Multifuel Energy Ltd (MEL) – advised that their statutory consultation had finished and that they were in the process of reviewing the additional responses following further phases of s42 consultation. Approximately 30 – 40 responses to the s42 consultation were received.

MEL stated that they had responded individually to the responses to s47 consultation with local communities, following the same approach applied for their s42 consultation with statutory consultees.

MEL advised that they are in discussions with the Environment Agency, Civil Aviation Authority, Coal Authority, Local Authority and Natural England with regard to Statements of Common Ground (SoCG).

Discussion was had around the resources available within some statutory bodies which, as a consequence, may not be able to engage fully in the process until the application has been formally submitted. The Knottingley Power Station application was briefly discussed, noting the combined demands that could be placed on Wakefield Metropolitan District Council's (WMDC) resources once FM2 is submitted. MEL noted that they were following the Knottingley application closely.

MEL provided an update on engagement with WMDC, noting that regular meetings had been held with relevant specialists to discuss drafting the requirements within the draft Development Consent Order (DCO). MEL also highlighted that engagement with MBC's expert assessors is ongoing with regard to visual, air quality assessment etc.

MEL advised they had entered into regular dialogue with Selby District Council and North Yorkshire County Council, noting the latter had showed an interest in drafting a Local Impact Report following discussion on specific chapters of the ES.

MEL advised that they are currently drafting chapters of the Environmental Statement (ES) and envisage the submission of the application in mid to late June 2014.

Feedback on draft documents

Development Consent Order and Explanatory Memorandum

PINS provided MEL with high-level comments on the draft DCO and accompanying draft Explanatory Memorandum, which are summarised below.

PINS noted these comments did not constitute legal advice on which MEL or others may rely. Any party requiring legal advice on which they may rely should seek it independently.

PINS advised MEL to ensure that there is consistency between articles/requirements and definitions (such as "commence") in the DCO, plans, and the book of reference; and that the extent of the power is certain and that powers are authorised by the Act. In relation to CA, applicants are advised to follow the guidance in the CLG CA guidance relating, in particular, to the approach to new rights and non-prescribed schedules when drafting the book of reference.

PINS provided the following comments on the Draft DCO:

- PINS queried why it is considered necessary to define the authorised project (in Part A) as including "maintenance"? There is a power to maintain in article 8. It was also noted however that no definition of maintenance is provided.
- PINS emphasized the need to clearly identify development which is integral, ancillary and associated, clearly defining the above and providing justification for the way that the development is defined.

- Associated development (grid connections) - The grid connection options were discussed with MEL advising it would be unlikely that they will have agreed a definitive option before submission of an application. MEL noted they had formally consulted on all three options and that these were within the parameters assessed in the ES. PINS queried how this is to be controlled through the DCO, given that there is nothing to prevent one or more options being implemented (however unlikely in practice). PINS advised that the draft DCO should be revised to ensure that only one option can be progressed.
- Article 7 - removal of consents subject to approval by regulator (s150) – PINS highlighted that the Draft DCO identifies the intention to apply s150 for a number of consents and queried whether this remained the intention for the submission version of the Draft DCO. MEL confirmed this was not the intention.
- Article 3 - PINS queried whether this article is necessary and within the powers of s120 - is this making provision **relating to or to matters ancillary to the development** given s229 PA deals with service of electronic documents?
- PINS advised that ordinarily the Order land would be described as land within the limits of land to be acquired or used. The role of the works plan is to show the proposed location of the development and works and limits within which works may be carried out. PINS advised MEL to consider further the definition of "Order land" and the role of the land plan to show the land required for or affected by development and any land over which it is proposed to exercise powers of CA etc (see Reg 5 APFP).
- Art 5 - limits of deviation - PINS advised MEL to consider how the impacts of deviation are assessed and how upwards/downwards deviation is controlled.
- Art 6 - EM could be clearer. A DCO may only authorise operation of a generating station if the development consent to which it relates includes the construction or extension of a generating station. That is the case here (the DCO authorises construction) and therefore article 6 can lawfully be used to authorise operation using the powers under s140.
- Art 9 (5) - is it necessary to impose a duty on the SoS when the SoS's general duty is to act reasonably?
- Statutory undertakers were discussed, with MEL advising that only two have been identified who are currently seeking protective provisions, National Grid and Northern Powergrid. MEL also stated that Network Rail, Yorkshire Water and BT have confirmed they have no apparatus or interest in the development land.
- Art 22 – PINS advised MEL to ensure that the BoR clearly describes the new rights. If new rights are to be acquired over statutory undertaker's land (art 30) or apparatus moved, the statement of reasons should provide evidence that the SoS can be satisfied as to the test under s127 (no detriment etc.) which will be necessary in the event that a statutory undertaker makes and does not withdraw a representation.
- MEL queried whether model provisions, that may not be required, should be removed from the draft DCO including in respect of CA powers. PINS noted that applicants can retain compulsory acquisition powers within the DCO, however, if retained a clear justification for why these powers are required will need to be provided.
- Art 36 - this departs from the model provision and doesn't specify land except by reference to remains in the Order Land. PINS queried whether this is certain enough?
- Art 39 - this should specify any other plans by name.
- Art 40/Art 39 - see above.
- Authorised project - PINS queried how "fuelled primarily" is to be controlled/constrained within limits of EIA.

- It is noted that there are no definitions in the requirements - e.g. what is the meaning of "commercial use"?
- Tailpieces - caselaw (*Midcounties etc*) has held that a tailpiece ("unless otherwise agreed in writing") is unlawful "if it would enable development not applied for, assessed or permitted to occur. It side steps the whole of the statutory process for the grant of permission and the variation of conditions..." A tailpiece should not be used which would allow details (going to the heart of the development consent) secured by requirement to be amended subsequently in writing. See separate S51 advice issued by PINS to MEL and appending this meeting note.

Rochdale envelope approach

PINS highlighted that the works plans submitted did not identify siting of specific works and therefore there are potentially a number of massing combinations within the limits of deviation.

PINS advised that in principle it is possible to seek flexibility through adopting a Rochdale envelope approach. However, it was emphasized that the applicant would need to clearly demonstrate that the worst case scenarios had been fully assessed within the accompanying Environmental Impact Assessment (EIA) and that an Examining Authority (ExA) may wish to test these during the Examination by requesting further information including for any scenarios not included within the assessment.

MEL advised that some of the works were fixed and stated that updated works plans to be submitted with the application would reflect this, noting that three sets of indicative plans/drawings assessing the worst case scenario will also be included in the application documents.

Air quality modeling

MEL advised that they had received comments from North Yorkshire County Council (NYCC) with regard to the air quality assessment who asked for further consideration of the cumulative effects of FM1 and FM2, which had not been requested by WMDC or the Environment Agency. MEL queried how this should be covered in the application

PINS advised that MEL should provide a full justification for the approach taken in the ES, providing references to any relevant guidance and consultation with prescribed bodies. MEL should also clearly set out how regard has been had to the comments received from NYCC. PINS identified that, if an application is accepted, the ExA could decide to examine this issue further and could request further information from MEL during examination.

Stack height

PINS noted the stack height set out in Art 5 of the DCO as being exactly 136 metres above ordnance datum (Newlyn). PINS also asked whether there was any likelihood of the stack height needing to be changed at a future date, for example if discussions with the EA on the Environmental Permit required a change in stack height.

MEL advised that, whilst the air quality assessment indicated that a lower stack could achieve the relevant air quality standards, following consultation with the community

which indicated a preference for a higher stack and improved air quality, a higher stack height has been selected.

MEL queried whether there was scope for flexibility in stack height given the current wording in the Draft DCO. PINS advised that it would be for the applicant to decide based on feedback from consultation. Currently the Draft DCO only allows for a stack of 136 metres above ordnance datum (Newlyn), and if flexibility were required then the DCO would need to reflect this. Furthermore, MEL would need to clearly demonstrate that this flexibility had been fully assessed in the EIA in terms of effects on air quality and any other relevant topics such as landscape and visual.

Environmental permit

MEL advised that the intention is to submit a permit application to the EA after the submission of an application for development consent.

Plans and Consultation Report

PINS set out their comments on the draft works plans noting that the main issue was a lack of detail. PINS highlighted that part of the development – works number 4 foul water connection – fell outside of the red line boundary and noted several inconsistencies between the plans and the draft DCO.

PINS highlighted that in schedule 1 of the draft DCO, it states “shown on Works Plan No. -” but doesn’t actually provide the plan number(s).

PINS advised that the format of the plans was consistent and contained the correct information, however an individual reference number for each plan would be beneficial as each plan had the same reference. It was also noted that works number 2 – Electricity Grid Connection – was labeled differently on the key to how it appeared on the plan and in the draft DCO.

PINS advised the draft Consultation Report was logically drafted and easy to navigate and noted that the use of tables was particularly helpful with regard to compliance with advice note 14 and the s55 checklist.

PINS advised that a separate section for s46 and a table outlining how they complied with commitments outlined in their Statement of Community Consultation (SOCC) would be helpful at acceptance. Although the section on s49 - duty to have regard to formal consultation responses - had not been drafted at the time, PINS reiterated the importance of this section and emphasized that adequate detail should be included as it is one of the key tests at the acceptance stage.

PINS advised that the applicant should collate all statutory consultation responses as, if requested during acceptance by PINS under reg 5(5) of the APFP regulations, a quick turn-around is likely to be required and therefore preparing the responses in advance of submission is advisable.

EIA update

PINS queried whether the application will include a Construction Environment Management Plan (CEMP), Landscape Plan or any other plans relied upon as

mitigation within the ES. MEL advised the ES will include a table listing all of the plans either provided with, or required within, the DCO.

PINS queried whether there were any concerns regarding European Protected Species with MEL noting that there were not.

Next Steps

MEL advised they will submit a revised draft Consultation Report following feedback from PINS, with a complete s49 section to review. A second draft of the DCO was also discussed with PINS advising that, due to limited time afforded in the current programme, a more effective approach to providing feedback may be to provide s51 advice in response to any specific questions on the re-submitted draft documents.

MEL noted they will be submitting a revised red line boundary and accompanying GIS shape file before submission with PINS requesting that notification should be given two weeks before submission in order that the relevant local authorities can be notified.

PINS advised that, in light of the issues raised, that telephoning NYCC and the Environment Agency would be constructive and requested contact details from MEL.