

Planning Act 2008

The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009

The Port Talbot Steelworks (Power Generation Enhancement) Order

D2(R17)1.01 - Applicant's response to Rule 17 request for further information dated 30 January 2015

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1.0 Introduction

- 1.1 This document comprises the applicant's responses to the request for further information issued by the Examining Authority (ExA) on 30 January 2015 under rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 (as amended).
- 1.2 The revised drafting that is referred to in this response is included in revision 1 of the draft DCO (Doc ref: 3.01 Rev.1) submitted to the ExA on 5 February 2015.

2.0 Applicant's Response

Question 4.36

Given the reliance upon the Rochdale envelope approach and the fact that the maximum extents or parameters of any consented Works may not lawfully be extended further pursuant to the discharge of any Requirement; and given that draft Requirement 4 currently appears to contain a number of maximum Work parameters and allows for their amendment, the applicant is requested either:

to confirm that all maximum parameters (heights, widths and lengths) of all proposed Works are (or will be through revision of the DCO) contained within Schedule 1 and related Works Plans/Sections;

Or,

to provide amendments to Requirements 4 and 20 clarifying that none of the maximum parameters for any Work that continue to be set out in the Requirements may be varied so as to extend them by virtue of the discharge of any requirement.

- 2.1 The applicant has amended requirements 4 and 20 in response to the ExA's request. The amendments are summarised as follows:
- a. the maximum parameters for the turbine hall and boiler house in requirement 4 are expressed in terms of the maximum areas and volumes for those buildings. These areas and volumes reflect the parameters that were used for the purposes of the applicant's environmental impact assessment (EIA);
 - b. the relevant planning authority is given limited scope within requirement 4 to approve minor or immaterial amendments to the individual dimensions (length, width, height) of the turbine hall and boiler house only, provided that:
 - i. the maximum areas and volumes of those buildings specified in requirement 4 are not exceeded; and

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- ii. the revised dimensions are unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement,
 - c. the ability of the relevant planning authority to approve amendments to the maximum parameters of any other elements of the authorised development is removed.
 - 2.2 The applicant set out in its response to the ExA's written questions why a degree of flexibility is necessary in relation to the detailed design of the authorised development (see response to question 3.01(e) submitted on 15 January 2015). The design of the authorised development is an outline design only at this stage and the final details will not be confirmed until the contractor has been appointed, which would likely be after the grant of development consent.
 - 2.3 The need for the design of energy infrastructure of this type to evolve over time is widely acknowledged and the Rochdale envelope approach provides an accepted means of assessing a project whose details have not been fully resolved at the time when the application is submitted. The applicant used the Rochdale envelope in the EIA for the authorised development. In doing so, the applicant's assessment was based on clearly defined parameters for the main elements of the proposed development which represented a realistic and likely worst case for the maximum size of those buildings.
 - 2.4 Given the degree of uncertainty that existed at that time about the final dimensions of those buildings, the applicant had to use a degree of judgement about what the realistic and likely maximum dimensions would be. Based on initial information about the project components and comparisons with equivalent generating stations, the applicant established a maximum envelope that could realistically be needed for the main project buildings. The applicant adopted a cautious approach to

setting these parameters and considers that they resulted in a robust assessment of the likely significant effects of buildings of this size.

- 2.5 The applicant is not seeking flexibility to increase the maximum envelope (in terms of the area and volume of the buildings) that was consulted on during the pre-application phase and was assessed in the EIA. The amendments to requirement 4 provide clear parameters for the main project elements which reflect the parameters assessed in the EIA and which cannot be exceeded through amendments approved by the relevant planning authority under the discharge of a requirement.
- 2.6 The ability for amendments to the parameters to be approved is now strictly limited to minor or immaterial amendments to the height, length or width of the turbine hall and boiler house, but the drafting now makes clear that such amendments cannot extend the maximum volumes and areas of those buildings that are fixed in requirement 4.
- 2.7 Whilst the applicant considers that the parameters for the turbine hall and boiler house are realistic and likely maximum heights, widths and lengths of the buildings, there remains a possibility that the final design produced by the contractor could involve a solution for the boiler house and turbine hall which was not considered likely or realistic at the time when the applicant was preparing the EIA and the draft DCO. The applicant therefore considers it is necessary for the DCO to contain a degree of flexibility so that minor extensions to these buildings (half a meter to the width of the turbine hall, for example) would not be outside the scope of the consent.
- 2.8 The revised drafting makes clear that such extensions could only be approved if they do not result in an increase in the volume or area of the turbine hall or boiler house (as applicable) which is specified in requirement 4. Consequently, a small extension to one dimension of the turbine hall or boiler house could only be approved if a corresponding decrease was made to another dimension such that the areas and

volumes specified in requirement 4 were not exceeded. Furthermore, approval could only be given if the relevant planning authority was satisfied that the increase would be unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

- 2.9 In revising the drafting the applicant has had regard, in particular, to *Advice Note 15: Drafting Development Consent Orders* (The Planning Inspectorate, October 2014). This states that tailpieces should not "allow the LPA to approve details which stray outside the parameters set for the development." The two conditions in requirement 20 ensure that the relevant planning authority would not be allowed to approve extensions which stray outside the scope of the maximum envelope which is set by the DCO (in terms of volume and area) and which was assessed in the applicant's EIA.
- 2.10 The revised drafting removes the ability of the relevant planning authority to approve amendments to the parameters of the other project elements listed in requirement 4. Furthermore, Schedule 5 (discharge of requirements) has been amended to make clear that if the relevant planning authority has not determined an application to approve amendments to the parameters of the turbine hall or boiler house, such applications shall be deemed to be refused.
- 2.11 An example of why this flexibility is necessary is emerging from the discussions which the applicant is having with Neath Port Talbot County Borough Council regarding the detailed design of the boiler house and turbine hall. The Council has indicated it may wish these buildings to incorporate a curved roof to enhance their appearance. If a curved roof was to be incorporated into the design, this could potentially result in the apex of the roof extending slightly beyond the maximum height specified in the DCO. Any such design feature would only be incorporated to enhance the visual appearance of the development, and the applicant

considers it is appropriate that the DCO should provide the necessary degree of flexibility to allow such extensions, provided that:

- a. they are unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement;
- b. they do not result in the building exceeding the maximum area and volume specified in the DCO.

2.12 The applicant considers that these provisos are drafted as precisely as possible to ensure that only minor and immaterial extensions to the height, width or length of the two buildings could be approved which are within the scope of the maximum areas and volumes specified in the DCO.

2.13 In its answers to the ExA's written question 3.01(e), the applicant refers to a number of earlier DCOs which include tailpieces that allow the approval of variations without any express reference to the parameters of the consent or the scope of the environmental assessment (e.g. the Network Rail (Ipswich Chord) Order 2012). The applicant acknowledges that this practice is no longer considered acceptable by the Planning Inspectorate, as is made clear in Advice Note 15. The applicant's revised drafting is intended to reflect the principles set out in that Advice Note by establishing clearly-defined maximum parameters which cannot be exceeded through amendments approved pursuant to the discharge of a requirement. The applicant considers that this approach follows more recent DCOs where the scope of flexibility provided by such tailpieces has been expressly limited to minor and immaterial amendments that are unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement (see for example paragraph 2 of Schedule 2 to The Northumberland County Council (A1 – South East Northumberland

Link Road (Morpeth Northern Bypass) Development Consent Order
2015.

Question 4.37

The applicant is requested to consider a potential amendment to enable requirement 4(3) to apply to all temporary buildings and structures forming Work 1B.

- 2.14 The applicant considers the nature and scope of the information that must be submitted to the relevant planning authority under requirement 4(3) (renumbered requirement 4(4) in revision 1 of the DCO) is not appropriate in the context of temporary buildings and structures forming Work No. 1B.
- 2.15 These structures are likely to include barriers, fencing and construction site offices of a standard design used by contractors. It would be disproportionate for the undertaker to have to submit the same level of detail about these structures as it is required to submit for approval in relation to the permanent elements. In particular, requiring details of the design, colour and surface finishes of these structures to be approved before works commence, would go beyond what is reasonable necessary to ensure the authorised development is carried out in accordance with the terms of the DCO and any mitigation measures secured under it.
- 2.16 At no stage either before or after submission of the application has the relevant planning authority expressed a wish for details of Work 1B to be submitted for approval before works commence. Notwithstanding this, the applicant recognises that the authority may wish to be reassured that the details of these structures are satisfactory, and therefore proposes to add a further requirement to Schedule 2 of the draft DCO to achieve this.
- 2.17 Rather than applying requirement 4(4) to the temporary structures forming Work 1B, the applicant has added a new requirement 20 (construction compound) which requires that details of the temporary structures and buildings forming Work 1B must be submitted to and

approved by the relevant planning authority. The level of detail that must be submitted under this additional provision is proportionate to the temporary nature and smaller scale of these structures relative to the permanent elements of the authorised development.