



The Planning Inspectorate  
Yr Arolygiaeth Gynllunio

# Meaford Energy Centre – draft documents meeting

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| <b>Status</b>             | <b>Final</b>   |
| <b>Author</b>             | Philippa Davey   |
| <b>Date</b>               | 23/03/2015   |
| <b>Meeting with</b>       | Meaford Energy Limited (MEL) (the applicant)   |
| <b>Venue</b>              | Temple Quay House  |
| <b>Attendees</b>          | <p><b>Planning Inspectorate</b><br/>Kenneth Taylor (Infrastructure Planning Lead)<br/>Kay Sully (Case Manager)<br/>Hannah Dickson (Case Officer)<br/>Philippa Davey (Assistant Case Officer)<br/>Helen Lancaster (EIA Advisor)<br/>Sarah Green (Legal Advisor)</p> <p><b>Applicant</b><br/>Daniel Chapman (MEL)<br/>Simon Keefe (MEL)<br/>Rupert Wood (MEL)<br/>Melanie Grimshaw (Pinsent Masons)<br/>Mark Brown (Local Dialogue)<br/>Karl Cradick (Savills)</p> |
| <b>Meeting objectives</b> | Draft documents feedback meeting and project update  |
| <b>Circulation</b>        | All  |

## Summary of key points discussed and advice given:

### Welcome and introductions

The applicant was made aware of the Planning Inspectorate's (the Inspectorate) openness policy and that any issues discussed or advice given would be recorded and placed on the Inspectorate's website under section 51 of the Planning Act 2008 (PA 2008). Further to this, it was made clear that any advice given did not constitute legal advice upon which the applicant (or others) can rely.

### Project update

The applicant gave a summary of the project to date. The anticipated submission date for the DCO application is 31 March 2015.

## **Feedback on Draft Documents**

The Inspectorate provided feedback on the following draft documents:

- Plans (Land, Works, and Access and Rights of Way plans)
- Funding Statement
- Consultation report
- Book of Reference/ Statement of Reasons
- Habitats Regulations Assessment/Environmental Statement documents
- Development Consent Order and Explanatory Memorandum

Prior to the meeting, the Inspectorate sent the applicant some initial comments in respect of the draft documents. These comments are contained in the annexes to these meeting notes. Discussions in respect of the draft documents focused on these comments. In addition to the comments, set out below, in respect of the DCO the Inspectorate sought clarification in respect of the extant planning permission on the site and the implications of requirement 15 (emergency access). The applicant explained that the intention of this requirement is to replicate the requirements in the planning conditions. The applicant was advised to reconsider the current drafting, as it appears it may seek to allow the approval/discharge of the condition on the outline planning approval via the approval of the requirement rather than replicating the process.

Discussions also focused on some detailed drafting in respect of Schedule 8, and the applicant was advised to reconsider some of the wording to ensure that, in the event of an appeal, the appointed person had appropriate latitude to consider late representations and the need for additional information to be submitted.

Furthermore, the DCO relies on the works plans to determine the limits of deviation for each work so it is very important that the boundary for each work is clearly delineated. With respect to the Funding Statement, an approximate quantum of compensation should be provided along with evidence to demonstrate how that figure was calculated.

### **Submission of the application**

When submitting the application 2 hard copies should be submitted and 2 electronic copies, the electronic copies may be on CD/DVD or a USB drive.

The Inspectorate informed the applicant that should the application be accepted for examination, an allocated programme officer would contact them in regards of the logistics for running the examination and arranging the Preliminary Meeting. The applicant confirmed that Mark Brown (from Local Dialogue) would be the contact point for the Inspectorate's Programme Officer.

The Inspectorate requested the contact details for all local authorities consulted by the applicant. The applicant advised that they may hold a longer Relevant Representations period than the minimum 28 days.

The applicant was considering whether they would agree for the application documents to be published, on the Inspectorate's website, upon receipt of the application. The applicant would confirm their preferred approach in due course.

## **Annex A – Feedback on draft plans**

### Works plans

Some aspects of these plans could be clearer, for example the labels for works 1A and 1E. The draft DCO shows that 1A-1D are the power station works and 1E is the compound. Perhaps this could be explained on the legend so that the reader does not need to refer back to the DCO.

Works 1B and 1C are very similar colours, particularly when viewed on a screen, so would suggest changing one of them.

It would be helpful if the colour choice of work 1E is changed; this would help clarify whether the orange shading stops at the border of the red hatch of the temporary construction laydown or continues underneath it.

The North arrows on all plans may resemble a logo. To make it clearer, we would suggest that they are changed to a simple north arrow, particularly since the plans should be viewed portrait orientation and the legend is landscape.

In Works 2B and 4 the order limits are wider than the limits of deviation the applicant should explain this in the Statement of Reasons / Explanatory Memorandum.

B-B and C-C on Sheet 2 define whether the works are underground or overground according to the draft DCO – this should perhaps be explained on the key.

### Access and Rights of Way plan

Points on the access plan appear to relate to Schedule 4, 5 and 6. Would it be helpful to see this on the key as they are not currently labelled as anything?

### Land plan

In the key for “Land subject to a power to acquire new rights or extinguish or suspend private rights”, the word “or” should be substituted for “and” otherwise there is no difference between the blue and yellow shaded areas on the plan.

It may also help to label on the key what the initials GC, AR, SW etc. mean.

## **Annex B - Funding Statement**

### Funding Statement

The applicant states that one of its two parent companies (St. Modwen) has a sufficient asset base to cover the funding of the scheme. Also that funding from lenders or other group companies may be available.

It is stated that St Modwen has a capitalisation of £1045 billion and asset base of £1.2 billion. This is in comparison to an estimated cost of the scheme of £300million.

Given that the applicant may have to rely on the asset base of St Modwen alone, the cost of the scheme appears to be sizeable in comparison to that asset base. This may mean that the ExA is concerned about the adequacy of funding for compensation.

The applicant should consider the following three actions:

- Other developers have used a Parent Company Guarantee to provide the ExA with comfort that funds will be available; this could be considered in relation to this project.
- It would be helpful if the asset bases of other group companies could be detailed and the probability of obtaining lending from other sources, should this be necessary.

In addition to the above, the timing of the availability of funds is likely to be important. The applicant should be able to demonstrate that the funds will be available within the 5 year time period set out in the DCO.

## **Annex C – Consultation report**

### Consultation report

The copies of the SoCC and Section 42 notices are un-readable in our copy and can't be checked.

Overall the CR is clearly set out and easy to reference.

Points in previous s51 advice appear to have been covered with the exception of submission of the non-statutory consultation plan– Paragraphs 5 refers to Appendix 1 however Appendix 1 is incomplete.

Staffordshire County Council has been identified as a B authority; it is a C authority.

The book of reference is not complete and seems to miss s42(1)(d) consultees as detailed in appendix 5 of the Consultation Report.

Para 8.3.4 wrongly identifies C authorities when they are D.

The additional targeted consultation in October 2014 is described as s42 consultation, which would suggest that it is considered statutory. Given that not all s42 persons were consulted, this should not be defined as statutory consultation nor should it be related to s42. This makes no practical difference as the duty to consult under s42 only need be discharged once, and this was done in June 2014.

## **Annex D – Book of Reference/Statement of Reasons**

### Book of Reference

Clearly laid out with descriptions and explanations at the beginning relating to each Part/Category etc. are very clear and written in a way that members of the public can understand.

With regards to Compulsory Acquisition, the applicant is not seeking the acquisition of any land, rather the acquisition and creation of rights and restrictions. Could this be made clearer?

The book of reference is incomplete and seems to miss s42(1)(d) consultees as detailed in appendix 5 of the Consultation Report, as well as some Statutory Undertakers referred to in the Statement of Reasons (specifically Severn Trent).

### Statement of Reasons

It is clear and well presented.

At para 9.2.2 the applicant confirms that they are continuing to make diligent enquiry into ownership of Canal Bridge 101. The applicant states that if the owner is identified they will try to reach a voluntary agreement regarding rights. The applicant is actively discussing ownership with the Canal and River Trust. Can the applicant update us with any progress made?

Statutory Undertakers are listed at para 10.3 as being Network Rail, Canal and River Trust, SP Manweb PLC, National Grid Gas Transmission, Western Power Distribution (WPD), BT, KCOM Group Plc, Colt Telecom and CA Telecom Limited, and Severn Trent. Why is Severn Trent missing from the Book of Reference?

Article 18 - the compulsory acquisition of rights authorises the compulsory acquisition of rights over the entirety of the order land. The applicant needs to explain why this necessary when the statement of reasons and the land plans make it clear that compulsory acquisition powers are only sought over plots GC3 & GC5?

It would appear that Article 21 is described incorrectly (see para 5.6.2). The article does not give statutory authority to override easements and other rights as stated. What it does is confirm and clarify the statutory authority already provided by s158 PA2008 that the undertaker has statutory authority to defence in civil or criminal proceedings with regards to nuisance (also in para 9.2.3).

## **Annex E – HRA documents**

### Draft 'NSER

The comments below relate to specific paragraphs within the draft documents.

2.2.2 -It would be helpful to give the date of the Environment Agency H1 guidance, Annex F so it is clear that the current version of the guidance has been relied on.

2.3.6- As currently worded, this reads as a bald assertion without any evidence to back it. It would improve the clarity of the report if either a couple of sentences were added explaining why in-combination effects other than those from emissions to air or water can be discounted. Alternatively reference could be made to the information in Appendix F.

2.3.7- This approach to dealing with in-combination effects from aerial deposition differs from approaches used in other recent NSIP applications. In these cases the process contributions from all the different projects included in the in-combination assessment were added together and then this figure was used to calculate the percentage of critical load. The approach used in the Habitats Regulations Assessment should be clearly explained and justified. If the approach relies on advice in the EA H1 guidance then it should be clear where in the guidance that advice has been drawn from.

3.1.5- This section should clearly state that the HRA has been based on the worst-case scenario defined in Chapter 4 of the Environmental Statement.

3.1.9- It would be helpful if this paragraph referred to a figure or plan that shows the layout of the electrical connection.

3.1.12- As above it would be helpful to include a reference in this paragraph to a figure or plan that shows the layout of the electrical connection.

3.1.19- This paragraph refers to works that may be implemented. It isn't clear whether this will actually happen or what the implications would be for the HRA.

4.2.1- This reads as an assertion without evidence to back it up. The clarity of the document would be improved if it contained a cross reference to Appendix C. An explanation, either in this paragraph or Appendix C of why 0.1% of critical load is negligible, should also be included.

### Screening matrices

A lot of the footnotes refer to Screening Appendix D, Table D1. Most of the relevant information however appears to be in the tables in Appendix F or in the air quality extract in Appendix C; the footnotes should be updated.

### Environmental Statement Chapter 1

1.5- Strictly speaking it is the Examining Authority who examines the application, not the Planning Inspectorate.

1.10- It would be helpful to either include a map that shows the area covered by the existing planning permission and the area covered by the DCO application or to cross-refer to Figure 5.1 in Chapter 5.

1.25- The inclusion of a summary of the mitigation measures and residual effects of the project is welcomed. It should also show how each mitigation measure will be secured through the DCO.

#### Environmental Statement Chapter 4

Table 4.1- The maximum height of the gas turbine hall is given as 25m in this table which would seem to add up to a total height of 124m (25m + 99m AOD). Table 2 of the DCO gives a maximum height of 149m AOD. Can this discrepancy be explained?

Table 4.1- For the HRSG, stack and transformer the quantity is given as 1 to 2. If this table is listing the maximum physical dimensions of the built elements then wouldn't it make more sense to just put 2?

Table 4.1- The maximum dimensions for the pressure regulating installation, the heat network interface and parking area are listed in this table but there do not appear to be any references in the DCO to the dimensions of these features. If the dimensions are not specified in the DCO what guarantee is there that the assessment in the ES reflects what would be permitted by the DCO?

Figure 4.8- This is a helpful figure but displaying the information this way does not show if/when activities would overlap. Could a figure also be provided that shows this?

#### Environmental Statement Chapter 5

5.52- The wording of this paragraph is confusing. It refers to established triggers for highways improvements related to occupancy of the Meaford Business Park – but later paragraphs (5.55-5.57) suggest that these improvements have already been consented and will be constructed by April 2016. The report needs to explain the situation clearly.



## **Annex F – DCO and Explanatory memorandum**

### Development Consent Order

- Need for consistency between DCO, EM & Works Plans.
- Need for clarity of limits of deviation on Works Plans – the project for which consent is sought must be clear.
- General need for more justification for articles & requirements in the EM.
- Explanation as to why article 25, authorisation of temporary possession of all of the order land, is necessary when they will have control over most of the order land via their lease. Why is it not possible to identify the specific land over which temporary possession is necessary in a schedule?
- Detailed explanation why all works are integral and not associated is required in EM.
- Work 7(b) is inappropriate in its current form as it appears to attempt to relate to all works but is contained in works 7 which only relates to landscaping.
- Definition of commencement needs amending; applicant appears to have misunderstood s.155 Planning Act 2008.
- Tailpiece contained in Requirement 3 unlikely to be acceptable as the parameters requirement 3 secures the authorised development and go to the heart of the consent, it appears to be an attempt to circumvent provisions in schedule 6 PA2008. Applicant should refer to relevant case law to justify its inclusion if they wish to retain (Mid-counties Co-Operative Ltd, R (on the application of) Wyre Forest District Council [2009] EWHC and R (on the application of) Warley v Wealden District Council [2010]).
- Use of the term “substantially in accordance with” in requirement 3(3), 4(1), 5(1) is insufficiently precise to ensure that the necessary mitigation is secured. If the applicant wishes to retain they will need to justify in EM in relation to each requirement.
- Use of the phrase “for the avoidance of doubt” is inappropriate in a DCO. If the applicant wishes to have a phased discharge of requirements this must be specifically included in the relevant requirement.
- It is not clear how the phasing of requirements 5, 8 & 9 will work in practice, particularly where many of the works have overlapping limits of deviation. The applicant will need to clearly explain how the phasing will work and why it is necessary for their specific project in the EM if they wish to adopt this approach. The applicant will need to consult the LPA regarding this approach. The applicant will need to ensure all mitigation is secured.
- It is not possible to consider whether requirement 15 is lawfully permissible without further detail of the extant planning permission 1998/2589/OUT & the planning permission whose reference number is missing. The applicant must

explain exactly what this requirement is intended to achieve, how it is lawfully possible and how it will work in practice in the EM.

- Consideration will need to be given to whether it is possible to effectively amend a planning permission condition requiring discharge by an LPA to require discharge by another method by a DCO. The applicant should submit the planning permission as an examination document if they intend to refer to it in the DCO. Possibly it would need to be a certified document in the DCO.