

9 March 2018

National Infrastructure Planning
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Your ref EN010068
Our ref C2/DMW/CD/6798870
Matter ref 161717/000001

Dear Sirs

EN010068/20010106 – APPLICATION BY MILLBROOK POWER LIMITED FOR AN ORDER GRANTING DEVELOPMENT CONSENT FOR THE MILLBROOK POWER PROJECT

MODIFICATIONS AND AMENDMENTS TO THE ROOKERY SOUTH ORDER

We act for Covanta Rookery South Limited ("Covanta"), the undertaker pursuant to the Rookery South (Resource Recovery Facility) Order 2011 (the "Rookery South Order"). We write in advance of the hearings on Tuesday 13 March 2018.

As set out in its representation of 16 January 2018, Covanta considers that the appropriate way to regulate the interaction between the proposed development and the development authorised by the Rookery South Order is by way of an interface agreement. Covanta does not consider it appropriate for the Rookery South Order to be modified and amended in the manner anticipated by the draft DCO.

The proposed amendments to the Rookery South Order are excessively wide in scope, unbalanced and unacceptable. The applicant has failed to justify satisfactorily their inclusion in the draft DCO.

We enclose Leading Counsel's advice which concludes:

1. In amending and modifying the Rookery South Order, the applicant purports to rely on the powers in Section 120(5) of the Planning Act 2008. There is a clear distinction between the powers conferred by Sections 120(5)(a) and 120(5)(b) of the 2008 Act. The nature of the amendments sought by the draft DCO exceed the scope of the power in Section 120(5)(a) and may only be made pursuant to Section 120(5)(b).
2. For the Secretary of State to sanction the inclusion in the DCO of powers under Section 120(5)(b) to amend an earlier DCO, he must be satisfied that to do so would be "necessary or expedient". This test applies to both the principle of the amendments sought as well as their detail. The application fails to make the case for the exercise of the Section 120(5)(b) powers.

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3. The inclusion of paragraphs 27 and 28 of Schedule 11 is inappropriate.
4. An agreement between Covanta and the applicant is the appropriate means to address interface issues between the development authorised by the Rookery South Order and the proposed development.

Covanta considers that the appropriate means to regulate the interface between the Rookery South Order and the proposed development is by way of an agreement between Covanta and the applicant and Covanta is keen to engage in relation to such an agreement. This approach is widely used, widely understood and has been endorsed by the Secretary of State on previous occasions. The applicant agreed to provide a draft agreement but one has not been forthcoming.

To the extent that the Examining Authority considers that it is appropriate to insert into the Rookery South Order provisions for the protection of the applicant, these should be limited to the protections in paragraph 26 of Schedule 11 to the draft DCO. The draft DCO should include reciprocal protections in favour of Covanta; the standard to which Covanta is currently protected in the DCO falls short of the provisions for the protection of the applicant.

Yours faithfully

A handwritten signature in black ink, appearing to read "Hogan Lovells International LLP". The signature is written in a cursive, flowing style.

Hogan Lovells International LLP

Enc

Copy: Claire Brodrick, Pinsent Masons LLP