



Meeting note

File reference	EN010068
Status	Final
Author	Karl-Jonas Johansson
Date	6 March 2015
Meeting with	Millbrook Power Limited
Venue	Temple Quay House, Bristol
Attendees	Applicant (Millbrook Power Limited) Nick Johnson, STAG energy Paul Wormald, Peter Brett Consultants Richard Griffiths, Pinsent Masons Planning Inspectorate Ken Taylor (Infrastructure Planning Lead) Vicki Hodgson (Legal) Kay Sully (Case Manager) Karl-Jonas Johansson (Case Officer)
Meeting objectives	Draft Documents meeting
Circulation	All attendees

Summary of key points discussed and advice given:

The applicant is 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.

Amendments of Rookery South Order

The applicant proposes to ask, via its draft Development Consent Order (DCO), for changes to the Rookery South DCO (the RSO). The Inspectorate had not seen how this would be achieved as draft provisions had not been included in the draft DCO. The Inspectorate explained that the documentation needed to clearly explain how the draft DCO would amend the RSO to minimise the applicant's risk of a non-acceptance of the application. The Inspectorate suggested that there was also a risk in relation to the proposition, on which the applicant was relying that the Secretary of State (SoS) would exercise his discretion to make changes to the RSO using powers in s120(5) of the PA 2008. Further that the applicant was advised to explain fully in its Explanatory

Memorandum its approach in relation to s120(5) rather than Schedule 6. The applicant informed the Inspectorate that they were currently in negotiations with Covanta (who have the benefit of the RSO) and was aiming for protective provisions to be finalised before the preliminary meeting or as the case may be, before the end of examination and that they would send drafts as soon as possible.

The Inspectorate raised concerns regarding the consultation report not addressing the issue of amending the RSO and emphasised the question of adequate consultation was relevant to the acceptance test. The Inspectorate recorded that had the change been proposed via Schedule 6 PA 2008 and considered as a material change by the SoS, explicit consultation on the change would have been necessary. The applicant informed the Inspectorate that in its view the changes to the RSO would not fundamentally change the order and that the consultation on the project and assessment of impacts was adequate. The applicant explained further that that they had made it clear to the consultees during each consultation stage that the two projects could co-exist and the Preliminary Environmental Information Report and Covanta's s.42 consultation response supported this and iterated its view that there was no need to consult specifically on the amendment of the RSO.

The applicants explained that Schedule 11 of the Millbrook draft DCO will amend article 33 in the RSO and add a part 2 to article 7 which will contain the protective provision required to allow the Millbrook Power Station to be constructed and operated. The Order will also make necessary amendments to the RSO landscaping plan.

Rochdale envelope

The Inspectorate stated that the scope of the Rochdale envelope sought was quite significant. Therefore the Inspectorate asked the applicant to explain how this had been addressed in the Environmental Statement (ES). The applicant explained that it had assessed the worse case scenario for the project but that each chapter would reassess the worse case scenario from the specific issue discussed to ensure that all aspects of the worse case scenario had been assessed. This approach has previously been used by Progress Power and Hirwaun Power. The limits of deviation that could be used would be capped by the ES. It was agreed that the approach would be explained in the explanatory memorandum.

The applicant stated that they now had further clarity as to potential turbine design and thus the scope of the Rochdale envelope could be reduced a little. The applicant illustrated how the DCO would provide for the various options by referring to an updated table 2, in requirement 2 in the DCO. This provided various limits of deviation depending on the number of turbines, but the limits of deviation for the stack height would be between 30-35 m regardless of the number of turbines. The inspectorate advised that the table should also include deviation of the width of the units.

Draft Development Consent Order

Article 6

There was discussion about article 6 sharing of the benefit of the Order. The Inspectorate explained that the rationale for this provision would need to be fully explained. There was discussion around alternative approaches to the DCO draft on this point.

Control over detail of Works

The applicant explained that the updated version of the DCO addressed the issue of some the works not being controlled in the previous version of the DCO. It was agreed that the applicant would check if works 1b, 1d and 3a was fully controlled in the updated version of the DCO. The applicant clarified that works 6a and b could be seen on the indicative layout plan but not on the works plans.

The Inspectorate highlighted that the heights of some of the buildings relating to works 4a were not listed in the DCO to which the applicant responded that it would be finalised during the examination.

Requirement 19

The Inspectorate stated that requirement 19 gives the local authority broad power to amend items listed in table 2 schedule 2 and informed the applicant that the SoS has previously removed these kind of broad powers from previous orders. The applicant would consider removing the limits of deviation from requirement 19 to minimise the powers given to the local authority.

Schedule 11

The applicant explained that the fees relating to the local authorities would be covered by a s.106 agreement between the applicant and the local authority. A similar approach was utilised in the application for Progress Power. The Inspectorate suggested that this could also be covered in a Statement of Common Ground.

Schedule 11(3)(2)(a)

The Inspectorate advised the applicant that the DCO needed more clarity on who would deal with any appeals and indicated that it was likely to be the SoS for Department for Communities and Local Government. It was also stated that business days are not used in statutory instruments. Further to this the Inspectorate advised the applicant to review the appeals process as it is very constricted in its current form and that the SoS should be free to appoint whoever he thought was qualified without any restrictions on qualifications.

Book of Reference

The inspectorate advised that the document could benefit from more descriptive texts on the contents page.

Consultation Report

The comments on the consultation report will be sent be appended to this letter.

Submission date

The applicant informed the Inspectorate that they intended to submit the application on Tuesday 17 of March 2015 however following this meeting; it may slip although will be submitted by 31 March 2015 at the latest. The applicant was requested by the

Inspectorate to be informed of any changes and in particular to ensure local authorities can be kept up to date.

AOB

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 was made aware that during acceptance the Inspectorate might request all consultation responses the applicant received during the pre-application period and should prepare for this eventuality.

The applicant was also made aware that, whilst it is not a decision made by the Inspectorate's case team, due to the complexity of matters that may arise as a result of the RSO it is likely that a Panel (rather than a single Inspector) would be appointed as the Examining Authority.

Annex A

Comments on the Millbrook Power Draft DCO

Annex B

Comments on the Millbrook Power Book of Reference

Annex C

Comments on the Millbrook Power Consultation Report

Annex A

Comments on the Millbrook Power Draft DCO

General

Currently there is nothing in the DCO on Rookery DCO overlap which is problematic as a novel and creative approach is proposed. It is recommended that an updated version of the DCO is submitted, incorporating the articles, protective provisions etc. which seek to address the overlap with the Rookery DCO. If this is not submitted as a draft document in advance of the submission of the application, this will have to be assessed during acceptance, and increases the risk that matters of concern may arise at that stage.

Footnotes are needed wherever an Act has been amended.

Introduction etc.

Remove "laid before parliament"

Article 2 – Interpretation

Define traffic authority as this is referred to in Article 40.

Article 3 – Development Consent Etc. granted by the Order

A new paragraph is needed: *Schedule 1 (Authorised Development) has effect.* (Otherwise there is nothing to hang the schedule on.)

Article 4 – Maintenance

Definition of *maintenance*: 'alter' has been removed by DECC in some DCOS on the basis that it implies alteration of the project rather than maintenance. Also the words *but not so as to vary from the description of the authorised development in Schedule 1* need to be added.

Article 6 – Benefit of the Order

It is noted that two organisations would benefit from the Order simultaneously. Justification for this approach should be provided.

Article 15 (5)

Query whether "except as authorised by this Order ..." is necessary? Are any works to the bed or banks of a water course proposed – it doesn't appear so from the Schedule of Works.

Article 17 (6) (b)

"and that person must, ..." on needs to be on a separate line as it applies to both (a) and (b).

Article 17 (9) (d) from "subject to paragraph (10)**Error! Reference source not found.** the undertaker must ..." on needs to be on a separate line as it applies to (a) – (d).

Article 22(3) – It would be helpful to provide clarity on the references to clauses 12.4 and 12.9.

Article 29 (Statutory undertakers) - Consider whether it is necessary/helpful to add that a reference to a statutory undertaker includes a reference to a public communications provider.

Article 31 (3) – Change "paragraph" to "article"

Article 32 - It may be necessary to apply and modify the 1997 Hedgerow regs.

Article 36 – This can be simplified to just having (a), (b) and (c) rather than (a)(i), (a)(ii) and (b)

Also, should this contain a cross reference to requirement 11, which deals with noise during the operational phase?

Schedule 1

Work 1B - Add "a" to electricity kiosk ((h)(iii) to provide clarity that there is only one kiosk proposed?

Not all the Works in 1B are captured in Table 2 in requirement 2 (i.e. the admin building and store in Work 1 B). What controls will be put in place for these works?

Work 1D - *How* will the control of the detail of these works be secured (i.e. numbers/scope/height of this infrastructure). This does not seem to fall within the scope of Table 2 in Requirement 2. Should this detail be submitted to the relevant LPA for approval?

Work 2A & 2B –Presumably these Works need amending to deal with the flexibility required to construct the access through the Rockery site.

Work 3A - Should the detail, i.e. number of kiosks, be controlled – these don't fall fully within the scope of requirement 2

Work 4B – Clarification should be provided as to how the detail of this work is controlled.

Work 6 – it is not immediately apparent why there are two options for Work 6. Are these in different locations (i.e. the northern and southern dotted areas on the Land Plans?) If so it may be helpful to annotate which is area 6A and 6B on the Land Plans.

Work 6A (c) and 6B (c) - It may be necessary to control the parameters of this element of the works (not secured in req. 2 and the fencing isn't secured in requirement 6.)

Work 6B (d) – delete the "and"

Work 6B (g) – add an "and"

Work 9 (last section) - How will these other works be controlled – for example will details be approved by the LPA? As currently worded this gives quite broad powers without any approval mechanism.

Schedule 2 (Requirements)

It may be helpful to consider the order of the requirements and group together those which deal with construction and then those that deal with the operational phase. For example requirement 12 deals with construction working hours, requirement 13 deals with lighting during the operational phase and then requirement 14 goes back to dealing with construction (construction travel plan).

Requirement 2 – This requirement doesn't capture all works – other works are proposed where there won't be parameters in Table 2 (i.e. the admin building and store in Work 1 B).

Add the Work number of the substation in table 2.

Note there is no requirement for the details of other works (i.e. other than 1, 3A, 5 and 6(a) to be approved – if this is absent this must be fully justified.

Requirement 3 – Landscaping also forms part of Work 7.

Requirement 4 – Although titled as such, the requirement doesn't actually cover maintenance of the landscaping, but it probably should be expanded to include this.

Requirement 5(2) – The details contained in Schedule 1 are not v detailed i.e. detailed design, lighting, highway drainage details are not provided. It may be necessary for the LPA/LHA to approve this detail. It is unlikely that it will be appropriate that the detail approved by the LPA could differ from that set out in schedule 1 – consider redrafting.

Requirement 6 – Works 4A(e), 6 and 7 also include fencing – broaden scope of this requirement?

Requirement 7 – It appears there may be drainage implications for work number 4 (the gas pipeline) – it may be necessary to include this in this requirement.

Is highway drainage dealt with under requirement 5 or this requirement – clarity on this would be helpful.

Work 6 also includes drainage, but this is not within the scope of this requirement.

Including an implementation timetable and maintenance details may be beneficial.

Requirement 8 – This requirement doesn't include a method for dealing with unexpected contamination

It is probably necessary for a verification report to be submitted to the LPA/EA to demonstrate that the remediation has been completed

The necessity for the "tail piece" must be justified.

Requirement 9 – Query extent to which this requirement has been agreed with EH/the LPA. It may be necessary to broaden the scope of the requirement so that areas where fieldwork or a watching brief are required is identified and if so that the watching brief is carried out by a suitably qualified body/person approved by the LPA.

The necessity for the “tail piece” must be justified.

Requirement 10 – Add lighting during construction, this is not covered by requirement 13.

Requirement 10(h) – Is this just a landscape impact issue or should tree/hedgerow protection stand on its own (i.e. there could be ecological implications)?

Requirement 10(o) - Why 40 movements? Is this justified elsewhere?

Requirement 13 – reference to “after consultation with the relevant planning authority” can be removed as the lighting scheme will be approved by the LPA.

Requirement 18 – Consider redrafting – it could be unclear whether the “unless otherwise agreed ...” refers to the “...necessary consents ...” or the need to submit the scheme for demolition

Consider expanding to include restoration

Consider expanding to include the submission and approval of a time table for the demolition and restoration.

Requirement 19 – The inclusion of “the parameters specified in requirement 2(2)” is not appropriate – this would allow the LPA to change the detail in the DCO, rather than just change the detail within a plan which is already to be approved by them.

Schedule 11

There is no mechanism for the payment of a fee to the relevant LPAs for the approval of the requirements.

S.11 3(2) (a) – It would be helpful to clarify which Secretary of State this refers to i.e. DCLG as the SoS would be DECC in all other references within the DCO.

S.11 3(2) (b) – Note business day is not defined in Article 2 (or specifically in this schedule). *Business days* are not normally used in legislation.

S.11 3(2) (b) – The requirement to appoint an inspector in 20 days could be tight in some circumstances – suggest this is reworded to *as soon as reasonably practicable*.

S.11 3(2) (e) – As above – suggest this is reworded to *as soon as reasonably practicable*.

S.11 3(3) – 5 business days is quite short for the appointed person to consider if further information is necessary particularly if it is a complex/technical matter. Also it may be necessary for the appointed person to consider the representations to come to a view if further information is necessary – the initial representations are only due on day 20 i.e. after the date the appointed person would have to come to a view as to

whether further information is necessary. Suggest this is reworded to *as soon as reasonably practicable*.

S.11 3(9) – Reference to schedule 2.

S.11 3(10) – Suggest the prescription as to who can be appointed (qualified town planner with 10 years' experience) is removed – this should be left to the discretion of the SoS to appoint.

Annex B

Comments on the Millbrook Power Book of Reference

Overall the Book of Reference is well presented and divided into three sections which appear logical, Power Generation Plant (PGP), Gas Connection (GC) and Electrical Connection (EC). The sections link plots to be compulsorily acquired to the appropriate land plans, and make the plots easy to locate. The location descriptions correlate with those shown on the relevant plans.

Clarity is an issue. The contents page could include a description/title for each part listed to assist in navigating the document. This would benefit those members of the public who are unfamiliar with this type of document.

Descriptions of Parts 1 – 5, Schedules 1 and 2 as well as definitions of who Category 1, 2 and 3 people are would be useful and again provide clarity. Given that Part 2 has been divided into 2a and 2b, descriptions for these would also be useful. These types of descriptions and definitions would assist in quick navigation to the correct page, and easy identification of rights required.

There are some good example documents on our website, although none at present showing an example of the Book of Reference. However, it would be advisable to look at the Book of References submitted as part of the application for other projects to see how they have been presented. An example of where an applicant has clearly defined the various Parts, Schedules and Categories is the application for the Navitus Bay Wind Park, which is still in examination. There are of course many others, which could assist in how to clearly present information within a Book of Reference.

Annex C

Comments on the Millbrook Power Consultation Report

General comments on the draft consultation report

The Inspectorate advises that prior to submission the applicant ensures that all references within the report are correct as the current draft contains some erroneous references to paragraphs and appendices.

The section outlaying how the applicant has developed the Statement of Community Consultation (SoCC) is very well constructed and due to the referencing use easy to follow. A similar approach to the s.42, 47 and 48 consultation would make the development of the project easier to comprehend.

The report does not discuss to a great extent how the Rookery South Order will impact on this project and the Inspectorate thinks some additional information relating to this would benefit the reader.

Due to data protection some consultees' names have been anonymised in the report. To enable the Inspectorate to identify these consultees, the applicant is advised to submit the Inspectorate with a key to who they are with the application

The inspectorate would like to draw the applicant to the attention of the section of our website that it regards as 'good' documents submitted in relationship to a National Significant Infrastructure Project. The documents can be found here:

<http://infrastructure.planningportal.gov.uk/application-process/example-documents/>

Section 42 Consultation

The report describes that some s.42 consultees were missed when the consultation material was sent out. The report shows sets out how this was rectified but does not explain why they were missed out. It would benefit the reader if this was explained in more detail.

The report discusses the outcome of the s.42 consultation on a very high level and in its current format there is unclear how the consultation has impacted on the project's development. The report would benefit from giving more information about the consultation and what impacted on the project rather than giving the broader themes discovered. It is the Inspectorate view that the table in appendix 4.C would benefit from being split into tables dealing with themes discussed in the report and referenced in the same way as the development of SoCC.

Appendix 4.B contains the original s.42 consultation responses. The Inspectorate suggests that each response is separated with a cover page for ease navigation.

Section 47 Consultation

The Inspectorate has not provided feedback on the applicants SoCC checklist as this document was submitted as a nearly draft.

The S.47 consultation has been presented in the same style as the s.42 consultation. It is the inspectorate view that the s.47 consultation be expanded in the same way as recommended for s.42.

Section 48 Consultation

The appendix containing the s.48 consultation material has not been reviewed as it has not been provided. There are some cross referencing errors in this chapter of the draft report and the inspectorate would like to iterate its advice regarding reviewing all cross references prior to the submission.

The report does not mention if there were any responses in regards to s.48 consultation. If there wasn't any formal responses to the s.48 consultation the report would benefit from this being clarified.

Chapter 5 of the report.

The chapter describes how the non- and statutory consultation has impacted on the development of the project. However the information is in the draft report on a high level. The chapter would benefit from expanding on how the consultation has impacted on the project with cross referencing to where the conclusions were drawn from. In its current format the reader doesn't get a very clear picture how the project has evolved.