



Meeting note

File reference	EN010068
Status	Final
Author	The Planning Inspectorate
Date	18 September 2017
Meeting with	Millbrook Power Ltd
Venue	Temple Quay House, Bristol
Attendees	Planning Inspectorate Chris White (Infrastructure Planning Lead) Tracey Williams (Case Manager) Ewa Sherman (Case Officer) Lynne Franklin (Government Legal Department) Lucy Hicks (EIA and Land Rights Advisor) Millbrook Power Limited Nick Johnson Sarah Chandler Claire Broderick
Meeting objectives	Project update
Circulation	All attendees

Summary of key points discussed and advice given

Welcome and Introductions

The Applicant and the Planning Inspectorate (the Inspectorate) team introduced themselves and their respective roles. The Inspectorate outlined its openness policy and ensured that those present understood that any issues discussed and advice given would be recorded and placed on the Inspectorate's website under section 51 of the Planning Act 2008 (PA2008). Further to this, it was made clear that any advice given did not constitute legal advice upon which the Applicant (or others) can rely.

Draft documents

The Inspectorate had reviewed the draft Development Consent Order (DCO) documents submitted by the Applicant on 23 August 2017. Detailed advice on the documents submitted is provided in the Annex to this note.

Development Consent Order (DCO) and Explanatory Memorandum (EM)

A summary of points raised are contained in more detail in Appendix A to this note. The Inspectorate advised the Applicant to ensure that all internal references and legal

footnotes in the final DCO are checked, and that the drafting follows the best practice advice contained in Planning Inspectorate Advice Note 15. The comments provided by the Inspectorate at the meeting focused on the main elements of DCO and EM drafting: certainty, justification and effect.

The Inspectorate advised that the EM would benefit from further explanation to help the Examining Authority and anyone involved in the examination of the application. Also when a precedent that has been set by a previous DCO is provided, it should be explained why it might be applicable on the facts of this particular application.

The Inspectorate and the Applicant discussed the issue of modifications to and amendment of the Rookery South (Resource Facility Order) 2011.

At the meeting the Inspectorate was of the view that the EM should not make reference to schedule 6. However, to clarify, it is not that the EM should ignore the existence of schedule 6 but that the applicant should consider carefully the way in which this is dealt with in the EM. The Applicant should take account of the section 51 advice provided by the Inspectorate in March 2017 and draft the EM in a way that does not suggest that schedule 6 is an alternative route in the event that section 120 is found by the Secretary of State to be inappropriate/unlawful and it is advised that the EM

1. Makes clear it is the Applicant's view that section 120 is the appropriate route. The Applicant responded by indicating that they are currently discussing with Covanta the use of s120 to amend the Covanta Order. Although both parties are agreed that there are various overlap issues which need to be dealt with, the most appropriate approach to dealing with the overlap is not yet agreed. Once the position is agreed the Applicant will update the EM.
2. Makes reference to the Secretary of State's decision letter which has already indicated the possibility of one DCO changing another.

The Applicant indicated that they intend to provide a joint statement between Millbrook Power Ltd and Covanta (the Rookery South Consent owners). In the event that a joint statement is not available for submission, the Applicant will provide a summary of the overlap between the two projects, which they plan to include in their Planning Statement.

The Inspectorate also advised that justification should be provided if the Applicant seeks flexibility in the DCO.

Other documents

Statement of Reasons – see comments in Appendix A

Funding Statement – see comments in Appendix A

Book of Reference – see comments in Appendix B

Consultation Report – see comments below and in Appendix C

Land and Works Plans – see comments in Appendix D

Habitats Regulations Assessment (HRA) No Significant Effects Report (NSER) and draft Environmental Statement Chapters 1-4 - see comments below and in Appendix E

Consultation Report (see Appendix C)

The Inspectorate provided a summary of points raised in more detail in Appendix C. The structure and information included in the document which would benefit from clear referencing for the ease of navigation in the document.

One of the requirements of the s55 Acceptance Checklist is to ensure compliance with s49 of the PA 2008, in that the Applicant has had regard to any relevant consultation responses received to the s42, s47 and s48 consultation. In the current draft Consultation Report the narrative with regard to this compliance is spread across the report in various locations throughout the report and is not explicit enough. The Inspectorate advised the Applicant to present them in a table to clearly demonstrate that they have had regard to responses received under statutory consultation carried out and whether they have led to a change in the application or not. The Applicant noted that such tables are referred to in the list of proposed Appendices in the draft Consultation Report and confirmed that they are currently working on bringing all consultation responses together in a table to ensure clarity.

Habitats Regulations Assessment (HRA) No Significant Effects Report (NSER) and Environmental Statement (See Appendix E)

Draft Habitats Regulations Assessment NSER

The Inspectorate provided a summary of points which are contained in more detail in Appendix E. The Applicant was made aware that the Inspectorate comments relate mostly to presentational matters rather than substantive issues and that the Applicant would be provided with a detailed copy of these. The Inspectorate advised that as Natural England's comments are dated 2015 that they should seek clarification that Natural England's comments still apply.

Draft Environmental Statement Chapters 1-5

The Inspectorate commented that the draft ES described the project under the EIA Regulations as Schedule 1 2(a) development and also stated that it would generate up to 299MW electrical output, and queried whether the project would fall under Schedule 2 of the EIA Regulations. The Applicant confirmed that they considered that the project fell under Schedule 1 as it would have a thermal output of greater than 300MW.

The Applicant's attention was drawn to Paragraph 3.5.4, and to a disparity regarding the number of compound areas on the Power Generation Site. The Inspectorate advised of the need for this to be described accurately across the dDCO and the ES.

The Inspectorate commented that there was some uncertainty regarding which elements of the Low Level Restoration Scheme form the baseline and on the need for the ES to be explicit. The Applicant was advised that if there was any possibility that the work to the eastern slope wouldn't be completed that it should be included in the cumulative effects assessment.

The Inspectorate advised that where it has been decided that the 2009 Regulations still apply an explanation for why you consider them to still apply should be provided.

Project update including submission timeline

The Applicant confirmed that they are currently discussing matters relating to the connection offer with National Grid and this has led to slippage of submission by a few weeks. This will mean that they will now progress the second option for connection. Both options were assessed in the Environmental Statement and there are no changes to the red line boundary

AOB

The Inspectorate advised the Applicant to look at the document called 'Guide to the Application' which was provided by National Grid for the Richborough Connection Project for each deadline, with a view to including something similar with this application at submission and to be updated at every examination deadline. It will shortly be included in the list of 'good examples of documents' available on the Inspectorate's website when the judicial review period for the Richborough project passes. The Applicant confirmed that they are already preparing a document for this purpose. The Inspectorate also advised that it would be very helpful if the Applicant could provide a covering letter with a list of all documents submitted and a summary for each deadline during examination to enable a quick search for any changes. When submitting documents via email, stating number of documents and emails would be helpful.

The Inspectorate advised Applicant to start looking at potential hearing venues and engaging with the programme officer should the application be accepted for examination.

The Inspectorate will provide more information regarding the practicalities ahead of submission of the DCO application as soon as the Applicant confirms that date, which is currently late October 2017.

Appendix A

MILLBROOK GAS FIRED POWER STATION

COMMENTS ON THE DRAFT DEVELOPMENT CONSENT ORDER AND EXPLANATORY MEMORANDUM

General

1. The applicant should ensure that when the development consent order (DCO) is finalised all internal references and legal footnotes are checked and that the drafting follows best practice in Advice Note 15 and any guidance on statutory instrument drafting.
2. The Explanatory Memorandum (EM) notes at various points that the wording of a model provision has been "slightly refined" (or similar) or that an article "is" a model provision. It would be helpful in these cases if the applicant could clarify whether the change is minor and has been made where in the applicant's view the model provision is unclear or does not follow standard statutory instrument drafting practice (for example changes made to articles 32, 34 and 35). Where a model provision or precedent article is substantially changed the EM should clearly explain how that alters the effect.
3. Notwithstanding that drafting precedent has been set by previous DCOs, whether or not a particular provision in this DCO is appropriate will be for the Examining authority (ExA) to consider and examine taking account of the facts of this particular DCO application and having regard to any views expressed by the relevant authorities and interested parties.

Article 2 interpretation

4. *definition of commencement to exclude drainage works*: It would be helpful if the applicant could provide a copy of the relevant planning permission and further clarification/justification. The EM notes that the "proposed location for this channel does not align with the proposed Project" but it's also stated that the revised location is "not materially different".
5. It is the function of the land plan to show amongst other things the land required for, or affected by, the proposed development. The Land Plan key identifies *Land required for, or affected by, the authorised development (the Order Limits)*. As the meaning of "Order limits" in the DCO is "the limits shown on the works plans" is this key correct? The applicant should check that where a power or requirement is made by reference to the Order land or Order Limits that this is correct, for example

in Requirement 18 the need for a decommissioning strategy arises “within twenty four months of the Order land ceasing to be used for the purposes of electricity generation”.

Article 6 Benefit of this Order

6. This article is not strictly comparable with articles 4 (and 7) of the Network Rail (Norton Bridge Area Improvements) Order 2014. This DCO grants development consent subject to the requirements and provides the benefit of the DCO to two separate undertakers but there are restrictions on implementation.
7. The applicant should consider whether Articles 3, 6 and 7 and the definition of “undertaker” are certain enough:
 - Current practice is to name the undertaker and not define by reference to “any other person who for the time being has the benefit of this order”
 - Consider the detailed approach in articles 3, 6 and 7 of the National Grid (Richborough Connection Project) Development Consent Order 2017. The approach in the National Grid (Hinkley Point C Connection Project) Order 2016 is also noted – this DCO provides named undertakers and is specific about who may transfer the benefit.
 - Article 6 (2) and (3)– “consent” should be more specific (presumably this is development consent) and should this more appropriately be covered in article 3 so that development consent is subject to the requirements?
8. It is noted that O&H Ltd is not a statutory undertaker as defined by the Acquisition of Land Act 1981, unlike National Grid and Network Rail, and the applicant should be asked to comment on whether this has any significance.
9. Is there any precedent for the notification details set out in article 7 (6) to (8)?

Article 11 temporary prohibition or restriction of use of streets

10. Notwithstanding the precedent in the Hirwaun DCO, whether or not article 11 of the Millbrook DCO is appropriate or is too wide will be a matter for the ExA depending on the facts of this particular DCO application (including the impacts of authorising temporary working sites in such circumstances) and taking account of any views expressed by the street authority.

Article 14 agreements with street authorities

11. To assist examination of this article it would be helpful to provide further justification for and an explanation of the effect of adding "such agreements to deal with the strengthening, improvement or repair of any streets". It would be helpful if the applicant could provide examples of the "similar orders" where this drafting has been used.

Article 15 Traffic regulation

12. To assist examination of this article it would be helpful to provide further explanation about any implications of paragraphs (2) and (3) of article 15 which provide that the traffic regulation power to prohibit, restrict etc "has effect as if duly made by" a traffic authority or local authority and "is deemed to be a traffic order for the purposes of Schedule 7 etc"
13. Notwithstanding that drafting precedent has been set by previous DCOs, whether or not paragraph (5) is appropriate will be for the ExA depending on the facts of this particular DCO application and taking account of any views expressed by the relevant authorities.

Article 17 Authority to survey and investigate the land

14. To assist the examination of this article it would be helpful to:
 - provide further justification for extending this power to "any land which may be affected by the authorised development". Is this land the same as/as extensive as the Order land which is defined as including land which is "affected by the authorised development"?
 - provide justification for (in the context of this particular DCO) and an explanation of the effect of applying Section 13 of the 1965 Act (issue of a warrant) by virtue of paragraph (7).

Article 18 human remains

15. In the circumstances of this DCO, what is the justification for this power? Is there evidence of human remains?
16. What is the justification for using "the Order land" (uncertain) instead of a description of specified land

Article 19 Compulsory acquisition of land

It would be helpful if the applicant explained the reason for removing paragraphs (2) and (3) from the model provision (in the context of article 20).

Article 20 Statutory authority to override easements and other rights

17. The applicant should explain why it is necessary “for the avoidance of doubt” to include this article, with reference as necessary to the repeal of section 237 by the Housing and Planning Act 2016. In any event it is also advisable to avoid use of this expression in statutory drafting.

Article 21 Time limit for exercise of authority to acquire land compulsorily

18. Whether or not this time limit is appropriate in the circumstances of this application will need to be examined. The applicant should provide justification.

Article 22 Compulsory acquisition of rights etc

19. To assist the examination it would be helpful if the applicant could provide further justification for the need to clarify that compensation applies in relation to creation of new rights and the need to amend existing compensation legislation as set out in Schedule 8, particularly in the light of the Secretary of State’s decision to remove similar provisions in the National Grid (Hinkley Point C Connection Project) Order 2016.

Article 23 Private rights

20. Paragraph (3) is uncertain as to its effect because it relies on a transfer which has yet to be granted. The applicant should provide further justification, with reference to the principle of certainty in statutory drafting.

21. Without further definition is it sufficiently clear what is meant by “private rights and restrictions”? What is the rationale for departing from current practice which is to use the formulation “private rights and restrictive covenants” and to set out what that includes? It’s noted that earlier DCOs made in 2011 and 2013 are relied on as precedents not current examples.

Article 24 Application of the Compulsory Purchase (Vesting Declarations) Act 1981

22. To the extent that it is relevant to understand the meaning of this article, the applicant should explain what changes were made by the Housing and

Planning Act 2016 to the Compulsory Purchase (Vesting Declarations) Act 1981 and the effect of reflecting those changes in this article.

Article 25 Acquisition of subsoil only

23. Is it clearer to say “does not prevent” rather than “must not prevent”?

Article 26 Application of Part 1 of the Compulsory Purchase Act 1965

24. To the extent that it is relevant to understand the meaning of this article, the applicant should explain what changes were made by the Housing and Planning Act 2016 to the Compulsory Purchase Act 1965 and the effect of reflecting those changes in this article.

25. The applicant should provide further explanation and justification for the need to clarify that entering and taking possession for the temporary use of land is not caught by the counter notice procedures in Schedule 2A.

Article 28 Temporary use of land for carrying out the authorised development

26. With some exceptions, the substantive provisions in Part 2 Chapter 1 (temporary possession of land) of the Neighbourhood Planning Act are not yet in force and no regulations have been made. The applicant may wish to consider in due course what, if any, changes might be required to this article when the provisions are effective.

Article 29 Temporary use of land for maintaining the authorised development

27. It is stated that this article is a model provision. However, changes have nonetheless been made to the model wording. The applicant should explain the effect and justify why in paragraph 11 the “maintenance period” begins with the date of “final commissioning” and not, as in the model provision, beginning with the date on which [that part] is first opened for use.

28. Other changes are presumably considered necessary to improve drafting and the applicant should explain where changes to the model provision have been made to improve clarity or to comply with standard statutory instrument drafting practice.

29. With some exceptions, the substantive provisions in Part 2 Chapter 1 (temporary possession of land) of the Neighbourhood Planning Act are not yet in force and no regulations have been made. The applicant may wish

to consider in due course what, if any, changes might be required to this article when the provisions are effective.

Article 30 Statutory undertakers

30. The applicant should explain why the model provision has been amended "to allow for the suspension of rights."
31. Other changes from the model provision have been made to define the scope of the power by reference to the Order land and not by reference to specific plans and the book of reference.
32. It is noted that statutory undertaker articles in recent DCOs (for example East Anglia 3) define the scope of the power by reference to land "shown on the land plan within the limits of the land to be acquired and described in the book of reference". The applicant should justify the approach taken in and explain the effects of paragraphs (a) and (c) of article 30.
33. The applicant should note that where a representation is made under section 127 of the 2008 Act and has not been withdrawn, the Secretary of State will be unable to authorise article 30 unless satisfied of specified matters set out in section 127.
34. The Secretary of State will also be unable to authorise removal or repositioning of apparatus unless satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the order relates in accordance with section 138 of the 2008 Act. The applicant should provide relevant justification either in the Explanatory Memorandum or Statement of Reasons.

Article 31 Apparatus and rights of statutory undertakers in streets

35. It would be helpful if the applicant could indicate which protective provisions in Schedule 10 mirror the model provisions which have been deleted to avoid duplication.

Article 33 Felling or lopping of trees and removal of hedgerows

36. It is noted that the model provision *Trees subject to tree preservation orders* is not included and the ExA may wish to be satisfied that the power in article 33 (to fell or lop any tree) does not affect any tree protected by a tree preservation order.
37. The definition of "hedgerow" in the Hedgerows Regulations 1997 is by reference to Section 97(8) of the Environment Act 1995 which defines "hedgerow" as including any stretch of hedgerow. It is not clear therefore

whether paragraph (5) is necessary to assist with the meaning of article 33. It will be for the ExA to consider whether this article should be made more certain by cross reference to a plan identifying the hedgerows to be removed.

38. Article 33 would also appear to have the effect of disapplying application of the Hedgerow Regulations 1997 so that important hedgerows can be removed without the need to comply with the procedures in those Regulations. The applicant should explain whether this is the intended effect of article 33 and if so to provide further justification. Alternatively, the applicant should be asked to confirm whether (following other DCO precedents) the intended effect of this article is to amend regulation 6(1) of the Hedgerow Regulations by inserting the following subparagraph: *after sub-paragraph (e)—“(ea) for carrying out development for which development consent is granted under section 114 of the Planning Act 2008”*

Article 34 Railway and navigation undertakings

39. The applicant should explain why this article is necessary in the circumstances of this NSIP.

Article 35 Application of landlord and tenant law

40. The applicant should explain why this article is necessary in the circumstances of this NSIP.

Article 36 Cases in which land is to be treated as not being operational land

41. The applicant should explain why this article is necessary in the circumstances of this NSIP.

Article 37 Defence to proceedings in respect of statutory nuisance

42. The applicant should explain why this article is necessary in the circumstances of this NSIP.

43. Section 65 (noise exceeding registered level) of the Control of Pollution Act 1974 was repealed by the Deregulation Act 2015. The applicant should ensure that this and all statutory references are updated.

Article 39 Modifications to and of amendment of statutory provisions

44. Paragraph 54 of the EM notes that the Secretary of State is also entitled to rely on paragraph 3 (7) of Schedule 6. Before relying on that power

the Secretary of State would need to comply with the procedure in the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011 Part 3 (Changes to, and revocation of, orders granting development consent under paragraphs 3(1), 3(3) and 3(7) of Schedule 6 to the Act). Does the applicant consider that this is a realistic alternative and is there some doubt as to whether section 120 can be used to change the Rookery DCO? The ExA will need to consider whether to investigate this further and how to report to the Secretary of State.

Schedule 11 – Modifications to and amendments of the Rookery South (Resource Recovery Facility Order) 2011

45. General - this schedule will need careful examination and the views of the Rookery South undertaker will be very important. To assist examination, the applicant could be asked to provide a track changed version of the Rookery South (Resources Recovery Facility) Order 2011 together with a plan showing the overlap of the Order lands and a statement of common ground with Covanta Rookery South Limited.
46. The applicant should justify and confirm that the proposed modifications and amendments in Schedule 11 ensure that the Rookery South DCO remains certain in its effect. For example, is it sufficient to prevent the exercise of powers in the articles referred to in sub-paragraph (1) subject only to obtaining the prior written consent of Millbrook Power Ltd without any requirement to act reasonably, or to provide a dispute mechanism but relying on a general duty to cooperate?
47. The applicant should check and confirm that the drafting approach used to modify and amend the Rookery South DCO follows best practice as set out, for example, in Statutory Instrument drafting guidance.
48. The applicant should clarify what is meant by the commentary in the EM which states that “the time for exercising those powers of compulsory acquisition and temporary possession have now expired” but also justifies the need for MPL protection on the grounds that the MPL works “will not be compromised in the event that it subsequently emerges that the powers conferred...have not lapsed”.
49. Paragraph 26 – the applicant should be asked to confirm that it is appropriate for a protective provision to provide that the “undertaker shall not be in breach of” any requirement and if necessary to provide precedent

examples and identify the power on which the indemnifying provision relies.

50. Paragraph 27 – the applicant should be asked why it is necessary to include “for the avoidance of doubt”, noting again that this expression should be avoided. The applicant should also be asked to confirm that the defence to a charge under section 161 can properly be provided by a protective provision. If it is considered that this should more appropriately be covered in the operative part of the Rookery South DCO, the applicant should be asked to identify the power on which the provision would be based (considering section 120 (4) and paragraph 11 of Schedule 5) and consider how the Rookery South DCO should be modified to incorporate that defence. In particular, the applicant should consider the clear and precise wording of articles which provide a defence to proceedings in respect of statutory nuisance.

Requirements

51. Requirements 2 and 16 – the combination of these requirements provides some flexibility. As advised in paragraph 19.4 of Advice Note 15 the applicant should be asked to provide justification for the need for this flexibility.
52. Would requirement 6 (3) read more clearly as “The fencing and other means of site perimeter enclosure must be constructed in accordance with the details approved”?
53. 6(4) – this sub paragraph provides the applicant with flexibility. See paragraph 19.3 of Advice Note 15 – “the tailpiece should not be drafted in a way which allows the LPA to dispense with the need for a scheme altogether. Neither should the tailpiece enable the LPA to vary the scheme in writing such that the scheme then departs from the principles fixed by the application.” Requirement 19 (2) only fixes the scope of amendments to parameters where this would not give rise to any materially new or materially different environmental effects. The applicant should be asked to justify the need for flexibility.
54. The above comments apply to other requirements which impose the need for a scheme but allow the LPA to provide flexibility for the applicant to vary or depart from the scheme.

55. Requirement 8 – would this read more clearly as “None of numbered works 1 to 8 must be commenced”?

56. Requirement 10 – would this read more clearly as “None of numbered works 1 to 8 must be commenced until...”? This comments also applies to other requirements which use the wording “Each of numbered works....must not be commenced”.

57. Requirement 19 – see above. The need for flexibility must be justified.

58. Requirement 20 – Section 120 of the Planning Act 2008 provides that:

(1) An order granting development consent may impose requirements in connection with the development for which consent is granted.

(2) The requirements may in particular include [—] ¹

(a) requirements corresponding to conditions which could have been imposed on the grant of any permission, consent or authorisation, or the giving of any notice, which (but for section 33(1)) would have been required for the development;

(b) requirements to obtain the approval of the Secretary of State or any other person, so far as not within paragraph (a).

59. The applicant should be asked to provide examples of precedent requirements which have the same effect as requirement 20 and confirm that the defence to failure to comply with a planning condition can properly be created in this requirement. If it is considered that this should more appropriately be covered in the operative part of the DCO, the applicant should be asked to identify the power on which the provision would be based and if possible provide precedent articles.

BOOK OF REFERENCE

60. There is no procedural requirement to include a schedule of statutory undertakers in the book of reference. Is it intended to provide a separate list of statutory undertakers (section 4) which isn't part of the book of reference?

STATEMENT OF REASONS

61. The summary is rather long and may be unnecessary given that there is a conclusion at the end which summarises the statement. However, it is appreciated that this document is still in draft.

FUNDING STATEMENT

62. No substantive comments on this document. It will be for the ExA to ask questions and be satisfied, at a later stage, as to whether the applicant has sufficient funds and has adequately assessed the project costs.

Appendix B

Planning Inspectorate Comments on the Book of Reference

The Applicant provided a list of those it consulted under s42 along with the draft Book of Reference (BoR) for review.

1. Clarification is needed over s42 consultee 'O&H Properties Limited'. There is also entry for 'O&H Q7 Limited'. It is the same address for both.
2. The Planning Inspectorate is not in position to comment on the accuracy of detailed information provided by the applicant who has a duty to make a diligent inquiry to identify Category 1 and 2 persons.
3. The BoR contains some inconsistent information. Please ensure that those consultees that appear in the BoR are also on the s42 consultee list and vice versa.
4. The layout of the BoR is very clear as the document has been divided into three main sections:
 - Power Gas Plant (PGP),
 - Electrical Connection (EC), and
 - Gas Connection (GC).
5. There is useful section listing all Rights Classes, and space for a list of Statutory Undertakers. However, this part is not completed.

Appendix C

Planning Inspectorate Comments on the Consultation Report (September 2017)

These comments relate solely to matters raised by the drafting of the Consultation Report, and not the merits of the proposal. They are limited by the time available for consideration, and raised without prejudice to the acceptance or otherwise of the eventual application. They are provided to assist the preparation of the next iteration of the report.

Paragraph number	Question/Comment
Executive Summary - General observations	<p>Suggest the abbreviations are moved to the rear of the document (unless consistent with other documents produced).</p> <p>Consider amending the overview of the consultation strategy within the Executive Summary (sections 1.1.5 to 1.1.24). This detail provided is vague and has little benefit to the reader to assist in understanding what happened during the consultation and when this occurred. It may be worth adding a consultation timeline, including headline milestones to assist the reader.</p> <p>It would be beneficial if the Executive Summary addresses the following (including suggestions below):</p> <ul style="list-style-type: none">• Overview of the proposed development; and• Purpose of the Report
1.1.2	<p>The submission of a Development Consent Order application is submitted to the Planning Inspectorate, on behalf of the Secretary of State.</p>
Figure 1.1	<p>It appears that this has been duplicated on pages 3 and 4.</p>
1.1.10	<p>Reference is made here to 'discussions with a landowner', however in the earlier text there is no mention of the Applicant consulting with landowners at this stage of the process. If the Applicant has consulted with landowners at this stage, suggest it explains the approach taken in doing this.</p>
1.1.11	<p>Is the CCZ represented in a figure within the Consultation Report?</p> <p>It would also be helpful to note where and when the three exhibitions took place.</p>
1.1.12	<p>Is it appropriate to include a section on EIA Scoping Consultation within the Applicant's Consultation Report? This is a consultation exercise carried out by the Planning Inspectorate in accordance</p>

	<p>with the EIA Regulation and not by the Applicant.</p> <p>Suggest this is removed and addressed within the Environmental Statement.</p>
1.1.28	This is a duplication of paragraph 1.1.27.
1.1.46	It would be helpful to the reader if the consenting route of the proposed Electrical Connection Option was made explicit here.
2.3.3	It is Planning Inspectorate policy to request that links to external websites are not provided within documents; links may become broken or not accessible in future.
3.3.4	Reference to the 'Commission' should be updated to avoid confusion.
4.2.1	A link is provided to the Phase 1 and Phase 2 Consultation Plan. Suggest copies of these are provided in an Appendix (if possible) and provide a reference within the text.
Table 5.1	As above, the table refers to EIA Scoping Consultation within the Applicant's Consultation Report? This is a consultation exercise carried out by the Planning Inspectorate in accordance with the EIA Regulation and not by the Applicant.
5.3.6	First line should refer to DCLG 'Guidance'.
5.3.9	Useful to provide a reference to a copy of the Phase 1 SoCC as provided in an appendix.
6.2.8	The drafting could imply that PINS has been consulted on as part of the pre-application consultation exercise. I am aware this isn't the intention, but the wording is misleading.
6.4.16 & 6.4.17	It would be useful here to note whether the authorities listed here are an A, B, C or D authority.
6.4.25	This appears to be a shorter period of consultation than the remaining s42 consultees although meets the statutory requirement of a minimum of 28 days. Suggest that this opportunity is used to explain why 35 days was not provided.
6.4.32	Suggest it is made explicit here of when the 'land interest' consultation ended; it is noted that the consultation period commenced on 26 January 2015.
6.4.48	Are there any notes from the meeting, or any post-meeting note confirming the statements made by the officers from CBC? If so, please provide in an annex.
6.4.92	'..protective provisions have been agreed with UK Power Networks Holdings Limited' is highlighted within the text.

	Suggest these are described within the Explanatory Memorandum accompanying the draft Development Consent Order and the reader can be referred to this document.
8.5.8 & 8.5.9	Provide a reference to copies of the responses received to the SoCC consultation.
8.5.25	As above (in reference to para 6.4.16 to 6.4.17) suggest the local authorities are listed and it is noted whether they are an A, B, C or D authority.
8.5.42, 8.5.43 & 8.5.45	Although these paragraphs explain that consultees were provided the minimum of 28 days to respond to the consultation material, suggest the Applicant takes this opportunity to make explicit the amount of days consultees were provided, for the avoidance of doubt.
8.5.47	Provide a reference as to where the evidence that the Applicant has had regard to any relevant responses from consultees is located within the documentation.
8.5.50	Provide a reference as to where the evidence that the Applicant has carried out consultation in accordance with the SoCC (SoCC compliance table?) is located within the documentation.
8.5.57	It would be useful to note the opening hours, the dates the documentation was available and the addresses of the locations here.
8.5.1 to 8.5.8 (page 111)	The numbering is incorrect here, please amend.
8.5.6 (page 111)	Suggest it made explicit, once again, the deadline and the amount of days provided to those consultees who were notified at a later date.
8.6.1	The Applicant should take this opportunity to note the responses received/actions taken from this 'non-statutory' consultation and evidence how regard has been given to any relevant responses received (or provide reference to where this evidence can be viewed within the documentation). Suggest the reasoning for carrying out these additional activities is provided; why were these particular parties approached?
9.5.4	Suggest the Applicant makes it explicit here that the 'comments on all consultation responses' are required to show that regard has been to any relevant responses, in accordance with s49 of the Planning Act 2008.
Appendices	Appendices 5.D to 5.G contain the Applicant's responses to comments received during the statutory consultation stage.

	As currently named these don't clearly state how, or if, the Applicant has had 'regard' to any relevant responses received. Suggest the names (and content if appropriate) of the appendices are amended to evidence and make explicit how the Applicant has complied with s49 of the Planning Act 2008.
10.1.2	You may consider, for ease of reading spelling out words in full before abbreviating. I however do note you have provided a glossary.
10.2.2	You cross reference para 4.2.21 and 4.2.22. These don't exist in my version of the Consultation Report (CR). If you mean 4.2.1 and 4.2.2 the narrative needs expanding as you state that feedback received from consultation in June 2014 is recorded there. However it isn't.
10.2.5	Reference is made to Appendix 3.H.i. This is not listed on Appendix index in CR but is listed on separate list. Please ensure the appendix list in CR is updated.
10.3	Reference is made to important information in relation to the Acceptance tests that will be contained in a number of Appendices. (i.e Covanta's response to s42 consultation in November 2014). Please ensure these Appendices are completed prior to submission and are clearly referenced.
Generic comment	When referring to consultation documents that are on your Project website it may be more helpful to give a specific link to the referenced document.
10.3.12	You state that Covanta and O&H received but didn't respond to s42 consultation. May be worth expanding and explain if you have been engaging with them outside of s42 consultation.
10.4.2	The paragraph references you provide do not to exist
10.4.3	You may wish to be more specific on dates in terms of the year for ease of reading
10.5.6	As mentioned before avoid using weblinks
Chapter 11	This section shows how the project has evolved. You may wish to present the information in this section in a table to clearly illustrate how you had regard to a statutory response and whether it lead to a change to the project or not. Currently this information is presented in various chapters across the Report.
11.5.2	You may wish to use the term 'engagement' rather than 'non statutory consultation' to describe engagement at post submission. Also this information isn't strictly required as the Consultation Report is narrating consultation prior to submission.
12.1.7	As mentioned before avoid using website links. Include as an annex.
12.1.8	Reference and provide a copy of the second SoCC in the annex.
12.1.9	As above
Table 7.1	You may wish to review the references as they don't appear to relate to the issue in column one.

Annex D

Planning Inspectorate comments on the submitted Land and Works Plans

All the plans reviewed show the correct scales and size.

Plan J0008128-101 - Power Generation Plant Land Plan (Sheet 1 of 3)- the plot marked in red on green lane not assigned any number/ highlighted in colour

Plan J0008128-103 - Gas Connection Land Plan (Sheet 3 of 3) - 3 plots on the Houghton Lane are not numbered/ highlighted in colour

The Order land on the land plans has been highlighted in pink, blue and yellow colour with the order limits bordered with red outlines. There are 4 plots which have been bordered in red but not given any colour/ or plot number. There is 1 on the Sheet 1 of 3 and 3 on the Sheet 3 of 3.

The descriptions for plots 10_EC and 11_EC does not completely match the BoR. The description in the BoR says both are situated to the east of South Pillinge Farm but it should be south east of the South Pillinge Farm.

Similarly, plot 12A_GC should say south east of Lower farm.

The work numbers have not been highlighted/ pointed on the works plans and it would be helpful if they are. Also the colours of lines/patterns used don't make it easy to identify the individual works. It's very hard to distinguish certain colours used for the patterns.

Appendix E

Planning Inspectorate Comments on the draft Environmental Statement Chapters 1-5

Description of Project

- Paragraph 1.2.2: the Applicant may wish to consider whether the project constitutes EIA Schedule 1 or Schedule 2 development, as it is described throughout as up to 299MW; paragraphs 3.2.23 – 3.2.25 in particular refer.
- Paragraph 3.2.13: a Pipeline Inspection Gauge (PIG) receiving facility is included under the Generating Equipment listed in draft Development Consent Order (dDCO) Schedule 1 Work No 1B(g)(i) and on page 10 of the Explanatory Memorandum (EM) but not mentioned in this paragraph or elsewhere in the ES chapters. The description of development in the ES needs to be consistent with that in the DCO and consistently assessed throughout the ES.
- Paragraph 3.2.14: refers to Table 3.1 as providing 'indicative' dimensions although they are expressed in the table in terms of minimum and maximum parameters, which is in accordance with the application of the 'Rochdale Envelope' approach, and consistent with the description in the dDCO. It also refers to the table as providing the dimensions of the main plant items within the Generating Equipment Site' although it includes buildings and structures which form part of the Gas Connection and Electrical Connection. Should it instead refer to the Project Site'? Should the title of Table 3.1 reflect that it additionally provides information related to the Gas Connection and Electrical Connection?
- Table 3.1: the maximum height of the control room is indicated as 6m while it is shown as 7m in dDCO Schedule 2, Table 2.
- Paragraph 3.3.12: indicates that an existing junction off Houghton Lane onto an existing agricultural track would be used to access the AGI. dDCO Work No 3B refers to the upgrading of an existing agricultural track and junction at Houghton Lane, and the EM refers to a new means of access off Houghton Lane. The nature of the works, if any, to be undertaken are unclear. This needs to be clarified and consistently assessed in the ES.
- Paragraph 3.4.3: notes that a new transmission tower would replace an existing tower and be located in the existing Grendon – Sundon transmission route corridor. The Inspectorate advises that the activities involved in the removal of the existing tower and the construction and operational effects of the new tower should be described in the ES and assessed in the topic chapters of the ES.
- Paragraph 3.4.4: indicates that it is considered that the Sealing End Compound (SEC) and replacement tower may cause a permanent obstruction to the LLRS secondary access and that if so a short permanent diversion would be provided. It is not indicated when this would be

decided or at what stage the works, if necessary, would be done. The Inspectorate assumes that this relates to dDCO Work No 6(d), and that it will be assessed in the topic chapters of the ES.

- Paragraph 3.5.1: notes that no requirements for demolition have been identified. The Inspectorate suggests that consideration is given to whether the removal of the existing tower amounts to demolition.

Paragraph 3.5.4: the wording suggests that there would be more than one 'compound area' on the Power Generation Plant Site. All other references in the draft ES refer to only one laydown area on that site. dDCO Work No 8 refers to 'a construction laydown area(s)' for the Power Generation Plant Site. The Applicant should therefore ensure that works 4B and 8 are described accurately. Terminology used to describe the compound area/laydown area should be consistent throughout the DCO and ES, and the maximum number of such areas should be consistently reflected across all documents.

- Paragraph 3.5.28: notes that the Generating Equipment '...would benefit from on line monitoring and operational diagnosis to identify maintenance needs according to lifecycle use.' It is unclear whether monitoring is actually being proposed and if it forms part of the operational stage of the Project.

The Low Level Restoration Scheme (LLRS)

- Paragraphs 3.1.4 – 3.1.8: it needs to be explicit in the ES which elements of the LLRS form part of the EIA baseline and which are considered in the cumulative effects assessment (CEA). Paragraph 3.1.5 notes that the LLRS will provide buttresses and regrading to the southern, eastern and northern slopes, in which case they would be included in the baseline, according to the explanation provided. However paragraph 3.1.7 suggests that the works to the eastern slopes may not have been completed prior to the commencement of the Project construction (assuming the Project gains consent) - in which case they should be included in the CEA?
- The list in paragraph 3.1.5 of the LLRS works which it is assumed will have taken place prior to the construction of the Project differs from the list contained in paragraph 4.10.10. Paragraph 4.10.10 also makes reference to LLRS Phases 1 and 2, which are not explained, and it is unclear what activities it is anticipated would take place in each phase. The LLRS works need to be clearly and consistently described in the ES.
- Paragraph 3.5.9: suggests that the LLRS includes work to upgrade the existing access track to agricultural standard, and build a new ramp into Rookery South Pit. Paras 3.1.5 and 3.2.16 indicate only that a new ramp is to be built and that the existing access track is already of agricultural standard. Under dDCO Part 1 Preliminary, 2 (Interpretation) the LLRS agricultural track is defined as an access track into Rookery South Pit from Green Lane which is in part existing and in part to be constructed in accordance with the permitted LLRS. dDCO Work No 2 Option 2A is described as including upgrading of an existing agricultural track and the

- LLRS agricultural track between Green Lane and Rookery South Pit. The nature and extent of the proposed works are therefore unclear, and need to be clarified in the ES and consistent within and between the ES and the DCO.

Textual points/terminology

- Consistent terminology should be used throughout the ES and between the ES, dDCO and EM.
- Paragraphs 1.3.2 and 1.5.2 final bullet: the text will need updating for the application ES to reflect that it is the final version.
- Table 3.1 is titled 'Indicative Dimensions of Main Plant Items, Substation and Electrical Connection' (notwithstanding the comment above about the content of the table), and page 34 includes a heading 'Indicative Generating Equipment Maintenance Activities'. Care should be taken to ensure that minimum and maximum parameters are specified where necessary, and that it is clear which activities will be undertaken as part of the Project. Careful consideration should be given to when it is appropriate to use 'indicative'.
- Paragraph 3.2.18: refers to the provision of the Access Road between Green Lane and the Power Generating Site. Should this refer to the Generating Equipment Site, consistent with 1.1.4?
- Paragraph 3.3.1: the gas receiving station is described as an element of the Gas Connection, however it is described in paras 3.2.13 and 3.3.10 as part of the Generating Equipment Plant.
- Paragraphs 3.3.7 – 3.3.9: refers to the above ground installation (AGI) as comprised of a Minimum Offtake Connection (MOC) and a Pipeline Inspection Gauge (PIG) Trap Facility (PTF). No reference is made to the PTF in either the EM or Schedule 1 of the dDCO, which each state that the AGI is comprised of a MOC and a PIG facility.
- Section 4.10: suggest that 'In-combination' is deleted from the title as the subsequent text covers only cumulative effects, and could be confused with the requirements of the Habitats Regulations.

Other

- Section 2.1: indicates that the chapter will include a summary of relevant national legislation. Information is provided only on the Planning Act. The EIA Regulations are mentioned within the EIA Directive text but not separately described, although it is noted that they are described elsewhere in the document. The same applies to the Habitats Regulations, which are referenced only within the Habitats Directive text. In respect of international legislation, the Birds Directive is not referenced. Is this intended?

- Paragraph 4.4.6: suggest this paragraph is deleted as it's not strictly correct. It is for an Applicant to decide which Regulations apply to a project. In the event that a project the subject of an application is substantially different to that described at scoping stage, the Applicant must decide whether it is sufficiently different that the 2017 EIA Regulations should apply.
- Paragraph 4.10.8: suggest it is clarified that this refers to the Applicant's view of the scope of the CEA.

Planning Inspectorate Comments on the draft Habitats Regulations Assessment – No Significant Effects Report

- Paragraph 1.1.1: 'Habitat Regulations' should read 'Habitats Regulations'.
- Paragraphs 1.1.5 – 1.1.6: in accordance with legislation and policy in England, the following sites are treated as European sites: Sites of Community Importance (SCIs); Special Areas of Conservation (SACs); candidate SACs (cSACs); possible Special Areas of Conservation (pSACs); Special Protection Areas (SPAs); potential SPAs (pSPAs); listed or proposed Ramsar sites; and sites identified, or required, as compensatory measures for adverse effects on any of the above sites. All of these site types should be referenced in this section and in Section 1.4 of the NSER.
- The study area for the consideration of effects on European sites is not defined. It appears from Figure 1 that a 30km radius from the site boundary has been applied. The extent of the study area should be clearly stated in the body of the report.
- For clarity, the Inspectorate suggests that the heading in Table 4 includes the following insertions: 'Likely changes to the European sites arising as a result of:'
- For clarity, the Inspectorate suggests that within the table in Appendix A entitled 'Impacts considered within the screening matrices' the descriptions of the matters listed under 'Impacts in submission information' more closely reflect the descriptions of the potential effects as set out in Table 4.
- 'Impacts' and 'effects' are used interchangeably throughout the report. It is recommended that 'effects' rather than 'impacts' are used consistently throughout.
- The three screening matrices all include greyed out columns under 'Effect 3'. It is assumed that this is a textual error and that the columns can be deleted. As all of the potential effects identified in the report are considered for all three of the European sites, the Inspectorate suggests that the last sentence on page 2 of Appendix 1 does not apply and can be deleted.

- Figure 1.2 is missing.
- The Inspectorate welcomes the inclusion of a copy of the relevant correspondence with Natural England at Appendix B of the report. However, as the correspondence is dated 2015, the Inspectorate recommends that the applicant seeks confirmation with Natural England that this still applies.