



National Infrastructure Planning
Temple Quay House
2 The Square
Bristol, BS1 6PN

Customer Services: 0303 444 5000
e-mail: EggboroughCCGT@pins.gsi.gov.uk

Your Ref:

Our Ref: EN010081

Date: 5 December 2017

Dear Sir/Madam

**Planning Act 2008 (as amended) and The Infrastructure Planning
(Examination Procedure) Rules 2010 (as amended) – Rule 8(3) and Rule 17**

**Application by Eggborough Power Limited for an Order Granting Development
Consent for the Eggborough CCGT Project**

Request for further information and changes to the timetable

After reviewing responses submitted by the Applicant for Deadline 3, Thursday 30 November 2017, I consider issues have been raised which are both important and relevant. I have set out my specific queries in **Annex A** to this letter, which are directed towards the Applicant, the Environment Agency and Natural England. While I note that the Applicant has indicated that it intends to respond on matters concerning the Habitat Regulations Assessment by Wednesday 13 December 2017, I have instead set a deadline for this response, along with those to my questions in Annex A for Deadline 5, **Tuesday 9 January 2018**.

As a result of the response from the Applicant at Deadline 3, I will need to revise the timetable by inserting a requirement to produce a Report on the Implications for European Sites (RIES). The revised examination timetable is set out in **Annex B** to this letter.

I also wish to inform all parties that I do not intend to hold an Issue Specific or Compulsory Acquisition Hearings schedule for Tuesday 23 and Wednesday 24 January 2018.

A summary of the proposed changes to the timetable is set out below:

- Response to Rule 17 Letter issued to Eggborough Power Limited, Natural England and the Environment agency **by Tuesday 9 January 2018 (Deadline 5)**
- Cancellation of the Issue Specific Hearing and Compulsory Acquisition hearing **on Tuesday 23 and Wednesday 24 January 2018**

- Issue of the RIES **on Thursday 25 January 2018**
- Comments on the REIS **by Wednesday 14 February 2018 (Deadline 7)**
- Responses to comments on the REIS **by Wednesday 28 February 2018 (Deadline 8)**

The Inspectorate requests that interested parties send, where practicable, electronic copies of their submissions as email attachments to EggboroughCCGT@pins.gsi.gov.uk.

Most people engage with our process via our website, where all submissions are published. Parties are therefore asked to consider this when formatting the electronic copies of their submissions and to avoid submissions made up of large numbers of small files, or excessively large files, or which are otherwise not optimised or unnecessarily difficult to navigate.

Electronic attachments should be clearly labelled with a subject title and not exceed 12MB for each email. Timely submissions in advance of the deadlines set in the timetable are encouraged. Where an electronic submission exceeds 12MB, we will accept the postal submission of an electronic document on portable media (such as a CD or USB flash drive). Providing links to websites where your submissions can be viewed is not acceptable.

Parties who are not comfortable with making submissions electronically are welcome to make their submission by post.

Should you have any queries regarding the content of the letter, please contact the case team using the details at the top of this letter.

Yours faithfully

Richard Allen

Richard Allen
Examining Authority

HABITATS REGULATIONS ASSESSMENT

Questions for the Applicant, the Environment Agency (EA), and Natural England (NE)

Questions

1. Can the Applicant, EA and NE comment on the reliance placed on the EA's significance criteria as set out in paragraphs 8.3.29 and 8.3.42 of the Environmental Statement [APP-046] and paragraph 3.4 of the Technical Note on air quality impacts [REP3-010] in concluding no likely significant effects (LSE) of the project alone and in-combination for the purposes of HRA. In particular, why the relevant thresholds are applicable for HRA (eg increases in process contributions to critical loads of less than 1% being considered 'insignificant').
2. For the last sentence of question 1 above, can NE specifically confirm that the EA's EPR Risk Assessment screening criteria, set against National Air Quality Strategy Objectives, which defines 'insignificant effects' as being where long-term process contributions should be less than, or equal to 1%, is a suitable criteria for the assessment of the effects on European sites in respect of HRA.
3. Can the Applicant, EA and NE explain if and why the thresholds applied in the Applicant's assessment for determining the absence of LSE (or otherwise) are appropriate for European sites where there are already exceedances above the critical loads or levels for given pollutants (as identified in tables 2-6 of [REP2-017]). The explanation should take into account the impact of the proposed development alone and in-combination with other plans and projects.
4. The judgment in *Wealden District Council v Secretary of State for Communities and Local Government* [2017] EWHC 351 highlights the procedural requirement of the Habitats Regulations in regard to the assessment of in-combination effects. The ExA acknowledges the Applicant's current approach described in Chapter 20 of the ES (paragraph 20.5.10 [APP-046]) which explains that the in-combination assessment has been undertaken on a qualitative basis. The current HRA matrices [APP-111] refer to this as evidence of no LSE in-combination with other plans and projects. The ExA is unclear as to how the conclusions reached in regards to in-combination effects are substantiated with reference to the thresholds applicable to the findings of LSE as referred to in question 1 above. The ExA requests the Applicant provide the information necessary to undertake the assessment of LSE of the Proposed Development in-combination with other plans and projects, with particular reference to the thresholds of LSE as referred to above.
5. Notwithstanding the points raised above, and in accordance the applicant's

methodology, an appropriate assessment is necessary for the Thorne Moor SAC. The ExA requests the applicant to provide the information necessary for the competent authority to undertake this assessment. The information should be sufficient to enable an assessment of the impacts to the integrity of the site in view of its conservation objectives. Where necessary, the information should explain the current conservation status of the site and how the proposed development will or will not affect this.

6. The Applicant's submissions identify that the contributions associated with the "fully operational" existing Eggborough Power Station are circa 3% of the critical loads but are not specific as to which pollutants / sites this relates (paragraph 2.27 of [REP3-010]). In undertaking the assessments referred to above, the applicant should explain the extent to which the reductions referred to are taken into account and are relevant to the findings of no LSE or the appropriate assessment(s). The ExA also invites NE and the EA to comment on this point.
7. The ExA notes the purported agreement reached between the applicant and the EA and NE regarding BAT and the potential use of SCR (paragraphs 2.22 and 2.28 of [REP3-010]). The ExA is aware that, at this moment in time, the applicant is unable to discount the need for SCR during the operation of the proposed development. Therefore, the assessment undertaken to inform the HRA process including appropriate assessment (where required) should include assessment of the SCR option.
8. With regard to the above, the ExA requests NE to confirm if they are still content with the Applicant's conclusions of no LSE (alone and in-combination with other plans and projects) at the sites identified as being relevant in the assessment.

AMENDED EXAMINATION TIMETABLE

The Examining Authority's (ExA) examination of the application takes the form of consideration of written submissions about the application. The ExA will also consider oral representations made at any hearings. The ExA is under a duty to complete the examination of the application by the end of the period of 6 months beginning with the day after the close of the Preliminary Meeting.

Item	Matters	Due Dates
12	Publication by the ExA of: <ul style="list-style-type: none"> • ExA's Further Written Questions (if required) 	Thursday 14 December 2017
13	Deadline 4 Deadline for receipt of: <ul style="list-style-type: none"> • Comments on Applicant's revised draft DCO • Updated Compulsory Acquisition schedule • Updated Statements of Common Ground • Responses to further information requested by the ExA 	Thursday 21 December 2017
14	Deadline 5 Deadline for receipt of: <ul style="list-style-type: none"> • Responses to ExA's Further Written Questions (if required) • Responses to further information requested by the ExA 	Tuesday 9 January 2018
15	Publication by the ExA of: <ul style="list-style-type: none"> • Report on the Implications for European Sites (RIES) 	Thursday 25 January 2018

<p>16</p>	<p>Deadline 6</p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> • Updated Guide to application documents • Applicant’s revised draft DCO • Comments on responses to further questions (if required) • Updated Guide to Application document tracker • Responses to further information requested by the ExA 	<p>Wednesday 31 January 2018</p>
<p>17</p>	<p>Deadline 7</p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> • Comments on Applicant’s revised draft DCO • Comments on the RIES • Responses to further information requested by the ExA 	<p>Wednesday 14 February 2018</p>
<p>18</p>	<p>Publication by the ExA of:</p> <ul style="list-style-type: none"> • The ExA’s draft DCO (if required) 	<p>Wednesday 21 February 2018</p>
<p>19</p>	<p>Deadline 8</p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> • Comments on the ExA’s draft DCO (if required) • Responses to comments on the RIES • Updated Statements of Common Ground • Updated Compulsory Acquisition schedule • Responses to further information requested by the ExA 	<p>Wednesday 28 February 2018</p>

20	Time reserved for issue by the ExA of: <ul style="list-style-type: none"> • Any further information requests under Rule 17 (if required) 	Wednesday 7 March 2018
21	Deadline 9 Deadline for receipt of: <ul style="list-style-type: none"> • Responses to comments on the ExA's draft DCO (if required) • Final DCO to be submitted by the Applicant in the SI template with the SI template validation report • Final updated Book of Reference • Final Statements of Common Ground • Final Compulsory Acquisition Schedule • Final Guide to Application document tracker • Responses to further information requested by the ExA 	Wednesday 14 March 2018
22	The ExA is under a duty to complete the examination of the application by the end of the period of 6 months beginning with the day after the close of the Preliminary Meeting	Tuesday 27 March 2018

Advice may be given about applying for an order granting development consent or making representations about an application (or a proposed application). This communication does not however constitute legal advice upon which you can rely and you should obtain your own legal advice and professional advice as required.

A record of the advice which is provided will be recorded on the National Infrastructure Planning website together with the name of the person or organisation who asked for the advice. The privacy of any other personal information will be protected in accordance with our Information Charter which you should view before sending information to the Planning Inspectorate.