



Department for
Business, Energy
& Industrial Strategy

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Our Ref: EN010081

20 September 2018

Dear Sir or Madam,

PLANNING ACT 2008

APPLICATION FOR THE EGGBOROUGH COMBINED CYCLE GAS TURBINE (GENERATING STATION) ORDER

I. Introduction

1.1 I am directed by the Secretary of State for Business, Energy and Industrial Strategy (“the Secretary of State”) to advise you that consideration has been given to the report dated 27 June 2018 of the Examining Authority (“the ExA”), Richard Allen B.Sc(Hons) PGDip MRTPI, who conducted an examination into the application (“the Application”) submitted on 30 May 2017 on behalf of Eggborough Power Limited (“the Applicant”) for a Development Consent Order (“the Order”) under section 37 of the Planning Act 2008 (“the 2008 Act”) for the Eggborough Combined Cycle Gas Turbine (“CCGT”) Generating Station (“the Development”).

1.2 The Application was accepted for examination on 27 June 2017. The examination began on 27 September 2017 and was completed on 27 March 2018.

1.3 The Order, as applied for, would grant development consent for the construction and operation of a CCGT generating station of up to 2,500 megawatts (“MW”) on land located at the existing Eggborough Coal-Fired Power Station site near Selby in North Yorkshire.

1.4 The Development would comprise:

- An electricity generating station located on land at the existing Eggborough Power Station site, fuelled by natural gas and with a gross output of up to 2500 MW; a peaking and black start plant with a combined gross output of up to 299 MW; and cooling infrastructure;

- Temporary construction and laydown area involving the infilling of an existing on-site lagoon, and reserve space for carbon capture readiness;
- Works to the existing National Grid Electricity Transmission (“NGET”) sub-station including underground and overground electrical cables, replacement equipment and connections to busbars;
- Works to replace the existing cooling water intake and discharge infrastructure from the River Aire;
- Works to replace the existing groundwater and towns water supply connections;
- Installation of a high-pressure gas supply pipeline to link the proposed CCGT to the National Grid Gas Feeder pipeline;
- Installation of an above-ground installation for both the Applicant and National Grid Gas at the gas pipeline connection point;
- Landscaping and biodiversity enhancements;
- Surface water drainage works from the site to Hensall Dyke utilising an existing connection; and
- Vehicular, pedestrian and cycle access works.

1.5 Published alongside this letter on the Planning Inspectorate’s website¹ is a copy of the ExA’s Report of Findings and Conclusions and Recommendation to the Secretary of State (“the ExA Report”). The ExA’s findings and conclusions are set out in Chapters 4 to 8 of the ExA Report, and the ExA’s summary of conclusions and recommendation is at Chapter 9.

II. Summary of the ExA’s Report and Recommendation

2.1 The principal issues considered during the Examination on which the ExA has reached conclusions on the case for development consent are set out in the ExA Report under the following broad headings:

- Legal and Policy Context, including the relevant National Policy Statements, European and Local planning policy (Chapter 3);
- Finding and Conclusions in relation to policy and factual issues, which includes consideration of: Sources of Information; Environmental Impact Assessment (“EIA”) Methodology; the need for the proposed development and examination of alternatives; Agriculture and Socio-Economics; Air Quality and Emissions; Archaeology and Historic Environment; Biodiversity and Ecology; Carbon Capture Storage Readiness; Combined Heat and Power Readiness; Flooding and Water; Land Contamination and Ground Conditions; Landscape and Visual; Noise and Vibration; Statutory Nuisance and Human Health; Sustainability and Climate Change; Traffic and Transport; Waste Management; Cumulative and Combined Effects; and the existing Coal-fired Power Station (Chapter 4);
- Findings and Conclusions in Relation to the Habitats Regulations (Chapter 5);

¹ <https://infrastructure.planninginspectorate.gov.uk/projects/yorkshire-and-the-humber/eggborough-ccgt/>

- The ExA’s Conclusion on the Case for Development Consent (Chapter 6);
- Compulsory Acquisition and Related Matters (Chapter 7); and
- Draft Order and Related Matters, including the Deemed Marine Licence (“DML”) and other Legal Agreements and related documents (Chapter 8).

2.2 For the reasons set out in the Summary of Findings and Conclusions (Chapter 9) of the ExA Report, the ExA recommends that the Order be made, as set out in Appendix D to the ExA Report [ER 9.1.10].

III. Summary of the Secretary of State’s Decision

3.1 The Secretary of State has decided under section 114 of the 2008 Act to make, with modifications, an Order granting development consent for the proposals in the Application. This letter is the statement of reasons for the Secretary of State’s decision for the purposes of section 116 of the Planning Act 2008 and regulation 23(2)(d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (“the 2009 Regulations”) – which apply to this application by operation of regulation 37(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

IV. Secretary of State’s Consideration of the Application

4.1 The Secretary of State has considered the ExA Report and all other material considerations, including the further representations received after the close of the ExA’s examination from the Applicant and the Crown Estate both dated 20 August 2018 in response to BEIS’s consultation letter dated 9 July 2018². The Secretary of State’s consideration of the ExA Report and further representations is set out in the following paragraphs. All numbered references, unless otherwise stated, are to paragraphs of the ExA Report.

4.2 The Secretary of State has had regard to the joint Local Impact Report (“LIR”) as submitted by North Yorkshire County Council (“NYCC”) and Selby District Council (“SDC”) [ER 3.10 and ER 4.2.5 – ER 4.2.6], the Development Plan [ER 3.11 and ER 4.2.7 – ER 4.2.9], environmental information as defined in Regulation 2(1) of the 2009 Regulations and to all other matters which are considered to be important and relevant to the Secretary of State’s decision as required by section 104 of the 2008 Act. In making the decision, the Secretary of State has complied with all applicable legal duties and has not taken account of any matters which are not relevant to the decision.

4.3 The Secretary of State notes nineteen relevant representations were made by statutory and non-statutory authorities, utility providers, NYCC and SDC, Hensall Parish Council and local residents [ER 4.2.1]. Written Representations, responses to questions and oral submissions made during the Examination were also taken into account by the ExA. Except as indicated otherwise in the paragraphs below, the Secretary of State agrees with the findings, conclusions and recommendations of the

² [https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010081/EN010081-001480-Egborough%20CCGT%20Consultation%20Letter%20Dated%209%20July%202018%20\(2\).pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010081/EN010081-001480-Egborough%20CCGT%20Consultation%20Letter%20Dated%209%20July%202018%20(2).pdf)

ExA as set out in the ExA Report, and the reasons for the Secretary of State's decision are those given by the ExA in support of his conclusions and recommendations.

Need for the Proposed Development and Examination of Alternatives

4.4 After having regard to the comments of the ExA set out in Chapter 3 (ER 3.3] of the ExA Report, and in particular the conclusions on the case for development consent in Chapter 4.5, the Secretary of State is satisfied that in the absence of any adverse effects which are unacceptable in planning terms, making the Order would be consistent with energy National Policy Statements ("NPS") EN-1 (the Overarching NPS for Energy), EN-2 (the NPS for Fossil Fuel Electricity Generating Infrastructure), EN-4 (the NPS for Gas Supply Infrastructure and Gas and Oil Pipelines) and EN-5 (the NPS for Electricity Networks Infrastructure). Taken together, these NPSs set out a national need for development of new nationally significant electricity generating infrastructure of the type proposed by the Applicant. The Secretary of State notes that the ExA is satisfied that alternative options for the siting of the proposed CCGT and route corridor for Work No.6 (gas pipeline) were rigorously tested by the Applicant and that the requirements of NPS EN-1 and the EIA Regulations in this regard have been met [ER 4.5.13].

Carbon Capture Readiness ("CCR")

4.5 As set out in NPSs EN-1 and EN-2, all commercial scale fossil fuel generating stations with a generating capacity of 300MW or more have to be 'Carbon Capture Ready'. Applicants are required to demonstrate that their proposed development complies with guidance issued by the Secretary of State in November 2009³ or any successor to it.

4.6 The Secretary of State notes that the Application was accompanied by a Carbon Capture Storage and Carbon Capture Readiness Statement, which also included an economic assessment and information on Carbon storage and transport. It is also noted that the Environment Agency ("EA") were consulted and concluded there are no foreseeable barriers to carbon capture with regard to space and, following clarification by the Applicant during the Examination, confirmed that it had no concerns in respect of CCR matters and that provision for CCR is adequately secured through Requirements 31 and 32 of the Order. The Statement of Common Ground between the Applicant and NYCC/SDC also agrees that the Development complies with the relevant regulations and guidance [ER 4.10.3 -4.10.4]. No written questions were posed by the ExA during the Examination on this matter [ER 4.10.5].

4.7 The Secretary of State is satisfied with the ExA's assessment of this particular issue, and conclusion that the Development adequately makes provision for CCR,

³ Carbon Capture Readiness A guidance note for Section 36 Applications URN09D/810
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/43609/Carbon_capture_readiness_-_guidance.pdf

accords with all legislation and policy requirements, and that CCR is adequately provided for and secured in its recommended Order [ER 4.10.6].

Combined Heat and Power (“CHP”)

4.8 NPS EN-1 requires that applications for thermal generation stations under the Planning Act 2008 should either include CHP, or evidence that opportunities for CHP have been explored where the proposal is for a generating station without CHP. The Secretary of State notes that the Application was accompanied by a CHP Assessment which concludes that the provision of heat or steam is not viable at this stage. However, the CHP assessment demonstrates that the proposed Development meets the “Best Available Techniques” tests and will be designed and built as CHP Ready to supply any identified viable heat load up to a potential maximum of 33MWth and sufficient to meet the identified load of 21MWth [ER 4.11.3]. The Statements of Common Ground between the Applicant and the Environment Agency (“EA”) and the Applicant and NYCC/SDC agree that the proposed Development would be CHP ready, which would be secured by Requirement 28 of the recommended Order [ER 4.11.5].

4.9 The Secretary of State is satisfied with the ExA’s conclusion that the proposed Development adequately makes provision for CHP, accords with all legislation and policy requirements and CHP is adequately provided for and secured in the recommended Order [ER 4.11.7].

V. Biodiversity and Habitats

5.1 The Development is not directly connected with or necessary to the management of any European Site. Therefore, under Regulation 63 of The Conservation Of Habitats And Species Regulations 2017 (“the Habitats Regulations”), the Secretary of State is required to consider whether the Development would be likely, either alone or in-combination with other plans and projects, to have a significant effect on a European site. If likely significant effects cannot be ruled out, then the Secretary of State must undertake an Appropriate Assessment (“AA”) addressing the implications for the European Site in view of its conservation objectives. In light of any such assessment, the Secretary of State may grant development consent only if it has been ascertained that the Development will not, either on its own or in-combination with other plans and projects, adversely affect the integrity of such a site, unless there are no feasible alternative or imperative reasons of overriding public interest apply. The complete process of assessment is commonly referred to as a Habitats Regulations Assessment (“HRA”).

5.2 In undertaking the HRA, the Secretary of State considered the following European Sites:

- Skipwith Common Special Area of Conservation (SAC);
- Thorne Moor SAC;
- Hatfield Moor SAC;
- Humber Estuary SAC;

- Humber Estuary Special Protection Area (SPA);
- Humber Estuary Ramsar;
- Strensall Common SAC; and
- North York Moors SAC.

5.3 All of the above listed sites were thought to either have the potential to be impacted by the Development through changes to surface water or changes to air quality. However, on the basis of the information submitted as part of the Application, the Secretary of State has concluded that the Development, alone and in-combination is not likely to have a significant effect on the on the above listed sites. This is with the exception of the Thorne Moor SAC; at this site air emissions from the operational Development are expected to contribute to increased Nutrient Nitrogen Deposition.

5.4 To assess this effect further, the Secretary of State undertook an Appropriate Assessment. This assessment focused on the effect of the increase in Nutrient Nitrogen Deposition on the site's qualifying feature ('degraded raised bogs still capable of natural regeneration'). The assessment noted that the level of Nutrient Nitrogen Deposition at this site (and many other European Sites) already exceeds the measures established for the protection of vegetation, known as Critical Loads or Critical Levels. However, on the basis that the contribution from the Development, in-combination with other plans and projects, would result in no measurable change to the protected bog habitat, the Secretary of State has concluded that the Development, alone and in-combination with other plans and projects, will not have an adverse effect on the protected bog feature, and therefore the integrity of the Thorne Moor SAC. This conclusion is supported by Natural England, the Government's Statutory Nature Conservation Advisor.

VI. Other Matters

Deemed Marine Licence Environmental Permit, and other consents, licences and permits

6.1 The Secretary of State notes that Schedule 13 of the Order is the Deemed Marine Licence ("DML") under the Marine and Coastal Act 2009 for cooling water and gas connections within the tidal section of the River Aire. The Marine Management Organisation ("MMO") submitted a number of written representations during the examination. It is understood that the MMO's principal concern had been in relation to the wording of part 2, paragraph (3)(4)(b) of the Applicant's draft DML, which they considered would have allowed the Applicant to undertake the proposed Development over a wider (and unassessed) area than indicated in the indicative DML Co-Ordinates [ER 8.8.3]. However, it is noted that revised wording was subsequently agreed within the Statement of Common Ground between the Applicant and the MMO [ER 8.8.5]. The revised wording has been included in the recommended Order and the Secretary of State agrees with the ExA that its inclusion in the Order adequately protects the interests and functions of the MMO [ER 8.8.6].

6.2 It is noted from the EA's Statement of Common Ground [REP3-008] submitted at Examination Deadline 3 that it was agreed that the proposed Development would

be subject to the Environmental Permitting regime under the Environmental Permitting Regulations 2010 ('EPR') covering operational emissions from the generating station. It was further agreed that the preferred approach to permitting the Proposed Development is to apply for a substantial variation to the existing Environmental Permit for the power station site (reference EPR/VP3930LH/V007).

6.3 The Statement of Common Ground agrees that the Secretary of State must be satisfied that potential emissions from the Development can be adequately regulated under the EPR, as outlined in paragraph 4.10.7 of NPS EN-1. It is noted, having considered the general content of the ES for the Development, the EA is satisfied and agrees that it is of a type and nature that should be capable of being adequately regulated under EPR. Further, the EA is not aware of anything that would preclude the granting of an Environmental Permit. The EA will examine information on air quality (including the air dispersion modelling), noise and other emissions to the environment which will be provided by the Applicant as part of the Environmental Permit application, but at this point in time they are not aware of any reason why it would not be possible to address these matters as part of the EPR application process and issues that may arise.

6.4 In the circumstances, the Secretary of State considers there are no reasons to believe the Environmental Permit will not be granted in due course.

6.5 Similarly, the Secretary of State notes there are various other consents, licences and permits that are likely to be required to construct and operate the proposed Development [ER 1.9.1] and has no reason to believe that the relevant approvals would also not be forthcoming.

VII. Consideration of Compulsory Acquisition and Related Further Representations

7.1 The Secretary of State notes that some issues relating to Compulsory Acquisition ("CA") and Temporary Possession ("TP") powers sought by the Applicant were unresolved at the close of the ExA's examination. As a result, the ExA recommended that the Secretary of State might wish to further consult the relevant interested parties [ER 7.6.25 and ER 7.6.29]. The BEIS consultation letter to the relevant interested parties (i.e. the Applicant, Crown Estates Commissioners and Northern Gas Networks) was issued on 9 July 2018. The outstanding issues and subsequent representations received by the Planning Inspectorate since the close of the ExA's examination are considered further below. The representations received in response to the consultation letter were:

- Dalton Warner Davis' letter of 23 July 2018 on behalf of the Applicant;
- The Crown Estate's letter of 20 July 2018;
- The Crown Estate's letter of 20 August 2018; and
- Dalton Warner Davis' letter of 20 August 2018 on behalf of the Applicant.

Crown Land/Section 135 Test

7.2 Section 135 of the Planning Act 2008 states that a DCO may include a provision authorising CA of an interest in Crown land only if: i) it is an interest which is for the time being held otherwise than by or on behalf of the Crown; and ii) the appropriate Crown authority consents to the CA. The Secretary of State notes that the Applicant is seeking powers to compulsorily acquire new rights over land that falls within the Crown interest (Plots 245, 255 and 690). Although the Applicant had been engaged with the Crown Estate's agents during the Examination to reach an agreement and stated in its submission at Deadline 9 that it had been signed, no further communication was received from the Crown Estate to confirm this or to state that it had authorised Crown land to be used. Without this confirmation, the ExA was unable to recommend that the Section 135 test has been passed and recommended that the Secretary of State seek confirmation from the Crown Estate that it has consented for Crown land to be used [ER 7.6.24 – ER 7.6.25]. Accordingly, the Crown Estate Commissioners were further consulted on this matter and confirmed by letter dated 20 August 2018 that it has reached a separate agreement with the Applicant which provides the Commissioners with sufficient assurance as to the way in which compulsory acquisition powers may be exercised and as a result confirmed their consent to the compulsory acquisition of third party interests in the relevant plots of land. This was subject to the inclusion of its suggested revised wording for Article 42 of the Order dealing with Crown rights. The Applicant has confirmed its agreement to the revised wording in the Order. The Secretary of State is also content with the Crown Estate's proposed revisions and is therefore satisfied that the Section 135 test in respect of Crown land is passed.

Northern Gas Networks Protective Provisions/Section 127 &138 Tests

7.3 Section 127 of the Planning Act 2008 relates to statutory undertakers' land. Section 127(5) and (6) states that a DCO may include provision authorising CA of a right over their land providing it can be done so without serious detriment to the carrying out of the undertaking, or that any detriment can be made good. Section 138 relates to the extinguishment of rights and section 138(4) states that a DCO may include a provision for the extinguishment of the relevant rights, or the removal of the relevant apparatus only if the Secretary of State is satisfied that the extinguishment or removal is necessary for the purposes of carrying out the development to which it relates. Both provisions are relevant to the statutory undertakers with land and equipment interests within the Order interests.

7.4 The Secretary of State notes that the Applicant and Northern Gas Networks had agreed to sign a private Asset Protection Agreement to protect the undertaker's interests. However, this was not signed by the close of the Examination [ER 7.6.27]. The ExA was content that the Section 127 and 138 tests are satisfied and there would be no serious detriment to Northern Gas Networks (or other statutory undertakers), but suggested the Secretary of State may want to seek confirmation from the Applicant that the private Asset Protection Agreement has been signed. Accordingly, the Applicant and Northern Gas Networks were further consulted on this matter and have

confirmed that an Asset Protection Agreement was signed on 12 July 2018. The Secretary of State is therefore satisfied that Northern Gas Networks' undertakings would be preserved and protected [ER 7.6.26 – ER 7.6.29].

Canal & River Trust ("CRT") Protective Provisions

7.5 The Secretary of State notes that CRT had also maintained an objection to the protective provisions in Schedule 12, Part 3 of the Applicant's draft Order. The objection related to an indemnity cap and also the Applicant's exclusion from liability for any consequential losses experienced by CRT as a result of the Development [ER 8.5.23-8.5.36]. The ExA reached a preliminary conclusion that both provisions placed an unreasonable and unjustified burden on CRT and as a result, recommended amendments to the draft Order. It is noted that the ExA's suggested modifications to the Applicant's final version of the draft Order, which are in line with the CRT's suggested wording, were not agreed before the close of the Examination. However, as both parties were given adequate opportunity to make their cases on this disagreement and their positions are clear, the Secretary of State considers nothing would have been gained by further consulting on the ExA's suggested modifications to Schedule 12, Part 3 of the Order. Further, the Secretary of State agrees with the ExA that the Applicant's suggested wording would place an unreasonable and unjustified burden on CRT, which would face a risk of potential costs and losses through no fault of its own [ER8.5.30] and is therefore satisfied with the ExA's recommendations on this matter [ER 8.5.32 - ER 8.5.36].

Human Rights Act 1998

7.6 The Secretary of State has considered the potential infringement of human rights in relation to the European Convention on Human Rights by the Development and the compulsory purchase powers contained in the draft Order. The Secretary of State notes the ExA's conclusion that: the Examination ensured a fair and public hearing; any interference with human rights arising from implementation of the Development is proportionate and strikes a fair balance between the rights of the individual and the public interest; and that compensation would be available in respect of any quantifiable loss. He agrees that there is no disproportionate or unjustified interference with human rights so as to conflict with the provisions of the Human Rights Act 1998 [ER 7.7.6].

Conclusion on CA [ER 7.7.1 – ER 7.7.6 and ER 9.1.5 – ER 9.1.9]

7.7 Having considered the ExA's analysis of CA and TP including the examination and also the further representations received, the Secretary of State agrees that the Development for which the land and rights are sought would be in accordance with national policy as set out in the relevant NPSs and that there is a national need for electricity generating capacity, including capacity from gas combustion. He is satisfied that the need to secure the land and rights required, and to construct the Development within a reasonable commercial timeframe represent a significant public benefit. The Secretary of State is content that the private loss to those affected is mitigated through

the choice of the Application land, and the limitation to minimum extent possible of the rights and interests proposed to be acquired. He agrees that the Applicant has explored all reasonable alternatives to the CA of the land, rights and interests sought and there are no better alternatives. The Secretary of State is content that adequate and secure funding would be available to enable CA within the statutory period following the Order being made and there would be no disproportionate or unjustified interference with human rights of individuals. In conclusion, the CA powers are justified and there is a compelling case in the public interest for land and interests to be compulsorily acquired and the Development would comply with the relevant sections of the Planning Act 2008.

VIII. Other Legal Agreements and Related Documents

8.1 The Secretary of State notes that, following concerns from the ExA during the Examination, no secure method for the demolition of the existing coal-fired power station existed. A signed Planning Agreement was therefore put in place under section 106 of the Town and Country Planning Act 1990 to secure its demolition in a timely manner if the Secretary of State makes the Order and the Development commences.

8.2 The Secretary of State understands that some loss of habitats on the Application site would occur through tree and existing lagoon removal, which the Applicant proposed would be mitigated through an agreed Landscape and Biodiversity Strategy secured by Requirement 6 of the Order. However, it is noted that there was a disagreement between the Applicant, Yorkshire Wildlife Trust and NYCC/SDC during the Examination over the Applicant's predicted onshore biodiversity offsetting calculations set out in the Indicative Landscape and Biodiversity Strategy. The Applicant subsequently recognised that its biodiversity offsetting calculations showed only a very small biodiversity gain, and on reflection it accepted more needed to be done. Yorkshire Wildlife Trust highlighted that an opportunity existed for the Applicant to contribute towards an off-site project in the Lower Aire Valley following a study on how natural processes could best be utilised to reduce flooding. This was one of two locations in the River Aire catchment (and the only one in the Lower Aire) which has high potential for habitat creation to be undertaken to reduce flood risk. As a result, a section 106 Planning Agreement was agreed to secure a financial contribution from the Applicant payable to SDC towards off-site wetland habitat creation in the Lower Aire Valley (ER 4.9).

8.3 The Secretary of State notes that in the ExA's judgement, both agreements are essential to the recommendation to make the Order [ER 8.9.2]. The Secretary of State is aware that a new National Planning Policy Framework was published in July 2018 (i.e. after the close of the ExA's Examination). However, the Secretary of State is content that there are no significant dissimilarities in the approach taken to sustainable development or to nationally significant infrastructure in the new National Planning Policy Framework [ER 3.12.2]. The Secretary of State is also satisfied the same tests set out for planning obligations still apply [ER 3.12.2] and that both of the above agreements meet the tests in that they are: necessary to make the Development acceptable in planning terms; directly related to the Development; and fair and reasonably related in scale and kind to the Development [ER 4.9.26 and ER 4.21.13].

8.4 In addition, the Secretary of State notes an Agreement under section 111 of the Local Government 1972, section 1 of the Localism Act 2011 and section 93 of the Local Government Act 2003 has also been signed to ensure parties will adopt a collaborative and constructive approach to discharge the Requirements in the Order.

IX. General Considerations

Equality Act 2010

9.1 The Equality Act 2010 includes a public sector “general equality duty”. This requires public authorities to have due regard in the exercise of their functions to the need to eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Act; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not in respect of the following “protected characteristics”: age; gender; gender reassignment; disability; marriage and civil partnerships⁴; pregnancy and maternity; religion and belief; and race. This matter has been considered by the Secretary of State who has concluded that there was no evidence of any harm, lack of respect for equalities, or disregard to equality issues.

Natural Environment and Rural Communities Act 2006

9.2 The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006, has to have regard to the purpose of conserving biodiversity, and in particular to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when granting development consent.

9.3 The Secretary of State is of the view that the ExA’s report, together with the environmental impact analysis, considers biodiversity sufficiently to inform him in this respect. In reaching the decision to give consent to the Development, the Secretary of State has had due regard to conserving biodiversity.

X. Secretary of State’s conclusions and decision

10.1 For the reasons given in this letter, the Secretary of State considers that there is a compelling case for granting consent. Given the national need for the proposed Development, as set out in the relevant National Policy Statements referred to above, the Secretary of State does not believe that this is outweighed by the Development’s potential adverse local impacts, as mitigated by the proposed terms of the Order.

⁴ In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

10.2 The Secretary of State has therefore decided to accept the ExA's recommendation to make the Order granting development consent [ER 9.1.10]. In reaching this decision, the Secretary of State confirms regard has been given to the ExA Report, the joint LIR submitted by NYCC/SDC and to all other matters which are considered important and relevant to the Secretary of State's decision as required by section 104 of the 2008 Act. The Secretary of State confirms for the purposes of regulation 3(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 that the environmental information as defined in regulation 2(1) of those Regulations has been taken into consideration.

XI. Modifications to the Order by the Secretary of State

11.1 The Secretary of State has made the following modifications to the Order:

- Renaming the Order applied for from '*The Eggborough CCGT (Generating Station) Order*' to '*The Eggborough Gas Fired Generating Station Order 2018*' for consistency with other recent Orders for CCGT generating stations made by the Secretary of State;
- Amendments to Article 6 to clarify the entity having the benefit of the provisions of the Order; and
- Amendments to Article 42 (Crown rights) to reflect the revisions agreed by the Crown Estate and Applicant.

Other Drafting Changes

11.2 In addition to the above, the Secretary of State has made various changes to the draft Order which do not materially alter its effect, including changes to conform with the current practice for statutory instruments (for example, modernisation of language), changes in the interests of clarity and consistency and changes to ensure that the Order has the intended effect.

XII. Challenge to decision

12.1 The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached at the Annex to this letter.

XIII. Publicity for decision

13.1 The Secretary of State's decision on this Application is being publicised as required by section 116 of the 2008 Act and regulation 23 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009.

13.2 Section 134(6A) of the Planning Act 2008 provides that a compulsory acquisition notice shall be a local land charge. Section 134(6A) also requires the compulsory acquisition notice to be sent to the Chief Land Registrar, and this will be the case where the order is situated in an area for which the Chief Land Registrar has given notice that he now keeps the local land charges register following changes made by Schedule 5 to the Infrastructure Act 2015. However where land in the order is situated in an area for which the local authority remains the registering authority for

local land charges (because the changes made by the Infrastructure Act 2015 have not yet taken effect), the prospective purchaser should comply with the steps required by section 5 of the Local Land Charges Act 1975 (prior to it being amended by the Infrastructure Act 2015) to ensure that the charge is registered by the local authority.

Yours sincerely

Gareth Leigh
Head of Energy Infrastructure Planning

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the Planning Court during the period of 6 weeks beginning with the day after the day on which the Order is published. The decision documents are being published on the date of this letter on the Planning Inspectorate website at the following address:

<https://infrastructure.planninginspectorate.gov.uk/projects/yorkshire-and-the-humber/eggborough-ccgt/>

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655)