



## Meeting note

<b>File reference</b>	EN010081
<b>Status</b>	<b>Final</b>
<b>Author</b>	Karl-Jonas Johansson
<b>Date</b>	5 April 2017
<b>Meeting with</b>	Eggborough Power Limited
<b>Venue</b>	Temple Quay House
<b>Attendees</b>	<b>The Planning Inspectorate:</b> Chris White (Infrastructure Planning Lead) Kay Sully (Case Manager ) Sarah George (Lawyer) Karl-Jonas Johansson –( Case Officer)  <b>Eggborough Power Limited</b> James Crankshaw (Eggborough Power Limited) Jason Morris (Eggborough Power Limited) Nick McDonald (Pinsent Masons) Richard Lowe (AECOM) Geoff Bullock (Dalton Warner Davis LLP) Carl Weaver (Ardent)
<b>Meeting objectives</b>	Project update
<b>Circulation</b>	All attendees

### Summary of key points discussed and advice given:

#### Welcome and Introductions

The Applicant and the Planning Inspectorate (the Inspectorate) case team introduced themselves and their respective roles. The Inspectorate continued by outlining its openness policy and ensured those present understood that any issues discussed and advice given would be recorded and placed on the Inspectorate's website under s51 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.

#### Project update including submission timeline

The Applicant reconfirmed the submission date for the application of 30 May 2017. It was agreed that the Applicant would notify the Inspectorate if there was any changes to this date.

## **Development Consent Order (DCO) & Explanatory Memorandum (EM)**

### Article 2

The Inspectorate highlighted that the term "order limits" was defined differently in the definition sections included in the Explanatory Memorandum (EM) and the Statement of Reasons (SoR) to Article 2 of the DCO. The Inspectorate advised that the Applicant ensure consistency in definitions between the application documents.

The Inspectorate highlighted that the definition of the "site" in the EM and the Statement of Reasons (SoR) implied that the "order limits" and the "order land" do not cover the same area of land. The Applicant confirmed that the "order limits" and "order land" in the works and land plans provided did cover the same area but this might change. The Applicant was advised to explain in the EM how the "order land" and "order limits" interact with each other.

The Inspectorate advised that the definition of "order limits" referred to the limits shown on the works plans but that these limits were not entirely clear from the works plans. The Inspectorate suggested that inclusion of "order limits" in the leger by reference to the red line boundary might assist. The Applicant agreed to review this before submitting the final application.

### Article 3 & limits of deviation

The Inspectorate queried the reference in Article 3(2) to numbered works being situated on the "corresponding numbered line" shown on the works plans and the reference in 3(3) to deviation from the "corresponding numbered line" shown on the works plans.

The Applicant clarified that the 'corresponding numbered line' related to the indicative route of the gas pipeline shown on the works plans but that the line might be removed before submitting the application. The Inspectorate highlighted that the indicative gas pipe line route was not a numbered work on the works plan but a line within the area of work number 6 and so did not tie in with the definition in the DCO in any event.

The limits of deviation must be clear from the DCO and works plans. The Inspectorate advised the applicant to review the works plans along with the DCO to ensure that the limits are clear and to consider whether reference to a numbered line in article 3 is necessary or if reference to the numbered work area would suffice.

### Article 7

The Applicant was advised to justify in the EM the need for the wide power in article 7(4) to transfer the benefit of the order to any Statutory Undertaker without the consent of the Secretary of State. The Inspectorate suggested that if this has been included in other made DCOs reference to precedent could be helpful. The Applicant explained that they were considering narrowing the definition to particular categories of Statutory Undertakers and would include justification in the EM by reference to the ability of these bodies to fund compulsory acquisition compensation.

### Article 17 & 20

The Inspectorate suggested that the Applicant explain the extent of the compulsory acquisition (CA) powers sought in the EM and SoR, for example by explaining how the

wide power in article 17 was limited by other articles and setting out the extent of the freehold acquisition actually sought. Reference to the specific plots could be helpful.

The Inspectorate advised that, as currently drafted, the draft DCO permitted the CA of land held by or on behalf of the Crown and that this is not permissible in accordance with s135 Planning Act 2008. The Applicant confirmed that it did not intend to CA any land held by or on behalf of the Crown and that negotiations with The Crown Estate regarding a lease were ongoing. The Inspectorate advised that CA of this land could either be excluded by including wording in these articles similar to that included in Articles 17 and 20 of the Thorpe Marsh Gas Pipeline Order or by exclusion of the Crown interests in the description of land in the Book of Reference (BoR) as in the Triton Knoll Electrical System or East Anglia Three Offshore Wind Farm BoR.

The Inspectorate highlighted that it was not clear whether CA is being sought of any interests held other than by or on behalf of the Crown. The Applicant clarified that the Canal and River Trust didn't have any third party interests but only navigational rights over the River Aire and that they didn't think that there were any other third party rights in Crown land. The Applicant confirmed that it was aware that Part 4 of the BoR needed to be updated in regards of Crown land interests. The Inspectorate advised the Applicant to explain in the SoR whether they are seeking to CA any interests held other than by or on behalf of the Crown. If they are seeking to acquire such interests s135(1) consent must be obtained from the relevant Crown authority prior to any DCO being made and the Applicant was advised to seek this as soon as possible. Section 135(2) consent is required for any other provision in the DCO applying to Crown land or rights benefiting the Crown and the Applicant was advised to seek this as soon as possible.

#### Article 22 & 24 & schedule 9

The Applicant was advised to consider amendments to the wording to reflect changes made by the provisions in the Housing and Planning Act 2016 which were brought into force by the Housing and Planning Act 2016 (Compulsory Purchase) (Corresponding Amendments) Regulations 2017. It was noted that the Silvertown draft DCO had been amended to reflect the changes and might be of assistance.

#### Article 26

The Inspectorate queried how the limitation in Article 26(3), which limits the period of temporary occupation to one year, fits in with the statement in the EM (2.14) which says that the temporary construction laydown area for the construction phase needs to be used for 3 years. The Applicant explained that they would not be using the temporary possession power in Article 26 to occupy the land for the construction laydown area and confirmed that they would explain this in the EM or SoR.

#### Article 42

The Inspectorate advised that the drafting of this Article did not reflect current practice in recently made DCOs and suggested that the Applicant consider the wording of Crown rights articles in the North Wales Offshore Wind Farm Connection Order, Hornsea Two Offshore Wind Farm Order, and Triton Knoll Electrical System Order.

The Applicant was advised to review article 42 to bring it in line with the Secretary of State's current views on section 135 of PA2008.

## Schedule 1

### Work No 1

The Applicant confirmed it had had regard to the Hirwaun Power and Progress Power Orders when defining the electrical output for the peaking plant.

The area covered by Work No 1 and Works No 1A, 1B and 1C on the works plan was discussed and the Applicant was advised to review the definition of what constituted Work No 1. The Applicant was advised to ensure that, if Work No 1 included an area which was not also comprised in Work 1A, 1B or 1C, the requirements cover this area, in particular requirement 5 on detailed design. The Applicant clarified that the part of Work No 1 relating to the bunding would be removed from the description of Work No 1 and given a separate work number to make the extent of Work No 1 clearer. The Applicant further clarified the rationale for splitting Work No 1 into three sections was to allow a certain amount of flexibility where parts of the CCGT station would be positioned within Work No 1, but also to ensure that certain of these elements could not be built in some areas. The Inspectorate advised that the Applicant ensure that the DCO reflected the assessments in the Environmental Statement (ES) and the justify the need for flexibility EM. The Applicant was advised to discuss the level of flexibility needed with the local authority and incorporate anything agreed in the Statement of Common Ground (SoCG) between them.

The Inspectorate iterated its advice regarding the need for the limits of deviation to be clear on the works plan.

### Work No 2

The Inspectorate raised concerns regarding the clarity of this work which appeared to comprise two separate elements, the temporary construction and laydown area and the carbon capture readiness reserve space. The Inspectorate advised the Applicant review the drafting of this work to ensure that the extent of the work is clear from the DCO and works plans. The Applicant explained that the temporary laydown area would, after construction, be reserved for carbon capture and that the mechanism to secure this was set out in requirement 33. The Inspectorate advised that the Applicant explain clearly how the temporary use of the land and the use of the land for carbon capture readiness reserve space will interact, including how long the land would be used as temporary laydown area, in the SoR and EM.

## Further Associated Development

The Applicant explained that the rail line connecting the existing power station to the main line is owned by Eggborough Power Limited and the ability to retain it (in an altered form) has been allowed for as it might be used to transport goods during the construction and demolition phases of the project. The Applicant was advised that it may be useful for the Applicant to consider whether there is a need for a SoCG with any relevant statutory parties if appropriate.

## Schedule 2

### Requirement 1

The Applicant was advised to review appropriateness of use of the phrase "a part" in the context of the Grampian requirements without further definition. The Applicant was advised to ensure that if requirements are permitted to be discharged in "parts" there is clarity and certainty as to what comprises a "part".

#### Requirement 4

The Applicant explained that due to the infrastructure at the site it would not be possible to run both the coal fired power station and the CCGT power station at the same time and that this assumption had formed the basis for assessments in the ES.

The Inspectorate advised that use of the phrase 'existing coal-fired power station' should be sufficiently defined so there can be no doubt as to which coal-fired power station needs to cease generating electricity.

#### Requirement 5

The Applicant was advised to clarify in the EM the need for the flexibility of two options, single and multi-shift parameters.

#### Requirement 6 and 18

The Inspectorate queried whether these should refer to no part of the development being commenced rather than commissioned. The Applicant was advised to justify their approach in the EM.

#### Requirement 33

The Inspectorate advised inclusion of a definition for the "CCR site" and suggested tying it to a defined area on the works plans.

#### Requirement 34

The Inspectorate queried what was meant by reference to "current CCR Proposals" in 34(3). The Applicant advised that this needed amending and confirmed that the drafting would be reviewed prior to submission.

#### Requirement 39

The Applicant clarified that the function of requirement 39 was to tie the design to what has been assessed in the ES. The Inspectorate advised that the Applicant justify the need for flexibility in relation to design drawings in the EM. The Inspectorate queried whether design drawings needed to be defined.

#### Requirement 40

The Applicant was advised to review the drafting of this requirement to ensure that the wording only permitted the LPA to approve non-material changes that did not give rise to any materially different environmental effects from those assessed in the ES rather than only applying to non-material changes.

The Inspectorate queried whether 39(2) was necessary in light of this requirement and the Applicant agreed to review prior to submission.

## Schedule 11

The Applicant was advised to review this schedule in particular in relation to the time limits specified (for example 1(1) compared to 3(2)(b)) and to consider whether appeal mechanism for non-determination was necessary in light of the deemed consent provisions. The Inspectorate noted that in accordance with other provisions in the DCO it would not be possible for the LPA to approve amendments which gave rise to materially new or different environmental effects than those assessed in the ES and queried whether the circumstances in 2(c) would ever arise.

## General

The Applicant clarified that such documents like the Construction Environmental Management Plan (CEMP) would be submitted as individual documents so they could be updated during the examination. The application will also contain a mitigation register that can be updated as the examination progresses.

The Applicant was advised to agree where certified copies of the application would be kept on record and to include this in the draft DCO.

## **Statement of Reasons**

The Applicant was advised to review the description of the CA powers sought and to ensure that the wording correctly reflects this, particularly in relation to the land which is owned by Eggborough Power; and to review table 10. The Applicant was further advised to provide a schedule to show how negotiations on CA are progressing and to review how the Richborough Connection and Hinkley Point C Connection projects had presented this information.

## **Book of Reference**

It was clarified that paragraphs 1.0-1.15 was an overview included in all documents to aid the readers' understanding of the project.

The Applicant informed the Inspectorate that it would renumber the plots in in the BoR consecutively. The Applicant confirmed that this would not affect or confuse those persons with an interest in the land as they had not been consulted on the land by reference to these plot numbers. The Applicant was advised to set out any explanation of this approach in the Consultation Report.

The Applicant clarified that it will revise part two of the BoR to include the Category 3 persons it had consulted. The Applicant was advised to justify its approach to who had been consulted as a Category 3 person.

## **Funding statement**

The Applicant was advised to clearly show in the funding statement the extent of the anticipated cost of CA, how this figure was arrived at, and how these costs are going to be met.

## **Plans**

The Applicant was advised to use distinctive colours for the plans so the different plots of lands were easily identified. It was further advised that the keys accompanying the maps needs to clearly labelled.

The Applicant was advised to review the highways works on the land plans to ensure the highways works areas are clearly identifiable. The Inspectorate queried what was meant by the highway works and advised that the BoR explain clearly what powers are sought over these areas and explain how these powers are secured in the DCO.

## **Application index Document Ref: 1.2**

The Applicant was advised to review [Advice note six: Preparation and submission of application documents](#) to ensure the application could be correctly uploaded to the Inspectorate's website.

## **Consultation Report**

The Inspectorate advised the Applicant to include both phase one and two consultation in the consultation report.

The Inspectorate requested that the Applicant change the wording from PINS 'consultation' to 'engagement' and consider signposting to the relevant meeting notes which have been published on the Inspectorate's Eggborough CCGT project webpage. The Inspectorate highlighted that reference is made throughout the report to 'PINS' and suggested the Applicant consider replacing this with 'the Inspectorate'.

The Inspectorate highlighted that it was not clear in the Consultation Report what date the s42 consultation correspondence was sent out by post and whether this provided sufficient time for consultation responses. The Applicant was advised to clarify the section of the report that described how undelivered recorded deliveries were handled to comply with PA2008.

The Applicant was advised to include cross references when either referencing other sections of the consultation report or documents and be consistent throughout the report with terminology.

The Inspectorate suggested the Applicant review the section about late consultation responses to ensure that it was clear which responses were taken into account and had been had regard to.

## **Information required in preparation for the submission**

The Applicant was asked to confirm whether they are happy for the application documents to be published as soon as practicable after submission. The Inspectorate explained that the benefit of doing this early on (instead of previous approach to publish after acceptance) is so those who wish to become familiar with the detail of what is being proposed have the opportunity to do so ahead of the relevant representation period. The Inspectorate highlighted this is now common practice across applications although is a decision entirely for the Applicant.

The Inspectorate requested that the Applicant submitted the shape file and local authority contacts it had 10 working days before submission.

The Inspectorate requested that the Applicant submitted a certified validation report for the draft DCO at submission and when it submitted its final draft DCO at the end of the examination.

The Applicant was advised to ensure that the application fee was received and cleared in the Inspectorate's bank account in time for the application submission.

### **Any Other Business**

The Applicant was advised to start thinking about drafting a site visit route plan in preparation for the examination.

### **Specific decisions / follow up required?**

The Inspectorate asked the Applicant to provide a list of venues used during the consultation period to aid it in the scoping of venues for the examination.

*Post meeting note: suggestion of venues has now been provided.*