



Deadline 5: Applicant's Response to the Examining Authority's Further Written Questions (ExQ3)

Appendix H - North London Heat and Power Project (NLHPP) Secretary of State Decision

Wheelabrator Kemsley (K3 Generating Station) and Wheelabrator Kemsley North (WKN) Waste to Energy Facility Development Consent Order

PINS Ref: EN010083

Document 13.2

June 2020 – Deadline 5





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Your ref: EN010071

24 February 2017

Dear Ms Taylor

PLANNING ACT 2008

PLANNING CONSENT APPLICATION – THE NORTH LONDON HEAT AND POWER PROJECT

1. 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 24 November 2016 of the Examining Authority (“the ExA”) on the application dated 15 October 2015 (“the Application”) by the North London Waste Authority (“the Applicant”) for a Development Consent Order (“the Order”) under section 37 of the Planning Act 2008 (“the 2008 Act”) for the North London Heat and Power Project (“the Development”);
 - representations received by the Secretary of State in respect of the Application; and
 - further consultation engaged in by the Secretary of State in respect of issues raised in the Examination and by the draft Order as submitted to the Secretary of State.
- 1.2. The Examination of the Application began on 24 February 2016 and was completed on 24 August 2016. The Examination was conducted on the basis of written evidence submitted to the ExA, accompanied site inspections on 17 March and 17 August 2016 and hearings on 18 March and 5 July 2016.
- 1.3. The Order, as applied for, would grant development consent under the 2008 Act for the construction and operation of an energy recovery facility with a gross electrical output of



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up to 70MW at the site of the existing energy from waste facility at the Edmonton EcoPark in the London Borough of Enfield which is expected to cease operation in 2025. The Development would also comprise the following:

- site preparation and demolition works;
 - decommissioning, demolition and removal of the existing energy from waste facility;
 - works required to provide buildings, structures, plant and equipment needed for the operation of the energy recovery facility;
 - the construction of a resource recovery facility;
 - the construction of a building (EcoPark House) to provide visitor, community and education facilities, office accommodation, and a base for the Edmonton Sea Cadets;
 - utilities and infrastructure works, landscaping along the edge of the River Lee Navigation, security and lighting;
 - access improvements to the Edmonton EcoPark, including the widening of the existing entrance from Advent Way, construction of an eastern access from Lee Park Way, and improvements to Deephams Farm Road to enable its use as a northern access;
 - works for the creation of and use of a temporary construction site to the east of the River Lee Navigation, comprising areas of hardstanding for storage of materials and fabrication, vehicle parking, office and staff welfare accommodation, utility works, fencing and security facilities, and an access from Walthamstow Avenue; and
 - such other minor works as may be necessary or expedient.
- 1.4. 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 Report"). The ExA's findings and conclusions are set out in the Report, and the ExA's summary of findings and conclusions is at section 4. (All numbered references, unless otherwise stated, are to paragraphs of the Report ("ER").)

2. Summary of the ExA's Report and Recommendation

- 2.1 The Secretary of State notes that the Report included findings and conclusions on the following principal issues:
- Habitats and Species Regulations;
 - compulsory acquisition;
 - combined heat and power;
 - grid connection;
 - design;
 - cumulative impacts with other development proposals;
 - transportation;
 - land use, including open space, green infrastructure and Green Belt;
 - landscape and visual impacts;

¹ <https://infrastructure.planninginspectorate.gov.uk/projects/london/north-london-heat-and-power-project/>



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- historic environment;
 - noise and vibration;
 - biodiversity, ecology and nature conservation;
 - climate change adaptation;
 - flood risk;
 - water quality and resources;
 - socio-economic impacts;
 - construction;
 - ground conditions and contamination;
 - air quality and emissions;
 - dust, odour, and other nuisances;
 - pollution control and other environmental regulatory regimes;
 - health;
 - waste management; and
 - utilities.
- 2.2 The ExA also considered the terms of the draft Order sought. For the reasons set out in the Report, the ExA recommended that the Secretary of State grants development consent for the Development in the form of the Order set out in the Report [ER 8.1.4].

3. 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 2008 Act and the notice and statement required by regulation 23(2)(c) and (d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 ("2009 Regulations").

4. Secretary of State's Consideration of the Application

- 4.1 The Secretary of State has considered the Report, the representations made in respect of the Application and all other material considerations. The Secretary of State's consideration of the Report is set out in the following paragraphs.
- 4.2 The Secretary of State has had regard to the National Policy Statements referred to in paragraph 4.4 below, the Local Impact Reports submitted by the London Boroughs of Enfield, Barnet, Haringey and the Greater London Authority, the relevant local plans 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. The Secretary of State also confirms for the purposes of regulation 3(2) of the 2009 Regulations that he has taken into consideration the environmental information as defined in regulation 2(1) of those Regulations. In making his decision, the Secretary of State has complied with all applicable legal duties on him and has not taken account of any matters which are not relevant to the decision.
- 4.3 Except as indicated otherwise in the paragraphs below, the Secretary of State agrees with the findings, conclusions and recommendation of the ExA as set out in the Report, and the reasons for the Secretary of State's decision are those given by the ExA in support of its conclusions and recommendation.



Need for the Proposed Development

- 4.4 In making his decision, the Secretary of State has had regard to the Energy National Policy Statements (“NPS”) EN-1 (Overarching NPS for Energy) and EN-3 (NPS for Renewable Energy Infrastructure) which set out a national need for development of new nationally significant electricity generating infrastructure of the type proposed by the Applicant. The case for the Development is considered throughout the Report, and after considering in particular the ExA’s conclusions in paragraph ER 4.2.11 and 8.1.1, the Secretary of State is satisfied that the decision to make the Order would be consistent with the Government’s policy objectives as set out in EN-1 and EN-3 and that there is a need for the Development.
- 4.5 In addition, the Secretary of State notes that a range of issues related to socio-economic impacts were examined by the ExA during its consideration of the Application. The ExA noted that although the Development would result in a net overall loss of jobs for the EcoPark, the Development would create additional employment opportunities during construction and provide benefits to the community through the potential for community activities to take place in the new EcoPark House. The ExA therefore concluded that there would be no significant socio-economic impacts [ER 4.17.15]. The Secretary of State agrees with the ExA’s conclusions in this matter.

Ecology and Biodiversity

a) Habitats Regulations Assessment

- 4.6 Regulation 61 of the Conservation of Habitats and Species Regulations 2010 (“the Habitats Regulations”) requires the Secretary of State to consider whether the Development is likely to have a significant effect, either alone or in combination with other plans and projects, on a European site as defined in the Habitats Regulations. If likely significant effects cannot be ruled out, then an Appropriate Assessment must be undertaken by the Secretary of State to address the implications for the site in view of its conservation objectives. In light of any such assessment, the Secretary of State may grant development consent only if the Secretary of State has ascertained that the Development will not, either on its own or in combination with other plans and projects, adversely affect the integrity of a European site, unless there is no alternative solution and imperative reasons of overriding public interest apply.
- 4.7 European sites protected include Special Areas of Conservation (“SACs”) established under Council Directive 92/43/EC on the conservation of habitats and species and of wild flora and fauna (the “Habitats Directive”) and Special Protection Areas (“SPAs”) established under Council Directive 2009/147/EC on the conservation of wild birds (the “Wild Birds Directive”). As a matter of policy, Government also affords the same degree of protection to Ramsar sites designated under the Ramsar Convention.
- 4.8 The ExA’s overall findings and conclusions in relation to the Habitats Regulations are found in section 4 of the Report.
- 4.9 A Habitats Regulations Assessment Report was submitted with the Application, which assessed the potential impacts of the Development on the Lee Valley SPA and Ramsar site, and the Epping Forest SAC. In the Secretary of State’s view, the Habitats Regulations Assessment Report contains sufficient information to inform consideration under regulation 61(1) of the Habitats Regulations as to the likely impact on the European sites, or other sites to which the same protection is applied as a matter of policy, and the Secretary of State agrees with the advice of the ExA as set out in the Report [ER 5.1.6] that the Development does not give rise to any likely significant effects alone or in combination with other plans or projects. The Secretary of State considers that sufficient information has been provided to determine that an Appropriate Assessment is not required.



b) Effects on other protected Sites and Species

- 4.10 As to the likely impact on other protected sites and species, the Secretary of State agrees with the ExA's conclusion that although the proposal has the potential to affect a non-statutory site, Lee Valley Site of Metropolitan Importance for Nature Conservation, mainly during the construction period, arrangements provided for in the Order including restoration of the temporary laydown area following construction works and appropriate enhancement of habitats within the Development site will offset and reduce impacts to below significant levels during the operational phase of the Development.

Compulsory Acquisition Powers

- 4.11 The Secretary of State has considered the compulsory acquisition ("CA") powers sought for land, the creation of new rights over land and the extinguishment or suspension of rights over land of both a permanent and temporary nature, for the purpose of constructing, operating and maintaining the Development. The ExA sets out his consideration of matters relating to CA in section 6 of the Report.
- 4.12 Section 122 of the 2008 Act provides that an order granting development consent may include provision authorising the compulsory acquisition of land only if the land is required for the development to which the development consent relates or is required to facilitate or is incidental to that development and there is a compelling case in the public interest for the land to be acquired compulsorily. The ExA was satisfied [ER 6.5.12] that the statutory tests in section 122 are met. The Secretary of State has considered the CA powers sought by the Applicant and agrees with the ExA's conclusions and reasoning on this matter. The Secretary of State's consideration of the Human Rights Act 1998 is set out below.
- 4.13 The Examiner noted that the Applicant has secured by agreement the majority of the land required for the proposed Development. However, CA powers are sought over the whole Application site due to the number of third party interests [ER 6.2.1]. The Examiner also noted that although progress was being made by the Applicant on negotiating private agreements outside the CA process with a number of statutory undertakers, the Applicant requires compulsory powers to ensure it can deliver the Development if for any reason the interests in the Order land cannot be acquired through private agreements.

Adequacy of Funding

- 4.14 The ExA notes that the Applicant's Funding Statement confirms that the Applicant has the financial resources required for the proposed Development, including the cost of acquiring any rights over land and the payment of compensation [ER 6.2.18], and that therefore the ExA was satisfied that the Applicant has the financial resources to meet such a liability [ER 6.5.3]. The Secretary of State agrees with the conclusions of the ExA and is satisfied that the resource implications in terms of CA and temporary possession obligations have been adequately met, and that the requirements of the 2008 Act and NPS in respect of funding are met.

Time Limit for Exercise of Compulsory Acquisition Powers

- 4.15 The Applicant sought through Article 20 of the proposed Order a period of seven years, rather than the usual five years, to exercise CA powers. Following the Secretary of State's consultation dated 13 December 2016 requesting further information from the Applicant on why the longer seven year period is necessary and inviting comments from all landowners affected by CA, the Secretary of State received a response from TfL stating that it did not consider that the Development is of a type that requires a longer period of time for CA powers to be implemented, and that it saw no reason why the land in which the Applicant has an interest should be unnecessarily blighted for a potentially



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longer period of time than necessary. The Applicant responded to the Secretary of State's 13 December 2016 citing the scale and complexity of the works, the lead-in time required for procurement and contract award, and the project programme as factors in support of this element of its Application. However, the Secretary of State did not consider that the Applicant had demonstrated that seven years for the exercise of compulsory acquisition powers was justified. The Secretary of State requested further project specific details as to why a seven year period for the exercise of CA powers would be justified from the Applicant in the 27 January 2017 consultation. The Applicant responded to confirm that a five year period for the exercise of CA powers would be acceptable. The Secretary of State has modified the Order accordingly.

Statutory Undertakers

4.16 Section 127 of the 2008 Act provides that an Order may only include provisions authorising the CA of statutory undertakers' land if certain conditions are met. The Secretary of State notes the Applicant seeks CA powers both of a permanent and temporary nature for the purposes of constructing, installing, operating and maintaining the Development on statutory undertakers' land [ER 6.4.9]. The Report records that for many statutory undertakers, the protective provisions in Schedule 13 of the Order were considered satisfactory and no objections to the proposed CA provisions were made [ER 6.4.12]. However, the Report also records that at the close of the Examination, there were outstanding representations under section 127(1)(b) of the 2008 Act in respect of the following statutory undertakers' land [E.R. 6.3.1]:

- Kennet Properties Limited ("Kennet Properties");
- Thames Water Utilities Limited ("TWUL");
- Canal & River Trust ("CRT");
- Transport for London ("TFL");
- National Grid ("NG");
- Lee Valley Regional Park Authority ("LVRPA"); and
- Zayo Group Limited ("Zayo").

4.17 Where such a representation is made and has not been withdrawn, the Secretary of State's powers to grant compulsory acquisition in respect of statutory undertakers' land may be exercised only if the Secretary of State is satisfied that the CA will not cause serious detriment to the carrying on of the undertaking. The Order contains an extensive set of protective provisions for the operators of electronic communications code networks; electricity, gas, water and sewerage undertakers; and, specifically, CRT, the Environment Agency and NG. The ExA concluded that the protective provisions in Schedule 13 of the Order, as modified by the ExA, would provide adequate protection of the interests of statutory undertakers [ER 6.4.11 – 6.4.12]. The ExA was therefore satisfied that there is no conflict with the requirements of section 127 or section 138 of the 2008 Act concerning the CA of statutory undertakers' land [ER 6.4.15]. Subject to the protective provisions included for National Grid, the Secretary of State agrees with the ExA's analysis of these issues and that the protective provisions contained within the Order sufficiently protect the interests of these statutory undertakers and there will be no serious detriment to the carrying on of their undertakings. However, the Secretary of State considered it necessary to consult the Applicant and National Grid on the protective provisions included for National Grid's benefit in Part 5 of Schedule 13 for the reasons set out below.



Transport for London

- 4.18 There were objections raised by TfL during the Examination that had not been withdrawn at the end of the Examination. TfL responded to the Secretary of State's consultations maintaining the following concerns: 1) that it was not specifically named in the Order as a consultee concerning works and requirements which may affect its function; 2) that it was not specifically named in the Order as a consultee on the Code of Construction Practice; and 3) that TfL should not be exposed to any financial or administrative burden as a result of the carrying out of landscaping works which the Applicant is required to undertake as part of the mitigation works.
- 4.19 The Secretary of State considers that these matters have been considered during the Examination and addressed in the ExA's Report. The Secretary of State agrees with the ExA's conclusions that article 37 and Schedule 3, which requires discharging authorities to consult all relevant and appropriate statutory consultees, is adequate [ER 4.18.13]. It is established practice for such works to be approved by the Local Planning Authority, in consultation with bodies such as TfL. The Secretary of State is also satisfied with the ExA's conclusion that the compulsory acquisition powers that the Applicant is seeking over the plots in question are justified, and that the ExA's amendment to Requirement 11 (Maintenance of Landscaping) in Schedule 2 of the Order ensures that the maintenance of the landscaping remains the responsibility of the Applicant [ER 6.3.32].

National Grid

- 4.20 Following the close of consultation, the Secretary of State received a letter from National Grid addressed to the Planning Inspectorate dated 22 November 2016 confirming that an agreement with the Applicant on the overlap of powers between The National Grid (North London Reinforcement Project) Order 2014 ("the North London Reinforcement Order") and the proposed Order had been concluded, and that therefore it was withdrawing its objections to the proposed Order on this ground. The letter also confirmed, however, that National Grid's objections on the adequacy of the protective provisions in the Applicant's proposed Order were still outstanding. The Order recommended by the ExA based the form of the protective provisions for National Grid on that submitted by the Applicant [ER 6.3.46] with modifications made by the ExA which it considered addressed the concerns raised by the National Grid.
- 4.21 However, National Grid's concerns relating to the adequacy of the protective provisions remained outstanding following the close of the Examination. The Secretary of State therefore consulted National Grid and the Applicant on the form of the protective provisions to be included on 13 December 2016 and invited comments on the ExA's recommended protective provisions. Following the receipt of comments from both National Grid and the Applicant, the Secretary of State considered that the ExA's recommended protective provisions required modification in light of the consultation responses in order to ensure that there is no serious detriment to National Grid. The Secretary of State consulted again to invite comments from both parties on a revised version of the protective provisions amended to reflect, where the Secretary of State considered appropriate, the responses to the earlier consultation. National Grid responded to confirm that it considered that this version of the protective provisions adequately protected its interests. However, the Applicant responded with further comments on this version and there was still disagreement on the wording of the protective provisions at the end of the Secretary of State's second consultation. The Secretary of State has included protective provisions for National Grid in a form which the Secretary of State considers protects the interests of National Grid and ensures there is no serious detriment to the carrying on of this undertaking.



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Section 132 (Special Category Land)

- 4.22 The ExA notes that there are 17 plots of land where the Applicant is seeking CA powers to acquire land around the Lee Park Way and on which they propose to undertake a range of improvements. This land is used for the purposes of public recreation and therefore falls within the category of “open space” to which section 132 of the 2008 Act Applies. This requires the Order to be subject to special parliamentary procedure unless the Secretary of State is satisfied that the exemption applies. The exemption to the special parliamentary procedure for such special category land as set out in section 132(3) of the 2008 Act only applies if the Secretary of State is satisfied that the relevant land will be no less advantageous than it was before to persons with interests in it and the public.
- 4.23 The ExA agrees in the Report with the Applicant’s conclusion that those who can currently use the land in question would be able to continue to do so, and that the improvements proposed by the Applicant such as landscaping and other works to improve the land that surrounds the Lee Park Way would mean a safer and more pleasant experience for vehicle users, cyclists and pedestrians. The ExA therefore recommended that the exemption applies and that the Order should not be subject to the special parliamentary procedure. The Secretary of State is satisfied with the ExA’s conclusion and confirms that the exemption to the special parliamentary procedures set out in section 132(3) applies in this instance.

Relationship with existing National Grid Order and Plot 21 – New Footpath

- 4.24 The Secretary of State has considered the relationship between the proposed Order and the North London Reinforcement Order, including the analysis of potential interactions between the two projects agreed by the Applicant and National Grid and the conclusions reached by the ExA on this matter [ER 4.7.8 - 4.7.13]. The Applicant and National Grid confirmed that they have entered into a private agreement to manage any overlap between these projects and National Grid has withdrawn its objections to the proposed Order on this ground. The Secretary of State agrees with the ExA’s reasoning on this issue and has concluded that any interactions can be managed by the Applicant and National Grid to allow both projects to proceed.
- 4.25 Relating to this, the Secretary of State consulted the Applicant and National Grid on whether a further power should be included in the proposed Order to allow for the new footpath in plot 21 to be temporarily stopped up or diverted on request by National Grid to allow works under the North London Reinforcement Order to be carried out. Both the National Grid and the Applicant agreed that such a power should be included, and the Applicant provided suggested text for the proposed new power to be inserted in Article 12 (Public rights of way). Following these responses, the Secretary of State consulted National Grid, the Applicant, TfL and the London Borough of Enfield on an amended version of the proposed wording to be inserted in Article 12 as the Secretary of State considered that the powers should be subject to the control of relevant public authorities. 4.22 The Applicant and National Grid responded to say that the proposed power as drafted by the Secretary of State was acceptable. The Secretary of State has modified the Order accordingly to include this power.
- 4.26 The Canal and River Trust submitted a response to the Secretary of State’s consultation of 13 December 2016 to raise a potential issue with the proposed temporary closure powers in relation to Plot 21. CRT later responded to confirm that the temporary closure of the footpath affecting Plot 21 would be unlikely to preclude the CRT’s ability to access its neighbouring assets.



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Green Belt

4.27 The Secretary of State is satisfied with the ExA's conclusion [ER 5.2.11 – 5.2.12] that the use of the Metropolitan Green Belt ("MGB") is justified because there is no feasible alternative for the temporary laydown area, the MGB land would be used temporarily, and the Order would provide for the establishment of the Green Belt function of the land following construction, and that these considerations outweigh the harm to the MGB and amount to very special circumstances which justify development of the temporary laydown area on MGB.

Public Rights of Way

4.28 The Order contains a provision to allow the Applicant to make some changes to the public rights of way ("PRoW") network on a temporary basis during construction and some permanent diversions. Section 136 of the 2008 Act provides that an Order may only include provisions to extinguish PRoWs if the Secretary of State is satisfied that there will be an alternative PRoW provided or that an alternative PRoW is not required. The Secretary of State agrees with the ExA's conclusion that the proposed changes to the access and rights of way in the Order deals adequately with the consequences to the PRoW of the construction of the Development [ER 4.8.53] and satisfy the requirements of section 136. The Secretary of State notes that where a PRoW is to be extinguished, the Order provides for an alternative to be provided.

5. Other Matters

Environmental Permit

5.1 In addition to development consent required under the 2008 Act, the operation of the proposed Development would be subject to an environmental permit from the Environment Agency ("EA") to prevent adverse impacts on the environment and human health. The Secretary of State notes that an application for an environmental permit was submitted by the Applicant to the EA in parallel with the application for the Order, and that the ExA recorded in the Report that no outstanding issues remained at the close of examination that suggested approval from the EA would not be granted [ER 1.1.20]. In the circumstances, the Secretary of State considers there are no reasons to believe the Environmental Permit and other licences will not be granted in due course.

Transboundary Impacts

5.2 A screening exercise for transboundary impacts was undertaken by the Secretary of State for Communities and Local Government ("SoSCLG") for the purposes of regulation 24 of the 2009 Regulations on 13 March 2015, and again on 9 December 2015 following the Planning Inspectorate's acceptance of the Application documents. SoSCLG applied the precautionary approach set out in the Planning Inspectorate's "Advice Note 12: Transboundary Impacts Consultation", and concluded that the Development was not likely to have a significant effect on the environment of another European Economic Area state. The Secretary of State agrees with this assessment.

Water Framework Directive

5.3 Issues relating to the Water Framework Directive were considered during the Examination. During the Examination, the EA stated in a response to the ExA's first written questions that in order to accurately assess the impacts of works that have not reached the design stage, the EA would require the opportunity to review any pre-construction surveys and designs to ensure that the works are compliant with the Water Framework Directive. The ExA notes that measures in the Applicant's Code of Construction Practice, the requirements of the Environmental Commitments and Mitigation Schedule, along with the permit to be sought from the EA provide mitigation



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against any impact relating to water quality and resources during both the construction and operational stage of the Development, and that therefore the Development does not conflict with the Water Framework Directive [ER 5.1.9]. The Secretary of State agrees with the ExA's conclusions on this matter.

Combined Heat and Power

- 5.4 EN-1 requires that applications for thermal generation stations applied for under the 2008 Act should include Combined Heat and Power ("CHP"). Where a proposal is for a generating station without CHP, EN-1 requires developers to provide evidence that opportunities for CHP have been explored to demonstrate why the proposal should be excluded from being CHP ready. The Application for the Development included a CHP Strategy which concluded that the application of CHP to the Development is not feasible because there are currently no suitable local users of the heat that would be made available from the operational Development. Although the Applicant had not identified any potential future requirements for heat demands that the Development could potentially supply, the Development would be enabled to supply heat in the future when circumstances become more favourable. The ExA concluded therefore that while the Development does not include CHP, because the Applicant has explored the potential for CHP and has demonstrated that the Development would be CHP ready should there be the demand for it in future, the Application meets the CHP requirements of EN-1 [ER 4.4.10]. The Secretary of State has considered the information provided by the Applicant and agrees with the ExA's conclusion that CHP issues have been adequately addressed. The Secretary of State has amended requirement 18 (combined heat and power) to align with combined heat and power policy.

Carbon Capture Readiness (CCR)

- 5.5 As set out in EN-1 and EN-2, all commercial scale fossil generating stations with a capacity of 300MW or more must be 'Carbon Capture Ready' (CCR). Applicants are required to demonstrate that their proposed development complies with guidance issued in November 2009² or any successor to it. As this Application seeks consent for a heat generating station with a gross rated electrical output of no more than 70MW using waste as fuel, the Secretary of State is satisfied that this is not a development to which the CCR requirement applies.

The Infrastructure Planning (Compulsory Acquisition) (Amendment) Regulations 2017 (SI 2017/105)

- 5.6 The Secretary of State draws the Applicant's attention to the above Regulations which replace the old Form C compulsory acquisition notice in Schedule 1 to the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (SI 2010/104) with new Forms A and B. The Applicant will need to ensure that it uses the new forms in respect of notification of the compulsory acquisition powers conferred in the Order. If the Applicant intends to exercise compulsory acquisition powers by executing general vesting declarations, the Applicant's attention is drawn to The Compulsory Purchase of Land (Vesting Declarations) (England) Regulations 2017 (SI 2017/3), which contain revised forms.

² 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



6. Consultation and Representations Received After the Close of the Examination

6.1 Following receipt of the ExA's Report, the Secretary of State consulted a number of Interested Parties on 13 December 2016 and 26 January 2017 on the issues listed below. These issues are considered in more detail in this letter in the paragraphs indicated below:

- the time limit for the exercise of compulsory acquisition powers (see paragraph 4.15 of this letter);
- the Protective Provisions to be included for the protection of National Grid's interests (see paragraphs 4.20 – 4.21 of this letter); and
- a further power to allow for the new footpath to be created on Plot 21 to be temporarily stopped up or diverted on request by National Grid to allow works under the North London Reinforcement Order to be carried out (see paragraphs 4.24 – 4.25 of this letter).

6.2 As well as responses from the Applicant, Canal and River Trust and National Grid, the Secretary of State received a response from Transport for London.

6.3 The Secretary of State's consultation letters and responses to the Secretary of State's consultations can be accessed on the Planning Inspectorate website at:

<https://infrastructure.planninginspectorate.gov.uk/projects/london/north-london-heat-and-power-project/?ipcsection=docs&stage=6&filter1=BEIS+Consultation>

6.4 The Secretary of State also received the following correspondence after the close of the examination:

- An email from National Grid dated 22 November 2016 confirming that it had concluded a private agreement with the Applicant on the overlap of powers between the North London Reinforcement Order and this Order and that it therefore withdrew its objections on this ground. National Grid also confirmed in this email that it maintained its objection on other outstanding matters and re-emphasised the need to attach appropriate Protective Provisions in the Order to ensure that their interests are protected (this is considered in paragraphs 4.20 – 4.21 above).
- A letter dated 29 September from Eastern Power Networks Limited confirming that it had reached a private agreement with the Applicant and that they had no outstanding objections; a letter from the Applicant dated 30 November 2016 confirming the same.
- A letter from Zayo Group UK Limited dated 29 September 2016 confirming that it had reached a private agreement with the Applicant and that it therefore withdrew its objections; and a letter from the Applicant dated 4 October confirming the same.
- An email from Mr David Arweny dated 25 September 2016 stating the Development should not be granted consent due to lack of housing in the area, and that instead the site should be used for housing development. The Secretary of State does not consider that this matter impacts on the Examiner's consideration of the need for the Development or the decision in relation to this Application.



7. General Considerations

Equality Act 2010

7.1 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 partnerships³; pregnancy and maternity; religion and belief; and race. The Secretary of State is satisfied that there is no evidence of any harm, lack of respect for equalities, or disregard to equality issues in relation to the Application.

Human Rights Act 1998

7.2 The Secretary of State has considered the possible interference with human rights protected by the Human Rights Act 1998 by the Development and compulsory purchase powers. The Secretary of State notes that the ExA concluded that the proposed interference with human rights would be for legitimate purposes that would justify such interference in the public interest and to a proportionate extent. The Secretary of State agrees with the ExA’s rationale for reaching its conclusion, as set out in ER 9.7.5. The Secretary of State therefore considers that the grant of development consent would not violate any human rights protected by the Human Rights Act 1998.

Natural Environment and Rural Communities Act 2006

7.3 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. The Secretary of State is of the view that the Report considers biodiversity sufficiently to accord with this duty.

8. Secretary of State’s conclusions and decision

8.1 For the reasons given in this letter, the Secretary of State considers that there is a compelling case for granting development consent, given the national need for the proposed Development and that the potential adverse local impacts of the Development do not outweigh the benefits of the scheme, as mitigated by the terms of the Order.

8.2 The Secretary of State has therefore decided to accept the ExA’s recommendation in paragraph 8.1.4 of the Report to make the Order granting development consent and to impose the requirements recommended by the ExA, but subject to the modifications described below.

9. Modifications to the Order

9.1 In considering the recommended Order submitted with the ExA’s report, the Secretary of State has decided to make modifications to the Order. The principal modifications, and the reasons for them, are set out below.

³ In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.



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The Order has been amended to ensure that it complies with current drafting practice and ensures certainty of consent granted. In particular, the Secretary of State has made the following modifications:

- Amendment of the wording in relation to the capacity of the generating station in Schedule 1 (authorised development) to remove the reference to a minimum capacity and to instead refer to a maximum capacity of 70MWe. The environmental statement refers to a capacity of around 70MWe but the Secretary of State considers that it is appropriate to include a maximum figure and has included 70MWe as this has been assessed in the environmental statement.
- Amendments of Schedule 13 (protective provisions), Part 5 (for the protection of National Grid as electricity and gas undertaker) to reflect the outcome of the Secretary of State's consultation on this matter and to ensure that there will be no serious detriment to the carrying on of their undertaking as a result of the exercise of CA powers in the Order (see paragraphs 4.20 – 4.21).
- Amendments to Article 12 (public rights of way) to reflect the outcome of the Secretary of State's consultation in relation to powers to stop up the new footpath in plot 21 (see paragraphs 4.24 – 4.25).
- Amendments to Article 20 (time limit for exercise of authority to acquire land compulsorily or use land temporarily) to reflect the outcome of the Secretary of State's consultation on the appropriate time limit for the exercise of compulsory acquisition powers (see paragraph 4.15).
- Amendments to Article 34 (arbitration) to provide that, failing agreement between the parties, the Secretary of State is to appoint an arbitrator.
- Amendments to requirement 18 (combined heat and power) to align with combined heat and power policy.
- Removal of what was Article 22 (statutory authority to override easements and other rights) in the ExA's recommended Order as the Secretary of State considers that this unnecessarily duplicates section 158 (nuisance: statutory authority) of the 2008 Act.
- Amendments to Article 23 (application of the Compulsory Purchase (Vesting Declarations) Act 1981 to reflect the fact that sections 3 and 5(1) of that Act have been repealed.

10. Challenge to decision

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

11 Publicity for decision

- 11.1 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 2009 Regulations.

Yours sincerely,

Giles Scott

Giles Scott, Head of Energy Infrastructure Planning and Coal Liabilities



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 date when the Order is published (or, if later, the day after the day on which the Secretary of State's Statement of Reasons (the decision letter) is published). The North London Heat and Power Generating Station Order 2017 as made is being published on the date of this letter on the Planning Inspectorate website at the following address:

<https://infrastructure.planninginspectorate.gov.uk/projects/london/north-london-heat-and-power-project/>

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).