



Meeting note

Project name	Wheelabrator Kemsley K3 Wheelabrator Kemsley North WKN
File reference	EN010083
Status	Final
Author	The Planning Inspectorate
Date	26 March 2019
Meeting with	The Applicant
Meeting objectives	Project (DCO) update teleconference
Circulation	All attendees

Summary of key points discussed and advice given

The Planning Inspectorate (the Inspectorate) advised that a note of the meeting would be taken and published on its website in accordance with section 51 of the Planning Act 2008 (PA2008). Any advice given under section 51 would not constitute legal advice upon which applicants (or others) could rely.

Project update

The Inspectorate confirmed that in principle there would be no issue with two NSIPs (or projects which are the subject of directions under s35 PA2008) being dealt with under one DCO.

A key element of the conversation, however, was around the question of whether part of the proposed project(s) (i.e. the proposed K3 upgrade) constitutes a Nationally Significant Infrastructure Project (NSIP) under s15 PA2008 and the Inspectorate sought clarification regarding this matter.

The Applicant confirmed there was no steer yet and that it would welcome the Inspectorate's opinion.

One project (WKN) is the subject of a direction under s35, and, therefore, it needs development consent under PA2008. It is still to be determined whether the other project (K3 upgrade) is a NSIP (particularly whether or not it constitutes an 'extension' for the purposes of s15(1) PA2008).

The Inspectorate suggested that if in any doubt, the Applicant could ask BEIS for advice and, if necessary, request (from BEIS) a s35 direction in relation to the K3 upgrade.

The Inspectorate advised that a key element in deciding whether to accept an application for examination is that there is evidence and justification for, or an arguable case for, the project being a NSIP, and that, in that regard, the applicant obtaining an opinion from BEIS on that question could assist the Inspectorate's consideration at acceptance stage.

The Inspectorate also commented at a high level on the questions on the draft DCO raised by the Applicant prior to the meeting:

- Article 4 - inter-relationship between paragraphs (2) and (3) – e.g. if (under (2) the planning permission conditions are to cease to have effect, why should anything done under them continue to prevail under (3)? Also there may not be a need to put in the DCO 'requirements' which have already been satisfied as 'conditions' under an earlier planning permission?
- Article 2(1) – why does the definition of K3 Generating Station Planning Permission include unspecified "subsequent variations and amendments"?
- Schedule 1, Work No. 1 - what is meant by "extension"? (a) extending capacity, or also (b) physical extension works. If (a), not requiring any actual works, then should it be listed as Work at all? If (b), then what are the extension works? Further, does the definition of 'commissioning' in Schedule 2 (as it relates to Work No.1) suggest that there ARE physical works involved?

The Applicant confirmed that some minor physical works would need to take place. The Inspectorate advised that, if that is the case, the applicant needs to detail those works.

- Requirement 2(2) – would the relevant LPA wish to have immediate notification (not up to a 7 day wait)?
- Requirement 4(1) – the word 'decides' may require more precise definition. Also, the relevant LPA might also wish to see additional requirements to decommission (e.g. if the undertaker ceases to operate the generating station(s) at any time coupled with a requirement to notify the LPA of any such cessation at the time it occurs)?
- Requirement 5 – what is the sanction if the noise levels are exceeded?
- Parts 2 and 3 of Schedule 2 - require greater clarity of drafting to avoid any uncertainty over exactly which generating station(s) and other related works every requirement relates to. For example, some of the current drafting uses the term 'authorised development', the current definition of which includes works to both generating stations.
- Schedule 3 – the applicant should revisit whether the reference to requirement 10 is correct. Also, whether the Schedule is appropriate at all would depend on examination of Article 4.
- Schedule 4 - refers to Circular 03/2009 (at paragraph 4) which has been withdrawn and replaced by PPG.
- All unpopulated areas of the draft DCO would need to be populated in the formal application draft and all cross referencing should be checked by the applicant.

The Inspectorate also provided general comments on the draft Consultation Report and emphasised again that more evidence of the project being an NSIP would assist the Inspectorate in consideration of the application at acceptance stage.