



Department for  
Business, Energy  
& Industrial Strategy

Department for Business,  
Energy & Industrial Strategy

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**Our Ref:** EN010088

21 October 2020

Dear Ms Vince,

## **PLANNING ACT 2008**

### **APPLICATION FOR THE WEST BURTON C POWER STATION PROJECT DEVELOPMENT CONSENT ORDER**

#### **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 21 July 2020 of the Examining Authority, Alex Hutson, who conducted an examination into the application (“the Application”) submitted on 30 April 2019 by EDF Energy (Thermal Generation) Limited (“the Applicant”) for a Development Consent Order (“the Order”) under section 37 of the Planning Act 2008 for the West Burton C Power Project (“the Development”).

1.2 The Application was accepted for examination on 23 May 2019. The examination began on 30 October 2019 and was completed on 22 April 2020. A number of changes were made to the Application documents during the examination. The details of these changes were made available to Interested Parties and examined by the Examining Authority [ER 2.3.1 – 2.3.4].

1.3 The Order, as applied for, would grant development consent for the construction, operation and decommissioning of a gas fired electricity generating station with a gross electrical generating capacity of up to 299 Megawatts ("MW"), comprising up to five open cycle gas turbines and associated buildings, structures and plant, as well as associated development within the boundary of the existing West Burton Power Station site, near Gainsborough, in the county of Nottinghamshire. The Development is designed to operate for up to 1500 hours per year on a rolling five year average over short periods of time as a 'peaking plant' to provide back-up power at times of stress on the electricity transmission network. The development comprises:

- (i) A gas fired generating station (Work No.1) with a gross electrical output of up to 299MW comprising (a) up to five open cycle gas turbine units and associated generators, potentially housed within building(s) with stack(s), transformer(s), air inlets filter(s) and exhaust gas diffuser(s); (b) associated switchgear and ancillary equipment; and (c) auxiliary closed loop cooling equipment/system;
- (ii) Work No. 1 may also include a banking compound comprising up to six transformers, overhead busbars, cable sealing ends and associated switchgear and ancillary equipment;
- (iii) A gas receiving area, gas treatment and control facilities, a compression station, generator and other auxiliary control cabinets and equipment (Work No.2);
- (iv) Electrical connection works (Work No.3) comprising: up to 400kV electrical cables and control systems cables to and from the existing West Burton B power station switchyard (Work No.3A); and works within or adjacent to the existing West Burton B power station switchyard, including electrical cables, connections to busbars and upgraded or replacement equipment Work No.3B);
- (v) Auxiliary buildings, structures and equipment (Work No 4) comprising: a) emergency diesel generator and associated diesel fuel tank; b) contained road tanker diesel unloading area; c) workshop, store, control, administration and welfare building; d) above ground raw water and fire water storage tanks and associated infrastructure; e) area of hardstanding for maintenance laydown and erection of temporary buildings associated with the commissioning, operation and maintenance of the open cycle gas turbine unit(s); f) pipework, pipe runs and pipe racks; g) fire-fighting equipment, buildings and distribution pipework; and h) chemical storage facilities, other minor infrastructure and auxiliaries / services;
- (vi) A new surface water drainage system (Work No 5) comprising pond(s) and /or a tank or similar including connection to an existing surface water drainage system on the West Burton power station site;
- (vii) Gas supply pipeline connection works for the transport of natural gas to Work No 1 from an existing gas receiving facility within West Burton B power station (Work No 6) comprising: on or below ground high pressure steel pipeline of up to 500 millimetres (nominal bore) in diameter and up to 150 metres in length including controls and instrumentation (Work No 6A); and an extension to the existing West Burton B power station gas receiving facility (Work No 6B) comprising: i) an offtake connection; ii) gas compressor (if required); iii) above and below ground valves, flanges and pipework; iv) an above or below ground remotely operated valve; v) an above or below

- ground remotely operated valve bypass; vi) an above or below ground pressurisation bridle; vii) instrumentation and electrical kiosks; and viii) telemetry equipment kiosks and communications equipment;
- (viii) Water supply and pipeline from Work No 1 to an existing water supply within West Burton B power station (Work No 7);
  - (ix) Low voltage electrical, control, metering and other cables and associated switchgear and ancillary equipment and cabinets required to connect Work Nos 1-6 with West Burton B power station (Work No 8);
  - (x) Associated development in connection with Work Nos 1-8 comprising: a rail offloading area from the existing rail loop 'merry-go-round' (Work No 9); and a Landscaping and Biodiversity Management and Enhancement Area (Work No 10); and
  - (xi) Further associated development comprising: a) vehicle parking and cycle storage facilities; b) construction laydown areas and contractor facilities including materials and plant storage and laydown areas; generators; concrete batching facilities; vehicle and cycle parking facilities; pedestrian and cycle routes and facilities; offices and staff welfare facilities; security fencing and gates; external lighting; roadways and haul routes; wheel wash facilities; and signage; c) internal access roads, roadways and footpaths; d) noise attenuation features; e) landscaping, fencing and security provisions; and f) lighting columns and lighting.

1.4 Published alongside this letter on the Planning Inspectorate's website<sup>1</sup> is a copy of the Examining Authority's Report of Findings and Conclusions and Recommendation to the Secretary of State. The Examining Authority's findings and conclusions are set out in Chapters 4-6 of the Examining Authority's Report, and the Examining Authority's summary of conclusions and recommendation is at Chapter 8.

## **2. Summary of the Examining Authority's Report and Recommendation**

2.1 The Examining Authority assessed and tested a range of issues during the Examination, which are set out in the Examining Authority's Report under the following broad headings:

- Introduction (Chapter 1);
- The Proposal and the site (Chapter 2);
- Legal and Policy Context: including the Planning Act 2008 and relevant National Policy Statements; European Law and related UK Regulations, other legal and policy provisions; made Development Consent Orders; transboundary effects, the National Planning Policy Framework; Local Impact Reports; the local Development Plan (Chapter 3);
- The main planning issues arising from the application and during examination (Chapter 4);
- Findings and Conclusions in relation to Habitats Regulations Assessment (Chapter 5);
- Conclusions on the case for Development Consent (Chapter 6);
- Draft Development Consent Order and Related Matters (Chapter 7); and

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<sup>1</sup> <https://infrastructure.planninginspectorate.gov.uk/projects/north-east/west-burton-c-power-station/?ipcsection=overview>

- Summary of Findings and Conclusions (Chapter 8).

2.2 For the reasons set out in the Summary of Findings and Conclusions (Chapter 8) of the Examining Authority's Report, the Examining Authority recommends that the Order be made in the form set out in Appendix C to the Examining Authority's Report [ER 8.2.1].

2.3 The Secretary of State notes that the Examining Authority drew to his attention the fact that changes to the key application documents were made during Examination. The changes were primarily to the wording in the draft Order to address points raised by Interested Parties and the Examining Authority's questions, and to reflect improved information and changes arising during the Examination including matters such as clarity and/or discrepancies within the Order and other environmental matters. The Examining Authority concluded that the changes did not result in any material difference in the Development that was applied for. The Secretary of State agrees with the Examining Authority in respect of this matter.

### **3. Summary of the Secretary of State's Decision**

3.1 The Secretary of State has decided under section 114 of the Planning Act 2008 to make, with minor modifications, an Order granting development consent for the proposals in the Application. The Order does not include any powers relating to compulsory acquisition. This letter is a statement of reasons for the Secretary of State's decision for the purposes of section 116 of the Planning Act 2008 and the notice and statement required by regulation 23(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 ("the 2009 Regulations")<sup>2</sup>.

### **4. Secretary of State's Consideration of the Application**

4.1 The Secretary of State has considered the Examining Authority's Report and all other material considerations. A summary of the Secretary of State's consideration of the Examining Authority's Report is set out in the following paragraphs. All numbered references, unless otherwise stated, are to paragraphs of the Examining Authority's Report.

4.2 The Secretary of State has had regard to the Local Impact Reports submitted by Bassetlaw District Council and West Lindsey District Council, Local Development Plans, 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 Planning Act 2008. 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 that 23 Relevant Representations were made and have been considered fully by the Examining Authority [RR-001-RR-023]. Those making the representations were able to become involved in the Examination as Interested Parties. Relevant Representations were made by statutory authorities, utility providers, Doncaster Council, Newark and Sherwood District Council, Nottinghamshire County Council, West Lindsey District Council, Bawtry Town Council,

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<sup>2</sup> S.I. 2009/2263

North and South Wheatly Parish Council, North Leverton with Hablesthorpe Parish Council, South Leverton Parish Council, Sturton le Steeple Parish Council, Sturton Ward Councillor, and residents located in the vicinity of the Development. Written representations, responses to questions and oral submissions made during the Examination were also taken into account by the Examining Authority.

4.4 Except as indicated otherwise in the paragraphs below, the Secretary of State agrees with the findings, conclusions and recommendations of the Examining Authority's Report, and the reasons for the Secretary of State's decision are those given by the Examining Authority in support of his conclusions and recommendations.

#### National Policy Statements, Need for the Development

4.5 The Secretary of State notes that the proposed Development is a Nationally Significant Infrastructure Project as defined in sections 14 and 15 of the Planning Act 2008 as it is an onshore generating station with a generating capacity of greater than 50MW. The Planning Act 2008, together with the Energy National Policy Statements, set out a process for decision-makers to follow in considering applications for development consent for such projects. The proposed Development is intended to operate as a peaking plant, for the purposes of rapidly supplying electricity to the National Grid as and when required, and the Examining Authority has concluded that it would accord with the guidance in the Overarching National Policy Statement for Energy (EN-1) and the National Policy Statement for Fossil Fuel Electricity Generating Infrastructure (EN-2). EN-1, acknowledges the potential impact of electricity generating developments but notes that a balancing exercise must be carried out to weigh the public benefits of those developments and any harm caused. As noted by the Examining Authority, EN-1 indicates that the Secretary of State should start with a presumption in favour of granting consent to applications for energy Nationally Significant Infrastructure Projects unless any more specific and relevant policies set out in the relevant National Policy Statements clearly indicate that consent should be refused.

4.6 After having regard to the comments of the Examining Authority set out in Chapter 6 of the Examining Authority's Report, and in particular the conclusions both on the need for the Development and the case for development consent in Chapters 4-6, 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 EN-1 and EN-2. Taken together, these National Policy Statements 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 is also satisfied that the requirements of the Climate Change Act 2008 (as amended), and other relevant policy have been met and that granting consent for the Application would not be incompatible with the amendment to the Climate Change Act 2008 or the Government's obligations under the Paris Agreement 2015. The Examining Authority concludes that given the substantial positive benefits by meeting national need for additional electricity generation capacity identified in EN-1, the benefits of granting the Development outweigh any localised adverse effects and recommends that development consent should be granted. The Secretary of State agrees with the Examining Authority's conclusion. He also agrees with the Examining Authority that substantial weight should be given to the contribution the proposed Development would make towards meeting that national need as demonstrated by EN-1 and that, as a peaking plant, it would

positively contribute towards a secure, flexible energy supply, facilitate the rollout of renewable energy and assist the decarbonisation of the economy.

### Carbon Capture Readiness and Combined Heat and Power

#### Carbon Capture Readiness (“CCR”)

4.7 As set out in National Policy Statements EN-1 and EN-2, in order to ensure that no foreseeable barriers exist to retrofitting carbon capture and storage equipment on combustion generating stations, all applications for commercial scale fossil fuel generating stations with a gross 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 2009<sup>3</sup> or any successor to it.

4.8 As this Application seeks consent for a generating station with an output of no more than 299MW, the Secretary of State is satisfied that this is not a development to which the CCR requirement applies.

#### Combined Heat and Power (“CHP”)

4.9 National Policy Statements EN-1 and EN-2, require that any application to develop a thermal generating station under the Planning Act 2008, must include either CHP or contain evidence that opportunities for CHP have been fully explored where the proposal is for a generating station without CHP. The Secretary of State is content the Applicant’s CHP Assessment [APP 136] demonstrates the generating station does not need to undertake further investigation of CHP and provides evidence as to why the Development should be excluded from being CHP-Ready. He concludes this is sufficient to ensure that the requirement of EN-1 paragraph 4.6.8 is met and the Development, therefore, complies with the guidance and with the relevant provisions in the National Policy Statements.

## **5. Issues outstanding at close of Examination**

5.1 There were no issues outstanding at the close of examination.

## **6. Other Matters**

### Landscape and Visual Effects

6.1 The Examining Authority notes [ER 4.11.2] that EN-1 sets out that “virtually all nationally significant energy infrastructure projects will have effects on the landscape”. Local landscape designations (set out within Local Development Plans) must be taken into account and harm should be mitigated. When considering these sites, the Secretary of State must consider whether the Development evidences good design. EN-1 notes that the landscape and visual effects of energy projects will vary on a case by case basis according to the type of development, its location, and the landscape setting. Exhaust stack(s) and their plumes are described as having the most obvious impact on landscape and visual amenity for thermal combustion generating stations. As there is currently no final design for the Development, the Applicant’s landscape

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<sup>3</sup> 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](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/43609/Carbon_capture_readiness_-_guidance.pdf)

and visual impact assessment considers a worst-case scenario, adopting the 'Rochdale Envelope' approach allowing for later choice of technology and dimensions and configuration of any buildings and stacks. The tallest element of the Development is the stack(s) with a maximum height of 45mAGL (above ground level)/59mAOD (above ordnance datum). The Examining Authority considers that Requirement 5 of the Order would provide for the sensitive design of the buildings and stack(s) associated with the proposed Development as secured in Tables 1 and 2 and has recommended to the Secretary of State that for clarity and to reflect the assessment undertaken, that maximum heights of the relevant components of the Development should be specified in Tables 1 and 2 of Requirement 5 in mAGL in addition to mAOD.

6.2 The Examining Authority notes that other than Cllr Naish on behalf of the residents of Bole village, no other Interested Parties raised landscape and visual impacts, including lighting, as a particular concern and as confirmed in various Statements of Common Ground between Interested Parties and the Applicant, that such effects associated with the Development would be acceptable [ER 4.11.19].

6.3 The Examining Authority's conclusion on visual impacts and landscape design [ER 4.11.31-4.11.35] is that the Development would not give rise to any significant effects on landscape character or landscape features during its construction, operation or decommissioning. However, the Development would, in his view, give rise to moderate adverse and thus significant effects in Environmental Impact Assessment terms for some visual receptors during its construction, operation and decommissioning, largely due to the use of cranes during construction and decommissioning and the height and visibility of the stack(s) once constructed, albeit that such effects would be localised and limited to users of the Public Right of Way in the vicinity of Viewpoint 4 and residents of Bole village in general.

6.4 The Examining Authority notes that though there is little scope for meaningful mitigation in relation to this, the siting of the proposed Development is appropriate and would be seen in the context of existing power stations. He further notes that adverse visual impact from Viewpoint 4 would be tempered by screening from existing vegetation and an absence of plumes, and that Requirement 5 of the Order would provide for the sensitive design of the buildings and stack(s) associated with the proposed Development. The Secretary of State agrees with the Examining Authority's conclusion having taken these matters into account and given the limited wider visual impact of the proposed Development, that visibility from Viewpoint 4 carries limited weight and that the Development would accord with EN-1 and EN-2 in respect of landscape and visual matters. The Secretary of State also agrees with the Examining Authority in respect to the proposed amendments to Requirement 5 to specify maximum heights of the relevant components of the Development in mAGL, in addition to mAOD in Tables 1 and 2. The Examining Authority concludes that landscape effects of the Development are a neutral consideration and that visual effects are a negative consideration. The Secretary of State sees no reason to disagree with this view.

#### Air Quality and Emissions

6.5 Paragraph 5.2.1 of EN-1 notes that infrastructure development can have adverse effects on air quality involving emissions to air which can lead to adverse impacts on health, protected species and habitats. Paragraph 5.2.4 notes that emissions from combustion plants are generally released through exhaust stacks and

therefore the design of stacks, particularly height, is the primary driver for the delivery of optimal dispersion of emissions. No Interested Parties raised any concerns about air quality and emissions matters. However, the Examining Authority noted in their Report that the Secretary of State should give air quality considerations substantial weight where a project would lead to a deterioration in air quality in an area, new breaches of national air quality limits or substantial changes in air quality levels even where no breaches occur.

6.6 The Applicant has assessed in its Environmental Statement Chapter 6 [APP-03] the potential of the Development on human health and ecological receptors from emissions during construction, operation and decommissioning, and included the effects of pollutants: NO<sub>x</sub>, NO<sub>2</sub>, Carbon Monoxide and particulate matter. Emission to air impacts from the Development have been assessed based on 35m stack heights for each of up to five open cycle gas turbines and a 40m stack height for a single open cycle gas turbine based on height in mAGL. These are the stack heights considered to adequately disperse emissions from the assessed options. Stacks of a different height could be utilised depending on the technology selected, higher stacks of up to 45mAGL could also be constructed which would further reduce predicted ground level pollutant concentrations.

6.7 There was some discussion during the Examination between the Examining Authority and the Applicant about whether there should be inclusion of minimum as well as maximum stack heights secured within Tables 1 and 2 of Requirement 5 of the draft Order. The Applicant took the view that this was not necessary as the air quality assessment was based on available information on turbine performance and emission rates at the time of preparing the Application and turbine technology and performance continue to advance and improve. The Applicant therefore considered that if a minimum stack height is specified in the Order there would be no opportunity to take advantage of any such advancement or improvement in turbine technology, which would correspondingly reduce the visual impacts of the stacks. The Examining Authority however, having carefully considered the Applicant's response, confirmed that his concerns still remain with this approach because the Order should reflect the parameters corresponding to the assessments undertaken with regard to air quality and emissions that were based on specified minimum stack heights. In light of this, the Examining Authority recommends to the Secretary of State that changes are made to the Applicant's final draft Order [REP7-003] to make provision for minimum stack heights in Tables 1 and 2 of Requirement 5, to be shown in mAGL. For consistency he also recommends that maximum heights of the elements of the proposed Development in Tables 1 and 2 of Requirement 5 of the draft Order including stacks, are shown in mAGL, in addition to mAOD.

6.8 The Examining Authority is satisfied that there would be no significant air quality and emissions effects caused from construction and decommissioning activities and that emissions during its operation would be controlled by the Environmental Permitting regime and, subject to the inclusion of minimum stack heights in the Order, there would be no significant air quality and emissions effects during operation. The Environment Agency signed a Statement of Common Ground with the Applicant [REP1-016] setting out that operational effects, including Combined Heat and Power, air quality and noise, are being considered as part of the determination of the varied Environmental Permit applications for West Burton A and West Burton B Power

stations. The Examining Authority is also content that the Development would accord with the relevant National Policy Statements and that Requirement 5 (detailed design), Requirement 16 (Construction Environmental Management Plan) and Requirement 27 (decommissioning) are adequately secured in the Order and would ensure appropriate mitigation is carried out. With these controls, air quality does not affect the planning balance and the Examining Authority concludes that air quality and emissions effects are a neutral consideration. The Secretary of State can see no reason to disagree with this view.

#### Noise and Vibration

6.9 Bassetlaw District Council and West Lindsey District Council signed a Statement of Common Ground with the Applicant agreeing the approach taken in the Environmental Statement to assess noise and vibration effects. It was agreed that operational noise emissions would be controlled through an Environmental Permit issued by the Environment Agency and that at the detailed design stage, noise models would be refined and additional acoustic assessments undertaken to determine the most appropriate mitigation options in accordance with Best Available Techniques. Public Health England acknowledged that the Environmental Statement has not identified any issues which could significantly affect public health and confirmed that it is satisfied with the methodology used in the Environmental Statement to undertake assessments.

6.10 Some Interested Parties raised noise as a concern, including Cllr Naish on behalf of the residents of Bole village and local resident Mr Coomber. Mr Coomber also raised vibration from low frequency/extra low frequency sound waves and low magnetic fields, and the effects of this on his health as a concern. Cllr Naish on behalf of the residents of Bole village has not sought to dispute the finding of the Applicant's noise and vibration assessment and Bassetlaw District Council and West Lindsey District Council have not either.

6.11 The concerns of Mr Coomber in respect of noise and vibration relate primarily to the operation of the existing West Burton A and West Burton B power stations and as such the Examining Authority considers they are of little relevance to the Development. The Examining Authority concludes that the Development would not give rise to any significant noise and vibration effects, and that noise and vibration matters, including appropriate mitigation, are adequately provided for and secured in the Order to ensure this. He is satisfied that the Development would accord with all relevant legislation and policy requirements including those of EN-1 and EN-2 and there are no disbenefits to weigh in the planning balance. The Examining Authority concludes that noise and vibration effects of the Development are a neutral consideration. The Secretary of State has no reason to disagree with this view.

#### Water quality and resources and flood risk

6.12 The Examining Authority is satisfied that the Development would have no significant environmental effects in terms of water quality or flood risk and would be flood resilient over its lifetime. He is content that adequate mitigation measures relating to water quality, flood risk and flood resilience are secured in the Order, including under Regulation 5 (detailed design), Requirement 9 (surface water drainage), Requirement 10 (foul water drainage), Requirement 11 (flood risk mitigation), Requirement 12 (contaminated land and groundwater), Requirement 13 (unexpected

contamination), Requirement 16 (Construction Environmental Management Plan), Requirement 23 (piling and penetrative foundation design) and Requirement 27 (decommissioning). The Development would therefore accord with relevant legislation and policy requirements including those of EN-1 and is considered by the Examining Authority to be a neutral consideration. The Secretary of State agrees with this view.

### Cultural Heritage

6.13 The Secretary of State notes the designated heritage assets that have been identified include the scheduled monuments of West Burton Medieval Deserted Village and Segelocom Roman Town; and Grade II listed buildings Bole Manor House and the Church of St Martin in Bole. No significant matters or concerns were raised by Interested Parties in respect of heritage matters. Historic England considered that significant effects on built heritage assets would be unlikely as a result of the Development and that the wording of Requirement 13 in the Order adequately secured a Written Scheme of Investigation to mitigate against potential harm to archaeology. Bassetlaw District Council and West Lindsey District Council raised no concerns in respect of effects of the Development on heritage assets in their Local Impact Reports. The Examining Authority considers there would be some limited impact during construction, operation and decommissioning on the setting of a very small number of designated heritage assets, including the two Grade II listed buildings and two scheduled monuments. However taking into account the existing West Burton A and West Burton B power stations and that the Development would be smaller in scale than these power stations, he concurs with the Applicant's assessment that the impacts on the settings of the identified designated heritage assets would not be significant. Moreover, any harm to the significance of the identified designated heritage assets through impacts on their settings would be less than substantial and would be outweighed by the public benefits of the Development, which includes the need for the type of energy infrastructure proposed, as established through EN-1.

6.14 The Secretary of State, in accordance with the duty in regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010, has had regard to the desirability of preserving the listed buildings and their settings and notes the presumption in EN-1 in favour of the conservation of designated heritage assets. He agrees with the Examining Authority's assessment that the harm to the significance of the identified designated heritage assets through impacts on their settings would be less than substantial. This weighs against the proposed Development, as does the potential for the loss of some archaeological remains if present and if their loss cannot be avoided. The Secretary of State gives considerable importance and weight to the desirability of preserving the setting of the listed buildings and scheduled monuments. However, he considers the public benefits of the Development, which includes the need for this type of energy infrastructure, outweigh any negative effects to the setting of the identified designated heritage assets.

### Traffic, Transport and Access

6.15 The Local Impact Reports from Bassetlaw District Council and West Lindsey District Council raised no concerns in respect of traffic and transport impacts of the Development. Highways England confirmed that it had no objections to the Development on traffic and transport grounds on the basis that it considers impacts on the strategic road network would be negligible. A number of Interested Parties raised traffic and transport concerns particularly in respect of the construction period. These included concerns around impacts of construction traffic travelling through the

respective villages, including speeding and damage to trees, verges and roads, Heavy Goods Vehicles using the A620 and construction workers parking at the entrance to Bole village. Two organisations were keen to promote sustainable transport of freight and Abnormal Indivisible Loads on the River Trent. The Examining Authority is content that the Environmental Statement has adequately assessed traffic and transport impacts and that there would be no significant effects during the construction of the Development. He is also satisfied that traffic and transport management matters are adequately provided for and secured in the Order including Requirement 17 (protection of highway surfaces), Requirement 18 (Construction Traffic Management Plan), Requirement 19 (Construction Workers Travel Plan), Requirement 25 (Local Liaison Committee) and Requirement 27 (decommissioning). He is satisfied there is no disbenefit to be weighed in the planning balance and that the Development accords with all legislation and policy requirements including those of EN-1. The Examining Authority considers that traffic and transport effects of the Development are a neutral consideration. The Secretary of State has no reason to disagree with this view.

#### Economic and social impacts

6.16 Paragraph 3.2.1 of EN-1 identifies the generally positive socioeconomic effects derived from electricity generation to meet nationally identified energy needs at the national level. No significant matters or concerns were raised by Interested Parties in respect of socio-economic matters. Bassetlaw District Council's Local Impact Report recognised that the Development would generate economic benefits including local job creation and training opportunities. Nottinghamshire County Council and Lincolnshire County Council signed a Statement of Common Ground with the Applicant agreeing on the wording of Requirement 26 in respect of local employment, skills and training. The Examining Authority is satisfied that the Development would support economic development in the area and would accord with all relevant policies including EN-1. He considers this weighs modestly in favour of the proposed Development.

6.17 With the exception of local resident Mr Coomber, no significant matters or concerns were raised by Interested Parties in respect of human health. In addition, Public Health England in its Relevant Representation acknowledged that the Environmental Statement has not identified any issues which could significantly affect public health and confirmed that it is satisfied with the methodology used in the Environmental Statement to undertake assessments. The Examining Authority is satisfied that the operation of the Development would not give rise to any electromagnetic fields effects on residential receptors including the residence of Mr Coomber and that necessary mitigation is secured through the relevant requirements of the Order and that the operation of the Development would be regulated by the Environment Agency through an Environmental Permit to control emissions from the Development through the use of Best Available Techniques. The Development would thus comply with relevant legislation and policy in respect of human health, including that of EN-1, and there are no disbenefits which weigh against the Development in this regard. The Secretary of State has no reason to disagree with the Examining Authority on these matters.

#### Habitats Regulations Assessment

6.18 The Development is not directly connected with, or necessary to, the management of a Natura 2000 site. Therefore, under Regulation 63 of The Conservation of Habitats and Species Regulations 2017 ("the Habitats Regulations"),

the Secretary of State is required, as Competent Authority, 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 Natura 2000 site. If likely significant effects cannot be ruled out, the Secretary of State must undertake an Appropriate Assessment addressing the implications for the Natura 2000 site in view of its conservation objectives. This process is collectively known as a Habitats Regulations Assessment. 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 or projects, adversely affect the integrity of such a site unless there are no feasible alternatives or imperative reasons of overriding public interest apply.

6.19 The Secretary of State notes that the Development is not located within or adjacent to any Natura 2000 sites. However, the Examination identified the potential for Natura 2000 sites located further away to be affected. The Examining Authority records that the Applicant used a 10km radius from the Development site to identify Natura 2000 sites. No Natura 2000 sites have been identified in that area. The use of a 10km radius follows air emission guidance published by the Department for Environment, Food & Rural Affairs and the Environment Agency.

6.20 The Applicant's No Significant Effects Report identified the nearest Natura 2000 sites between 19.5km and 25km away from the application site. These are:

- Hatfield Moor Special Areas of Conservation ("SAC") (approximately 19.5km from the application site);
- Thorne Moor Special Protection Area ("SPA")/SAC (approximately 25km from the application site);
- Birklands and Bilhaugh SAC (approximately 25km from the application site); and
- The Humber Estuary SPA/SAC/Ramsar site (approximately 25km from the application site in respect of the SAC and 35km in respect of the SPA/Ramsar Site).

6.21 In terms of potential surface water impacts, the No Significant Effects Report notes that there are no direct discharges to the River Trent proposed during the construction or operation of the proposed Development and that design and impact avoidance measures for flood risk, hydrology and water resources are included within the framework of the Construction Environmental Management Plan and would minimise the risk of any unplanned discharges. However, the No Significant Effects Report states that *'even in the absence of such design and impact avoidance measures, it is reasonable to assume that any surface water pollution would have significantly diluted over this distance such that it would not pose a risk to designated features'* therefore likely significant effects are not expected, even without the embedded mitigation set out in the Construction Environmental Management Plan. Discharges would be controlled through an Environmental Permit issued by the Environment Agency and as such, operational impacts on the River Trent and thereby on the Humber Estuary SPA/SAC/Ramsar site are considered not to be significant.

6.22 In terms of noise impacts, the No Significant Effects Report sets out that no pathways by which noise could give rise to likely significant effects on species within

Natura 2000 sites have been identified given the considerable separation distances involved, nor are there any pathways that could result in direct habitat loss or direct physical damage to any of the Natura 2000 sites.

6.23 In terms of air quality impacts, the No Significant Effects Report notes that no assessment of this has been undertaken for Natura 2000 sites given that they lie outside the 10km search area and as such would not be affected by the Development. The No Significant Effects Report concludes that as no Natura 2000 sites would be affected by the Development, no in combination effects assessment is necessary. Natural England confirmed that it is satisfied with the findings of the No Significant Effects Report and agreed that there is no potential for Likely Significant Effects on Natura 2000 sites and as such a detailed Habitats Regulation Assessment is not required. No other Interested Parties raised any concerns in this regard.

6.24 The Secretary of State concludes on the basis of the above, that the Development, either alone or in-combination with other plans or projects, is not likely to have a significant effect on any Natura 2000 site and that an Appropriate Assessment is not required. This conclusion is consistent with the advice provided during the examination by the Statutory Nature Conservation Body, Natural England and the recommendation made by the Examining Authority.

#### Biodiversity

6.25 The Examining Authority's Report [4.10.4] states that Chapter 9 of the Environmental Statement [REP-014] assesses the effect of the Development on biodiversity and nature conservation during construction, operation and decommissioning. The Chapter considers potential effects from air quality, noise, water, landscape and light on ecological receptors.

6.26 Lea Marsh Site of Special Scientific Interest ("SSSI") is the only wildlife site of national importance within a 2km radius of the application site and the assessment concludes there would be no direct or indirect construction impacts on the Lea Marsh SSSI given its distance from the application site. There are 10 Local Wildlife Sites within a 2km radius, these are: West Burton Power Station (partially within the site), Bole Ings (partially within the site), West Burton Reedbed, Burton Round Ditch, Bole Ings Drains, Saundby Ponds, Bole Ings Flood Pasture, Mother Drain-Upper Ings, West Burton Meadow and Lea Meadow. West Burton Power Station Local Wildlife Site is the only site identified as being potentially affected, this would be due to some vegetation clearance and ground disturbance resulting in the temporary loss of semi-improved neutral grassland. The grassland would be reinstated upon completion of works.

6.27 No protected, rare or notable plant species were identified within the application site during the preliminary ecological appraisal nor were any invasive, non-native plants species identified. Protected and notable fauna species identified as present, or potentially present, within and adjacent to the application site include great crested newts, bats, badgers, grass snakes, breeding birds, otters and brown hares, however construction effects on the population resulting from habitat loss and/or disturbance are not considered to be significant. The killing or injury of individual great crested newts due to temporary and permanent loss of terrestrial habitat for foraging, shelter and hibernation is predicted to be moderate adverse and thus significant but mitigated

through measures implemented in the European Protected Species Mitigation Licence. Air quality and emission impacts on wildlife sites would be minimised through the use of appropriate stack heights to aid dispersion of pollutants and through emissions monitoring to demonstrate compliance with the Emissions Limit Value set by the Environment Agency and controlled through an environmental permit. Regarding badgers, a licence would be obtained from Natural England to close any active setts affected, prior to works commencing. Natural England has confirmed to the Examining Authority that such an approach would be appropriate without the need for a prior draft licence application.

6.28 The Examining Authority is satisfied that Natural England has raised no concerns in respect of the effects of the proposed Development on badgers or breeding birds. Various mitigation measures were proposed, including within the Landscaping and Biodiversity Management and Enhancement Plan, Lighting Strategy and framework Construction Environmental Management Plan. The Examining Authority considers that the effect of those mitigation measures, and the securing of an European Protected Species Mitigation Licence in respect of great crested newts, for which Natural England has issued a letter of no impediment, would be that no residual likely significant effects are anticipated on any of the ecological receptors identified. The Examining Authority concludes he is satisfied that the proposed Development would comply with policy and legislation relating to biodiversity and nature conservation, including that of EN-1 and that this matter is a neutral consideration in the planning balance. The Secretary of State has no reason to disagree with this view.

#### Climate Change Act 2008

6.29 On May 2019, the Committee on Climate Change recommended the UK reduce greenhouse gas emissions by net zero by 2050. This was proposed to deliver on the commitments the UK made by signing the Paris Agreement in 2016. On 26 June 2019, Government altered the target in the Climate Change Act 2008 through the Climate Change Act 2008 (2050 Target Amendment) Order 2019, requiring the UK to reduce net carbon emissions by 2050 by 100% below the 1990 baseline.

6.30 The Examining Authority noted the amendment to the net zero target and the UK's obligations under the Paris Agreement 2015. He also noted that EN-1 makes clear the Government's legally binding commitment to cut greenhouse gas emissions. EN-1 confirms the importance of securing reliable supplies of electricity as the UK transitions to a low carbon economy and recognises that gas is the cleanest and most reliable fossil fuel and is likely to continue to be a central part of the transition to a low carbon economy. The Examining Authority further noted that both EN-1 and EN-2 recognise that though CO<sub>2</sub> emissions can have a significant adverse impact, individual applications do not need to be assessed in terms of carbon emissions against carbon budgets and CO<sub>2</sub> emissions are not a reason to prohibit the consenting of projects.

6.31 The Examining Authority noted that the Relevant Representations of some Interested Parties, including those of Cllr Naish on behalf of the residents of Bole village and local resident Mrs Phipps, cite CO<sub>2</sub> emissions and the efficiency of open cycle gas turbines as a concern. The Applicant's response to such concerns was that such technology is recognised by the Environment Agency to represent Best Available Technology for peaking plants and that as the proportion of renewable energy

increases, due to its intermittency, there will be a corresponding requirement for more back up capacity and the proposed Development would help provide that.

6.32 The Environmental Statement assessed the effects of the proposed Development on climate change. Its Greenhouse Gas Assessment concludes that, depending on its efficiency level, the proposed Development would produce an additional 10-106 tonnes of CO<sub>2</sub> equivalent per gigawatt hour of electricity generated compared to average fossil fuel power stations. However, it also notes that the proposed Development would be used for short periods of time and would only operate for approximately 1500 hours per annum under the Environmental Permit.

6.33 The Examining Authority noted overall annual CO<sub>2</sub> emissions as a result of the proposed Development would be limited by its operation for 2250 hours per year (or 1500 hours per year as a rolling five-year average) under the Environmental Permit issued by the Environment Agency. He also noted that CO<sub>2</sub> emissions associated with the wider West Burton power station site would be likely to reduce if, as is anticipated, the West Burton A coal fired power station ceases operation in 2025.

6.34 The Examining Authority considered the proposed Development would positively contribute towards a secure, flexible energy supply and would help meet the identified need for additional generating capacity as established by EN-1. The modest increase in greenhouse gas emissions would not be significant and would be outweighed by the contribution the proposed Development, in its role as a peaking plant, would make to supporting the UK's transition to a low carbon economy.

6.35 The Examining Authority was satisfied the proposed Development would accord with the guidance in EN-1 and EN-2 and with the UK's commitments under the Climate Change Act 2008 and the Paris Agreement 2015.

6.36 The Secretary of State has considered the Examining Authority's assessment in relation to climate change and agrees with its conclusions. Since the publication of the Examining Authority's Report, the High Court has affirmed the decision to grant the Drax Power (Generating Stations) Order 2019 and permission has been sought for a judicial review in relation to the Energy National Policy Statements. In response, the Secretary of State has disclosed that he has provisionally agreed to announce a review of the Energy National Policy Statements in the Energy White Paper, and that they will not be suspended for the duration of the review. The Secretary of State notes that the energy National Policy Statements remain the primary basis for decision-making under the Planning Act 2008. He further notes that although the proposed Development would lead to a modest increase in greenhouse gas emissions, this would be outweighed by its contribution to a secure and flexible energy supply, which will assist greater use of renewable energy sources and support the UK's transition to a low carbon economy.

#### The Planning Balance

6.37 The Secretary of State notes that the Examining Authority considered the planning balance in drawing his conclusion on whether the Application should be granted [ER 6.3.1.- 6.3.7]. The Secretary of State further notes, the Examining Authority considered there are no adverse impacts of sufficient weight to argue against the Order being made and that the identified harms in relation to the construction, operation and decommissioning of the Development would be outweighed by the

benefits from the provision of energy to meet the need identified in EN-1. He further concludes that there is no breach of National Policy Statement policy overall.

6.38 In line with EN-1, these are considerations that the Secretary of State must weigh in the planning balance. The Secretary of State agrees with the Examining Authority's conclusions in respect of the planning balance for the Development, though he has given considerable importance and weight to the desirability of preserving the setting of the identified designated heritage assets. The Secretary of State considers the case for development consent has been made and should be granted.

6.39 The Secretary of State notes that the peaking nature of the Development is not compatible with the inclusion of CHP in the scheme and that at 299MW electrical output it falls below the threshold for CCR. However, the Secretary of State considers that neither of these issues counts against the Development. The Secretary of State notes the inevitable increase in greenhouse gases arising from the Development but considers that this is outweighed by its contribution to a secure and responsive energy supply which will facilitate the roll out of increased levels of renewable energy.

## **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; sex and sexual orientation; gender reassignment; disability; marriage and civil partnerships<sup>4</sup>; 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

7.2 The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006, must 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.

7.3 The Secretary of State is of the view that the Examining Authority'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.

## **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

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

such development, as set out in the relevant National Policy Statements referred to above, the Secretary of State does not consider that this is outweighed by the Development's potential adverse impacts, as mitigated by the proposed terms of the Order.

8.2 The Secretary of State has therefore decided to accept the Examining Authority's recommendation to make the Order granting development consent [ER 8.2], and to include minor modifications made by his officials. In reaching this decision, the Secretary of State confirms regard has been given to the Examining Authority's Report, the Local Impact Reports submitted by Bassetlaw District Council and East Lindsey District Council and to all other matters which are considered important and relevant to the Secretary of State's decision, as required by section 104 (decisions in cases where National Policy Statement has effect) of the Planning Act 2008. The Secretary of State confirms for the purposes of regulation 3(2) of the 2009 Regulations that an environmental impact assessment has been carried out in respect of the application and that the environmental information, as defined in regulation 2(1) of those Regulations, has been taken into consideration.

## **9. Modifications to the Order by the Secretary of State**

9.1 The Secretary of State has made the following modifications to the Order recommended by the Examining Authority at Appendix C to its Report:

- (i) Addition at Article 7(1) to confirm the provisions of the Order have effect solely for the benefit of the undertaker except as otherwise provided by the Order;
- (ii) Removal of provision in Article 7 stating consent may not be unreasonably withheld or delayed. There is no suggestion that the Secretary of State has previously failed to respond to such requests within good time and the consent of the Secretary of State is not required in straightforward transfers in the circumstances specified in subparagraph 5 of the Article;
- (iii) Addition of paragraphs (7) to (9) within Article 7 to provide clarity on the form and content of the notification the undertaker must provide the Secretary of State before transferring or granting any or all of the provisions of the Order;
- (iv) Removal of provision in Article 11 that states the article does not authorise a water discharge or groundwater activity prohibited by regulation 12 of the Environmental Permitting (England and Wales) Regulations 2016. Provision is already made for this in Article 11(7);
- (v) Removal of provision relating to the removal of human remains. There are no known burial grounds within the Order limits. Provision for any archaeological remains should be included in the written scheme of archaeological investigation;
- (vi) Addition at Article 14(1) to limit the scope of the provision such that the undertaker may fell or lop any tree or shrub within the extent of the publicly maintainable highway only where that is near any part of the authorised project. It is not reasonable to assume that local authorities or people living far from the project site but near to the publicly maintainable highway would have been aware that this Application contained the original provision and were therefore in a position to make representations objecting to its broad scope;
- (vii) Removal of requirement in Schedule 3, paragraph 4(2)(c) that the Secretary of State appoint the appointed person within 10 business days of

receiving appeal documentation. There is no suggestion the Secretary of State has failed to respond to such requests within good time.

9.2 The Explanatory Note to the Order has been amended to enable public inspection of the Order online when restrictions on movement are place in response to the coronavirus pandemic.

9.3 In addition to the above, the Secretary of State has made various changes to the 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 its intended effect.

## **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 at the Annex 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 Planning Act 2008 and regulation 23 of the 2009 Regulations.

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:

**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)**