

The Drax Power (Generating Stations) Order

Land at, and in the vicinity of, Drax Power Station, near Selby, North Yorkshire

Written Summary of Drax Power Limited's ("the Applicant") Oral Case put at the Compulsory Acquisition Hearing – 6 December 2018
(Submitted for Deadline 4)



The Planning Act 2008
The Infrastructure Planning (Applications: Prescribed Forms and Procedure)
Regulations 2009 – Regulation 5(2)(q)

Drax Power Limited

Drax Repower Project

Applicant: DRAX POWER LIMITED
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**WRITTEN SUMMARY OF DRAX POWER LIMITED'S ("THE APPLICANT")
ORAL CASE PUT AT THE COMPULSORY ACQUISITION HEARING
6 DECEMBER 2018**

1. INTRODUCTORY REMARKS

- 1.1 The Compulsory Acquisition Hearing was held at 2:00pm on 6 December 2018 at the Goole Leisure Centre, North Street, Goole DN14 5QX.
- 1.2 The Compulsory Acquisition Hearing took the form of running through the items listed in the agenda published by the Examining Authority ("**ExA**") on 27 November 2018 (the "**Agenda**"). Other issues not on the Agenda were raised as part of the Compulsory Acquisition Hearing. The discussion on compulsory acquisition ("**CA**") matters predominantly focused on, the:
- 1.2.1 tests of CA within the Planning Act 2008 ("**PA 2008**");
 - 1.2.2 need to compulsorily acquire the freehold of Plot 8; the southern and eastern strips of Plot 10 for the purposes of Work Nos 10C and 11 (retained landscaping); and the south-eastern section of Plot 62 in respect of Work No 6A (above-ground installation);
 - 1.2.3 changes sought on the application made at D2 [REP2-038, REP2-039 and REP2-040];
 - 1.2.4 issues concerning the Plot 5 'limbs' concerning Work Nos. 8A and 8B; and
 - 1.2.5 updates on Protective Provisions.
- 1.3 The Applicant's substantive oral submissions commenced at item 2 of the Agenda and therefore this note does not cover item 1 which was procedural and administrative in nature.

2. AGENDA ITEM 2 – INTRODUCTION OF THE PARTICIPANTS

- 2.1 The ExA: Richard Allen as the lead member of the panel and Menaka Sahai as a panel member.
- 2.2 The Applicant:
- 2.2.1 Speaking on behalf of the Applicant: Richard Griffiths (Partner at Pinsent Masons LLP).
 - 2.2.2 Present from the Applicant: Oliver Baybut (Environment and Governance Section Head at Drax Power Limited), Jim Doyle (Environmental Consents Officer at Drax Power Limited), Steve Austin (Drax Repower Technical Manager at Drax Power Limited), Gary Preece (Lead Engineer at Drax Power Limited), and Gary Borgan (Senior Legal Counsel – Construction and Projects at Drax Power Limited).
 - 2.2.3 The Applicant's consultants and legal advisors: Alexis Coleman (Senior Associate at Pinsent Masons LLP), Abigail Sweeting (Solicitor at Pinsent Masons LLP), Clare Hennessey (Technical Director, Infrastructure Planning Director at WSP and Project Director for Drax Repower), Lara Peter (Principal Consultant at WSP and Project Manager for Drax Repower), Dr Chris Taylor (Associate Director at WSP and EIA Lead for Drax Repower), Dr Andrew Jackson: (Associate at WSP and Gas Engineering Lead for Drax Repower), and Paul Barnett (Director at Lambert Smith Hampton).

2.3 Richard Watson, tenant at Drax Abbey Farm.

3. **AGENDA ITEM 3 – MAIN DISCUSSION POINTS**

3.1 **Additional Land Application (Changes sought on the application made at D2 [REP2-038, REP2-039 and REP2-040])**

3.2 With respect to the Additional Land Application, the ExA confirmed that it had received the further information requested from the Applicant as well as a copy of the notice published in accordance with the Infrastructure Planning (Compulsory Acquisition) Regulations 2010. The ExA confirmed it was satisfied that the consultation with affected persons can be undertaken during the Examination period and no affected persons would be prejudiced. The ExA therefore accepted the Additional Land Application into the Examination. The ExA confirmed that written confirmation would follow.

3.3 **Update on negotiations by the Applicant**

3.4 **The ExA** asked for an update on negotiations with affected persons.

3.5 **Richard Griffiths** confirmed:

3.5.1 The Applicant has reached agreement in principle and the commercial terms with all Category 1 landowners save for Mr Watson and the legal agreements are currently being negotiated with the respective solicitors; and

3.5.2 The Applicant has had extensive discussions with Mr Watson and he supports the project in principle but the two parties are in the process of agreeing the commercial terms around the land acquisition sought from Mr Watson.

3.6 **Mr Watson** confirmed that there had been discussions but that there was a significant difference in the parties' positions on the commercial terms of a voluntary agreement.

3.7 **The ExA** clarified its understanding (based on the Applicant's Response to Written Questions (REP2-035)) that the Applicant had Heads of Terms agreed with: Kate Bingley; John Neville Stones; John and Yvonne Holgreaves; T.W Falkingham Limited; and Bryan Major Wild. In relation to Paul Cooper and Gwendoline Cooper, the Applicant had not agreed Heads of Terms but the Applicant was close to doing so; the ExA asked if this had changed.

3.8 **Richard Griffiths** confirmed that the Applicant and Paul Cooper and Gwendoline Cooper have not signed Heads of Terms yet, but the outstanding issue was a legal drafting point and this was being dealt with in the legal agreement between the parties. Agreement in principle and commercial terms have been agreed with Paul Cooper and Gwendoline Cooper.

3.9 **The ExA** asked Mr Watson if he envisages that the issues will be resolved by the close of the Examination.

3.10 **Mr Watson** stated that he and the Applicant had an agreement 3 years ago in relation to another project relating to a different parcel of land and then the Applicant pulled out. The Applicant does not seem willing to follow the same route in relation to the Proposed Scheme.

3.11 **Mr Griffiths** clarified that the project being referred to by Mr Watson was the White Rose CCS Project and this project did not go forward as the Government changed its position on CCS. That is why the DCO was not granted and why the Applicant did not need to complete the deal with Mr Watson, as there was no need for the land.

- 3.12 **The ExA** noted that it was pleased that the Applicant has agreed Heads of Terms with a number of affected persons. The ExA sought clarification that the Heads of Terms signed with Mr Bingley and Mr Cooper also take into account the changes the subject of the Additional Land Application.
- 3.13 **Mr Griffiths** confirmed the changes have been discussed with the affected persons and the changes do not affect the Heads of Terms. Mr Griffiths referred to the confirmation of agreement in principle to the changes from affected persons, as enclosed with the Applicant's letter submitted to the Planning Inspectorate on Tuesday 4 December 2018.
- 3.14 **Paul Barnett**, who is progressing the land negotiations on behalf of the Applicant, confirmed:-
- 3.14.1 Kate Bingley and Mr Stones – other than changes to the plans there have been no changes to the Heads of Terms. Those changes have been accepted in principle by Michael Townsend acting on behalf of both these parties.
- 3.14.2 Mr Cooper – the situation is slightly different as there are compensation issues as a result of boundary changes. However, these changes have been accepted by Mr Cooper (as evidenced in the correspondence enclosed with the Applicant's letter submitted to the Planning Inspectorate on Tuesday 4 December 2018).
- 3.15 **Mr Griffiths** confirmed the affected persons are aware of the changes sought and have signed up to them.
- 3.16 **Mr Barnett** confirmed that the Applicant has given the landowners a target of completing the Option Agreements for the easements and land purchases by Christmas and also the forms of easement and transfers. Pinsent Masons LLP and the landowners' solicitors are working hard to meet this deadline. Mr Watson is the exception, as the commercial terms are not agreed.
- 3.17 **Tests of CA within the Planning Act 2008**
- 3.18 **The ExA** sought confirmation from the Applicant that the compulsory acquisition of land meets the test of sections 122 and 123 of the PA 2008.
- 3.19 **Richard Griffiths** referred to the conditions set out in the relevant sections of the PA 2008. In particular, section 122 sets out the following conditions:
- "(a) is required for the development to which the development consent relates,*
- (b) is required to facilitate or is incidental to that development, or*
- (c) is replacement land which is to be given in exchange for the order land under section 131 or 132" – Mr Griffiths confirmed that section 122(2)(c) is not relevant as there is no replacement land being exchanged as part of the Proposed Scheme.*
- "(3) The condition is that there is a compelling case in the public interest for the land to be acquired compulsorily".*
- 3.20 **Mr Griffiths** explained that there is very little freehold land being acquired. There is land within the Existing Drax Power Station Complex and whilst Drax owns the freehold of this land there are various leasehold and landlord and tenant arrangements which are being relocated. To ensure there are no landlord and tenant interests left on the title, the freehold is included in the compulsory acquisition schedule. The Applicant is in the process of relocating these leasehold interests to elsewhere within the Existing Drax Power Station Complex, and no objection have

been received by the Applicant. The land is necessary for the Proposed Scheme, given the land within the Existing Drax Power Station Complex is where Units X and Units Y would be located.

- 3.21 **Mr Griffiths** identified that for the majority of the Gas Pipeline route the Applicant is seeking the acquisition of rights. The Applicant only seeks acquisition of freehold land at the beginning of the Gas Pipeline route where the Gas Receiving Facility ("**GRF**") is located (Plot 9 on the Land Plans) and at the other end where the Above Ground Installation ("**AGI**") is located. The operator of a generating station requires the freehold of these areas for security and operational reasons. Where the construction corridor is located, temporary possession, not compulsory acquisition, is required. Along the Gas Pipeline route, the Applicant has sought to minimise the land required and the majority of the route is 30m wide. This was explained by the Applicant in the Issue Specific Hearing on Environmental Issues held on 5 December 2018 about what constitutes the "working width". At crossing points, the areas shown on the Land Plans is slightly wider to allow potential for directional drilling. In summary, the Applicant has minimised its acquisition of rights as far as reasonably practicable and limited its acquisition of freehold land to the infrastructure where it is necessary for an operator of a generating station to own the freehold.
- 3.22 **Mr Griffiths** identified that the Applicant has sought to minimise the freehold acquisition around the GRF (Work Number 5) and the AGI (Work Number 6) as far as reasonably practicable in order to accommodate the GRF and AGI. The GRF and AGI are necessary pieces of infrastructure for the Gas Pipeline, and are associated development to the generating stations Units X and Y.
- 3.23 Accordingly, section 122(2)(a) of the PA 2008 is met in respect of the land within the Existing Power Station Complex (required for Units X and Y), the Gas Pipeline route, and the GRF and AGI as the land is required for the development to which the development consent relates.
- 3.24 **Mr Griffiths** explained that the following plots relate to Mr Watson's land:-
- 3.24.1 Plot 8 (land which is required for Carbon Capture Readiness ("**CCR**") (Work Number 10), and retained and enhanced landscaping (Work Number 11)); and
- 3.24.2 Plots 10, 13 and 15 (land which is required for construction compound (Work Number 9B), and post construction the land is reserved for CCR. This land is also required for retained and enhanced landscaping.
- 3.25 **Mr Watson** asked for clarification in relation to the different Plots and Works Numbers. Mr Griffiths confirmed this by reference to the Land Plans and Works Plans.
- 3.26 **Mr Watson** asked if the Applicant's use of Plots 13, 15 and 10 had changed. Mr Griffiths confirmed the requirement for these plots (including the works numbers set out in Schedule 1 of the DCO) have not changed since submission of the Application.
- 3.27 **Mr Griffiths** explained that provision of space for CCR is an NPS policy requirement in connection with a Nationally Significant Infrastructure Project, for which there is an urgent need (as established by NPS EN-1 and in the Applicant's submissions made at the Issue Specific Hearing on 5 December 2018). As a result, the condition in section 122(2)(b) of the PA 2008 is satisfied with respect to Mr Watson's land (the freehold of which is owned by the Applicant, with Mr Watson having a leasehold interest), as that land is required to facilitate the development. In relation to the space for the Carbon Capture Reserve Space, the Applicant has to demonstrate that the land is sufficient to meet the Environment Agency's requirements and the Applicant is not seeking any more than is needed.

- 3.28 **Mr Griffiths** submitted, with respect to the condition that there be a compelling case in the public interest to compulsorily acquire the land and rights required for the Proposed Scheme, that given the demonstrated urgent need for the Proposed Scheme, the compulsory acquisition of land needed for, or to facilitate, the development is in the public interest. As noted above, the need for the project was discussed during the Issue Specific Hearing on Environmental Matters on 5 December 2018, as were the benefits of the Proposed Scheme.
- 3.29 **Need to compulsorily acquire the freehold of Plot 8**
- 3.30 **The ExA** questioned why the whole of Plot 8 is required to be acquired when only the southern, south western corner of it (Work Number 10(a)) is required for CCR and Work Numbers 10(c) and 11 relate to landscaping only.
- 3.31 **Richard Griffiths** confirmed that the Applicant owns the freehold of Plot 8 and compulsory acquisition is required to terminate the existing lease.
- 3.32 **Mr Griffiths** acknowledged that the Applicant is happy to review this and assess whether part of Plot 8 could be changed from pink (compulsory acquisition of the leasehold) to blue (seeking new rights only).
- 3.33 **Need to compulsorily acquire the southern and eastern strips of plot 10 for the purposes of Work Nos 10c and 11 (retained landscaping)**
- 3.34 **The ExA** asked if the areas within Work Number 11 on Plot 10 can be changed from pink to blue as for Plot 8 above. Richard Griffiths confirmed that from a practical perspective, it makes sense for the Applicant to acquire the leasehold of this plot as the entire area (including the southern and eastern strips shown as being within Work Number 11) is required for CCR (Work Number 10A).
- 3.35 **Mr Watson** submitted that existing planting is already in place around the southern end of Plot 10. Mr Griffiths confirmed that existing landscaping on the southern end of Plot 10 will be retained and enhanced as part of mitigation for the Proposed Scheme.
- 3.36 **The ExA** asked if there is a conflict between the retained and enhanced landscaping as part of Work Number 11 and the CCR being Work Number 10A. Mr Griffiths explained that there is no conflict as Work Number 11 retains and enhances this landscaping, then in the future, if a separate planning application or DCO application comes forward for carbon capture storage, that would be subject to its own separate landscaping strategy, dealt with as part of that application. This is no different to any subsequent planning application, including the Proposed Scheme and the existing landscaping provided as part of the original power station design.
- 3.37 **Mr Watson** stated that during his meetings with the Applicant, he has been informed there is no fixed plan for the Carbon Capture Storage plant and the Applicant is not in a position to put a design forward. The Carbon Capture Storage scheme will require its own development consent order at which point a design will be put forward. Mr Watson stated that if the Carbon Capture Storage scheme does require its own development consent order, the Applicant could seek compulsory acquisition of the land at that point. The Applicant owns the freehold and all it has to do is seek a surrender of his Agricultural Landholding Lease under the Agricultural Landholding legislation.
- 3.38 **Mr Griffiths** confirmed the Applicant can deliver the land for CCR through the termination of Mr Watson's lease. However, Plots 10, 13 and 15 are also required for the construction compound and laydown area. It is the Applicant's understanding that Mr Watson does not wish to have this land back after its use as construction laydown, which could be in approximately 7 years' time. As a result, the discussions with Mr Watson over these Plots and Plot 8 are part of a wider commercial negotiation with Mr Watson, who is packaging these Plots together as well as other land that is not

required for the Proposed Scheme but which Mr Watson is adding into the commercial discussions. The land will remain in the compulsory acquisition request until discussions have been finalised with Mr Watson.

- 3.39 **Mr Watson** referred to the Applicant's Construction Travel Worker Plan (REP2-021), which sets out that all construction deliveries will be to the west of New Road, not the east, and therefore queried why so much space was required to the east for Work Number 9B (construction laydown). Mr Griffiths confirmed that Work Number 9B has always been included in the DCO and is part of the main construction laydown area for construction of the Proposed Scheme. Mr Griffiths noted that there may be an error in the Construction Travel Worker Plan, and the Applicant would consider this further.
- 3.40 Following the hearing the Applicant has reviewed both the Outline Construction Worker Travel Plan and the Outline Construction Traffic Management Plan in response to Mr Watson's query. References in those documents referred to HGV access to laydown areas north of the cooling towers. It has now been made clear at paragraphs 3.1.4, 3.2.1 and 6.2.1 of the Outline Construction Traffic Management Plan, and paragraph 3.2.4 of the Outline Construction Worker Travel Plan that HGV deliveries will access the Existing Drax Power Station Complex and the two laydown areas on both the east and the west sides of New Road (shown as Work Numbers 9A and 9B on the Works Plans). Revised versions of both documents are submitted at Deadline 4. This is why the plots Mr Watson refers to are required for construction laydown, as well as construction worker parking, as set out in Schedule 1 of the DCO.
- 3.41 **Plots 12 and 24**
- 3.42 **The ExA queried** why the rights sought over Plots 12 and 24 (sheets 3 and 5 of the Land Plans) were wider than for the rest of the Gas Pipeline route.
- 3.43 **Richard Griffiths** explained that towards the end of the Gas Pipeline route there needs to be flexibility as the exact location of the GRF in Plot 9 has not yet been determined. Flexibility is required to ensure the Gas Pipeline can enter the GRF at the correct location.
- 3.44 **Dr Andrew Jackson**, the Applicant's Gas Pipeline Engineer, confirmed:-
- 3.44.1 The location of the GRF is constrained by the pylon for the overhead cables as no works can be carried out in close proximity to this pylon; and
- 3.44.2 The most direct line for the Gas Pipeline is straight and therefore it is likely to enter the GRF on the northern or southern border of the plot. It is more likely that it will enter by the South.
- 3.45 **The ExA** asked why there was a need for flexibility for the location of the GRF. Dr Jackson confirmed that this is about its size given the substantial amount of kit to be contained within this facility. The size required is broadly the area of Plot 9. However, there may be the opportunity to reduce the area required but only once detailed design has been carried out.
- 3.46 **The ExA** asked whether the detailed design process would take place during the Examination in order to have confirmation of the area required for the GRF. Dr Jackson confirmed this would not be completed by the end of the Examination given the complexity with designing a large facility such as the GRF, and that its layout would be complicated. This is a post-consent design workstream.

- 3.47 **Issues concerning the Plot 5 'limbs' concerning Work Nos. 8A and 8B**
- 3.48 **The ExA** noted that it was aware that National Grid had issues with the two 'limbs' within Plot 5 and asked for an update from the Applicant about its discussions with National Grid.
- 3.49 **Richard Griffiths** confirmed that this point is wrapped up in discussions with National Grid on the protective provisions. Mr Griffiths confirmed that this issue was expected to be resolved by the end of the Examination.
- 3.50 **Funding Statement**
- 3.51 The **ExA** asked the Applicant to confirm the Funding Statement has the requisite funds for the compulsory acquisition of the Additional Land. Richard Griffiths confirmed this is correct.
- 3.52 **The ExA** also sought confirmation that Article 43 is the funding Article in the DCO, to guarantee the funds for compulsory acquisition. Mr Griffiths confirmed this was correct.
- 3.53 **Changes sought on the application made at D2 [REP2-038, REP2-039 and REP2-040]**
- 3.54 **The ExA** confirmed the compulsory acquisition changes submitted by the Applicant (referred to as the Additional Land Application) have now been accepted into the Examination (as noted earlier in this summary).
- 3.55 **Richard Griffiths** explained the changes that are set out in the Additional Land Application submitted at D2 (REP2-039). Mr Griffiths explained that the red line boundary for the Proposed Scheme remains exactly as submitted at the Application stage, and that the changes sought relate to the category of land being acquired within the original redline, being in general terms over certain plots:
- 3.55.1 the acquisition of new rights has changed to the acquisition of freehold;
 - 3.55.2 the acquisition of freehold has been changed to acquisition of new rights; or
 - 3.55.3 the acquisition of new rights has been changed to temporary possession.
- 3.56 **Mr Griffiths** went through the changes:
- 3.56.1 Plot 9 – the GRF – there has been a change from seeking to acquire new rights to acquisition of freehold as there was a discrepancy between the Works Plans and the Land Plans. The Works Plans already showed the GRF in this area but the Land Plans had not been updated. The ExA queried why there was an assumption that the Land Plans were incorrect. Mr Griffiths explained that the Works Plans have been created by the engineering team and the Land Plans have been created by the land referencing team and unfortunately the Land Plans did not accurately reflect the Works Plans. Mr Griffiths confirmed that the Applicant had not assumed the Land Plans were incorrect; a checking exercise was undertaken when the discrepancy was discovered;
 - 3.56.2 Plot 12 and Plot 25 – originally temporary possession was sought over these plots and this is changed to acquisition of new rights to give the Applicant the right to enhance and maintain existing landscaping along the Gas Pipeline route;
 - 3.56.3 Plot 27 – temporary possession was originally sought and this has been changed to acquisition of new rights. The alignment and area of the plot has

been changed to match the current Gas Pipeline alignment and ensure consistency with work plans;

- 3.56.4 Plot 32 – acquisition of rights was originally sought and this is reduced to temporary possession. This is not strictly "additional land", however the Applicant has included it for completeness;
- 3.56.5 Plots 58, 61, 66 and 67 (Above Ground Installation) – temporary possession was originally sought over these plots and this is changed to acquisition of new rights. There was a discrepancy between the land plans and the area of planting identified in the outline Landscape and Biodiversity Strategy. As a result, a greater area was required for planting mitigation than shown on Land Plans. New rights are required over this land in order to retain and manage the planting in future;
- 3.56.6 Plots 62 – there has been a change from seeking to acquire new rights to acquisition of freehold. This is a result of various changes regarding the location of the oil separator and attenuation tank, as well as the access circle which has been slightly extended to prevent blocking the access road leading to the AGI. This is a National Grid requirement.
- 3.57 **The ExA** asked whether the location of the oil separation tank (in Plot 62) had been always in the same place. Mr Griffiths confirmed that the tank has always formed part of the drainage strategy. As the design has been refined, the location has been able to be locked down, which has resulted in the need for the turning circle to prevent blockages to the access road to the AGI. This further design evolution has also come about through discussions with Mr and Mrs Cooper and their access to the south, which impacted on the drainage strategy. Mr Griffiths confirmed that the Applicant does not need to acquire the freehold for the access required by Mr and Mrs Cooper and therefore this does not need to be shown on the land plans.
- 3.58 **Dr Jackson** confirmed the access for Mr and Mrs Cooper will be along the part of the access road (Plot 62) running north to south, and the part of the access road running east to west is for the exclusive use of National Grid and Drax to allow permanent access to the AGI. This is in compliance with National Grid's requirement. The road has been extended to allow agricultural vehicles and National Grid vehicles to pass each other. In response to a question from the ExA, Dr Jackson confirmed that it would be unlikely that the access to the AGI where the access road turns will be gated, however, a fence will be used to block animals and guarantee 24-hour access to National Grid.
- 3.59 **Updates on Protective Provisions**
- 3.60 **Richard Griffiths** confirmed that Protective Provisions have been agreed with Yorkshire Water and BT/Openreach. The agreed draft Protective Provisions are found in the latest draft of the DCO at Part 1 and Part 2 of Schedule 12 (REP3-007).
- 3.61 **Vodafone – Mr Griffiths** confirmed:-
- 3.61.1 The Applicant has been in communication with Vodafone since Spring 2018. Vodafone originally said it did not have apparatus that was affected by the Proposed Scheme and then reversed this position.
- 3.61.2 Vodafone is not caught by Section 127 of the PA 2008. In any event, Schedule 12, Part 2 of the DCO would protect them if the Applicant does not receive a response from Vodafone on the Protective Provisions in circulation. The Applicant will continue to chase Vodafone to reach agreement.
- 3.62 **National Powergrid Limited – Mr Griffiths** confirmed:-

- 3.62.1 The Applicant has been in communication with Northern Powergrid since Spring 2018.
 - 3.62.2 Northern Powergrid Limited is caught by Section 127 of the PA 2008 but the Secretary of State can be satisfied that Schedule 12, Part 1 protects Northern Powergrid Limited if the Applicant does not receive a response from them on the protective provisions in circulation. The Applicant will continue to chase Northern Powergrid Limited for a response.
- 3.63 **National Grid – Mr Griffiths** confirmed:-
- 3.63.1 The Applicant is discussing the Protective Provisions with National Grid alongside a confidential side agreement.
 - 3.63.2 There is a 400KV substation belonging to National Grid within Drax's Power Station complex and therefore a number of existing documents need to be amended which are expected to be agreed by the end of the Examination.
 - 3.63.3 The Applicant will include a working draft of the Protective Provisions with National Grid in Part 3, Schedule 12 of the DCO submitted for D5.

