

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 – 12th February 2019
(Submitted for Deadline 7)



The Planning Act 2008

Drax Power Limited

Drax Repower Project

Applicant: DRAX POWER LIMITED
Date: February 2019
Document Ref: 8.5.19
PINS Ref: EN010091

Document History

Document Ref	8.5.19
Revision	001
Author	Abigail Sweeting / Alexis Coleman
Signed	Date 20/02/2019
Approved By	Richard Griffiths
Signed	Date 20/02/2019
Document Owner	Pinsent Masons LLP

WRITTEN SUMMARY OF DRAX POWER LIMITED'S ("THE APPLICANT") ORAL CASE PUT AT THE COMPULSORY ACQUISITION HEARING – 12 FEBRUARY 2019

1. INTRODUCTORY REMARKS

- 1.1 The Compulsory Acquisition Hearing ("**CAH**") was held at 10am on 12 February 2019 at the Goole Leisure Centre, North Street, Goole DN14 5QX.

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), 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), 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) and Paul Barnett (Director at Lambert Smith Hampton).

- 2.3 Richard Watson, tenant at Drax Abbey Farm.

3. REASON FOR THE CAH

- 3.1 **The ExA** explained that the Applicant made an application for the acquisition of additional land within the Order Limits (Examination Library Reference REP2-039) which was accepted by the ExA on 7 December 2018 by way of a procedural decision (Examination Library Reference PD-010) subject to its duties under Regulations 7, 8 and 9 of the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 ("**CA Regulations**").

- 3.2 **The ExA** set out that pursuant to Regulation 15(2) of the CA Regulations:- "*If an additional affected person notifies the Secretary of State of a wish to be heard at a compulsory acquisition hearing and such a hearing has already taken place, the Examining authority must arrange another and notify the applicant, each affected person and each additional affected person of the date, time and place fixed for the further compulsory acquisition hearing.*" The ExA confirmed that no request has been made by any affected person, however, taking a precautionary approach, the ExA has decided to hold this CAH.

4. MAIN DISCUSSION POINTS

- 4.1 **The ExA** asked if:-

- 4.1.1 Any affected person(s) (meaning those persons who have an interest in the land subject to compulsory acquisition) wished to make an oral representation – no person confirmed that they did; and

- 4.1.2 Any interested party wanted to make an oral submission – no person confirmed that they did.
- 4.2 **The ExA** asked Mr Griffiths for an update on the legal agreements with persons affected by the compulsory purchase of land within the Order Limits.
- 4.3 **Richard Griffiths** confirmed:-
- 4.3.1 One option agreement is signed and will exchange shortly with John and Yvonne Holgreaves;
- 4.3.2 Other landowners over which compulsory acquisition of land or rights is sought or temporary possession is sought (save for Mr Watson) – all contracts are currently with their respective legal advisers and the Applicant expects the options to be exchanged by the end of February 2019; and
- 4.3.3 In respect of Mr Watson, negotiations have continued between the parties since the last CAH. The Applicant has received a revised proposal from Mr Watson which it is currently assessing and it aims to respond to this by the end of the month. Mr Griffiths acknowledged on behalf of the Applicant that this agreement is significantly behind the others but the parties are in active discussions to progress this; and
- 4.3.4 Mr Griffiths noted that the legal agreement with Ms Bingley and Mr Stones may be delayed due to a family circumstance.
- 4.4 **The ExA** sought confirmation from the Applicant that save for the agreement with Mr Watson, it is confident it will reach agreement with the other landowners by the end of the Examination.
- 4.5 **Mr Griffiths** confirmed the Applicant's aim is to exchange contracts with the landowners before the end of this month but ideally by the end of the Examination on the 4 April 2019 (although noting the personal circumstance of Ms Bingley and Mr Stones which is outside the control of the Applicant).
- 4.6 **The ExA** asked if the legal agreement with Mr Watson is not completed before the end of the Examination, how the Applicant would advise the ExA to treat the Application in this respect.
- 4.7 **Mr Griffiths** confirmed that the Applicant would continue to discuss the terms with Mr Watson after the close of the Examination if agreement has not been reached. The Applicant understands there is no objection in principle by Mr Watson to the Application; the delay is purely a commercial discussion which has been on-going for a number of months. The priority of the Applicant is to reach a voluntary agreement, however, if at the end of the Examination agreement has not been reached, the ExA's report will need to take into account that the Applicant has been negotiating with Mr Watson and consider the need for the land, and assess the request for compulsory acquisition powers on that basis.
- 4.8 **The ExA** asked Mr Watson if he had any comments on what Mr Griffiths has just said.
- 4.9 **Mr Watson** informed the ExA that he has agreed with the Applicant that they will submit a statement outlining the latest position on their discussions before the end of the Examination in the event that agreement has not been reached before then. In addition, Mr Watson responded that under the Carbon Capture Reserve ("**CCR**") proposals, the Applicant talks about a requirement for it to "reserve land" for CCR and he cannot find the provision that requires this and asked for the relevant document that sets such requirement out.

- 4.10 **Mr Griffiths** explained that the CCR land is firstly required for construction laydown and then must be reserved in order to comply with the Capture Readiness (Electricity Generating Stations) Regulations 2013. The Applicant has since provided to Mr Watson the relevant sections of the Carbon Capture Readiness (Electricity Generating Stations) Regulations 2013 and the CCR Guidance: A guidance note for Section 36 Electricity Act 1989 consent applications, November 2009 (including the model conditions in Annex G) which set out the requirement to reserve or safeguard land for CCR.
- 4.11 **Mr Watson** confirmed that the Applicant provided two different plans showing the CCR land and wanted to confirm if the ExA had received these too.
- 4.12 **Jim Doyle** clarified that the plans are available on the Planning Inspectorate's website. One plan shows the 1,800 megawatt ("**MW**") unit (Unit X) and the second plan shows the 3,600 MW capacity (Units X and Y). The Applicant can confirm that these plans are included within its CCR report (Examination Library Reference REP3-015) and are already before the ExA.
- 4.13 **Mr Watson** also asked for confirmation that the Applicant would not be proceeding with the previous agreed voluntary agreement between himself and the Applicant that covered the relevant land but related to a different project.
- 4.14 **Mr Griffiths** confirmed that this is a commercial negotiation point which is outside the remit of the Examination. The ExA agreed with Mr Griffiths that this sits outside the Examination.
- 4.15 **The ExA** asked for an update on the protective provisions ("**PPs**").
- 4.16 **Mr Griffiths** responded:-
- 4.16.1 **National Grid** – The Applicant expects the PPs and separate commercial agreement will be signed before the close of the Examination. In response to a question from the ExA, Mr Griffiths confirmed that these discussions tie in with the two "limbs" forming part of Plot 5. Mr Griffiths confirmed that the final joint position will be set out for the ExA before the end of the Examination. Mr Griffiths also noted that with the PPs, there would be no serious detriment to National Grid's undertaking and as such the section 127 of the Planning Act 2008 would be satisfied;
- 4.16.2 **Environment Agency ("EA")** – the Applicant is waiting to hear back from the EA on the draft PPs with the aim of reaching an agreement on such as quickly as possible;
- 4.16.3 **Northern Powergrid** – discussions on the PPs are progressing and the Applicant is hopeful that they will be agreed before the end of the Examination. Mr Griffiths also noted that with the PPs, there would be no serious detriment to Northern Powergrid's undertaking and as such the section 127 of the Planning Act 2008 would be satisfied;
- 4.16.4 **Vodafone** – Section 127 of the Planning Act 2008 does not apply to this statutory undertaker. Vodafone went to Site last week to confirm the infrastructure they have within the Order Land. The Applicant hopes they can now agree the PPs in the DCO; and
- 4.16.5 **Yorkshire Water and BT** – the PPs are agreed with this statutory undertaker, as reported previously. Accordingly, in respect of Yorkshire Water, the Secretary of State can be satisfied that there would be no serious detriment to Yorkshire Water's undertaking given the protection in the PPs and accordingly the test in Section 127 of the Planning Act 2008 is met. Section 127 of the Planning Act 2008 does not apply in respect of BT.

- 4.17 **The ExA** asked in relation to the "Bingley Land" if this is going to be compulsory acquired.
- 4.18 **Mr Griffiths** confirmed there is no plan to compulsory acquire this land. As set out in the Outline Landscape and Biodiversity Strategy (Examination Library Reference REP6-009), there is to be a private agreement with the landowner in relation to the planting proposed on this land outside of the red line boundary. The Applicant hopes to confirm by the end of the Examination that this legal agreement is in place. However, due to the personal circumstances of the landowner this agreement may be delayed, in which case the Applicant aims to submit correspondence with the landowner's land agent that confirms the planting on this land is deliverable and agreed with the landowner.

