

Tracey Williams
The Planning Inspectorate

Planning

Ask for: Wendy Lane

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My ref:

Your ref: EN010092

Date: 10 June 2020

Via email only to

ThurrockFPG@planninginspectorate.gov.uk

Dear Tracey Williams,

Application by Thurrock Power Limited for an Order Granting Development Consent for the Thurrock Flexible Generation Plant - Adequacy of consultation request

Thank you for your letter dated 27 May 2020 requesting views on the adequacy of the pre-application consultation in respect to the Application by Thurrock Power Limited for an Order Granting Development Consent for the Thurrock Flexible Generation Plant

PINS invited the Council to advise whether the Council considers that the developer has complied, in relation to the application, with the following duties:

- **Duty to consult - PA2008 – section 42**
 - Section 42 requires consultation with certain persons specified in the Act and prescribed in regulations.
- **Duty to consult the local community - PA2008 – section 47**
 - Section 47 requires applicants to prepare a “Statement of Community Consultation” (SoCC) in consultation with relevant Local Authorities which sets out how the developer intends to consult the local community on its proposals. The developer must then publish the SoCC and undertake statutory consultation in accordance with it.
- **Duty to publicise - PA2008 – section 48**
 - Section 48 requires that details of the statutory consultation be publicised via a series of notices in the local and national press.

Statutory pre-application consultation was carried out under Sections 42, 47 and 48 of the Act between 16th October 2018 and 14th November 2018 for a period of 30 days. The Borough Council responded on 14 November 2018 to that section 42 consultation.

As explained in the applicant’s consultation statement in paragraph 1.1.5:

Due to design evolution, including in response to feedback received, project changes were made subsequent to the consultation in 2018. Consultation on those project changes took place in October / November 2019. Parties consulted during the initial consultation in 2018 under S42 of the Act were consulted, as well as parties who had not been consulted in 2018 but which the Applicant considered might be affected either directly or indirectly by the

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changes to the project.

Our response to that October / November 2019 consultation included the following:

The primary change of relevance to Gravesham Borough Council is the proposal to construct a new permanent causeway into the River Thames along with two alternative access routes, with the consequential amendments to the red line boundary. This brings the construction facilities much closer to the east side of Gravesend and also directly impacts on the marine environment.

The Project Changes report sets out the reasons for the causeway and an outline of its design. Impact on salt marsh is noted along with other issues to do with the dredged channel. There is however no discussion of the landscape, noise, lighting, historic environment and other potential impacts on Gravesham or Thurrock from the proposal. As use of causeway is dictated by the tide it has to be assumed that it could be operational at any point of the day or night. Para 3.5 makes reference to the top of the causeway being 'X meters AOD'.

It may be noted that in the September 2018 Scoping Opinion from PINS Table 1.5 on Construction Impacts it says 'If the option to transport materials/abnormal loads via water is pursued, noise impacts from ships/barges should be assessed where significant effects are likely'. This was scoped out previously as no longer being proposed, but is now logically back in scope. There is no information provided on these potential implications of the new proposed causeway so it is not possible to make further comment.

It will be necessary to explore the implications from these proposals on Gravesham including the in combination effects. Tilbury 2 is now permitted and under construction, and far more is known about Lower Thames Crossing than when the original consultation was carried out. From these revised proposals and following the list in Part 5 of the Overarching National Policy Statement for Energy (EN-1, July 2011) lists generic impacts that may arise from infrastructure projects. The following would appear to be potentially relevant:

- 5.2 Air quality and emissions including from marine vessels
- 5.3 Biodiversity and geological conservation
- 5.5 Coastal change
- 5.6 Dust, odour, artificial light, smoke, steam and insect infestation
- 5.7 Flood risk
- 5.8 Historic environment
- 5.9 Landscape and visual
- 5.10 Land use including open space, green infrastructure and Green Belt
- 5.11 Noise and vibration
- 5.12 Socio-economic
- 5.15 Water Quality and resources

It is not clear what the future use of the causeway is, which is described as permanent (para 3.1). The new Zone plan (Zone G) suggests that the access connections are temporary whereas for one of the deleted links (see para 3.16 (c)) it was suggested it would remain should large loads be required in the future. Clarity, and appropriate assessment, is required.

It is noted that PINS advised the applicant to ‘consider a SoCG with neighbouring Local Authorities regarding visual impacts from the project’ (S.51 advice 31 Jan 2019). Combined with the proposed changes it would be helpful to have a meeting to understand the proposals better and explore common ground, and meet the PINS suggestion.

The Council has previously advised that a Planning Performance Agreement should be put in place as no fees are received for this proposal. This means that all costs for GBC’s input into the project is being borne by the Council.

We understand that PINS, at this stage, are not seeking GBC’s views on the merits of the application. However a consideration of the adequacy of the consultation must include consideration of whether the consultation provided sufficient information as to the effects of the scheme – it can’t just be a consideration of process and does need to consider content.

The Planning Act 2008 does not lay down a detailed procedure for the carrying out of the consultation exercise and this gives the Secretary of State / PINS broad discretion. However even such discretion is subject to the principles set out by Stephen Sedley QC as approved by Hodgson J in *R v Brent LBC ex parte Gunning* (1985) 84 LGR 168 and endorsed by the Supreme Court in *R (Moseley) v Haringey LBC* [2014] UKHL 56 per Lord Wilson JSC (“the Gunning principles”):

“First, that consultation must be at a time when proposals are still at a formative stage. Second, that the proposer must be given sufficient reasons for any proposal to permit of intelligent consideration and response. Third... that adequate time must be given for consideration and response and, finally, fourth, that the product of the consultation must be conscientiously taken into account in finalising any statutory proposals.”

In summary, the applicant’s consultation statement¹ advises that in response to GBC’s concerns (as set out in the extract above) that “The Project Changes Report (Appendix 7.17) is incomplete and lacks assessment of the landscape, noise, lighting, historic environment” that impacts on Gravesham are now covered within the Environmental Statement submitted as part of the DCO application. Whilst this is appreciated, this information wasn’t available to the GBC or the public as part of the consultation process. We are therefore grappling with the second Gunning principle i.e. has sufficient information been made available to the public in Gravesham, especially in respect to the late addition of the causeway, to enable “intelligent consideration and response”. We imagine that this is a common issue for PINS as proposals are at a formative stage when they are being consulted upon but there must be “a line in the sand” to ensure that the Gunning Principles are complied with.

The Borough Council has had a further exchange of emails during May 2020 with the applicant, which is summarised in paragraphs 11.1.10 & 11.1.11 of Consultation Report: Thurrock Flexible Energy Plant Application document 5.1. The applicant has stated that they have carried out additional technical work which the Borough Council will review when the application material is made available, and comment as appropriate in making any representations in due course. As you would expect from our above comments, whilst this additional information is appreciated, this information hasn’t been available to our Members and the public, and so, as you highlighted in your original adequacy response in March, it does raise concerns about whether people can sufficiently understand the impact that this project would have on its site and wider environment.

In conclusion, therefore, whilst we concur that the applicant has complied with the procedural aspects of the duties, we would appreciate PINS consideration of the content of the material especially at the consultation in October 2019 which post-dated the applicant’s statutory pre-application consultation undertaken in 2018.

¹ A5.1_Consultation_Report

If you require any further information, please feel to contact me.

Regards

Wendy Lane

Assistant Director (Planning)
Gravesham Borough Council