



REDACTED

Thurrock Power Limited
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145 Kensington Church Street
London
W8 7LP

12 September 2024

Dear REDACTED,

PLANNING ACT 2008

**PROPOSED NON-MATERIAL CHANGE TO THE THURROCK FLEXIBLE GENERATION PLANT
DEVELOPMENT CONSENT ORDER 2022 – S.I. [2022/157]**

1. I am directed by the Secretary of State for Energy Security and Net Zero (“the Secretary of State”) to advise you that consideration has been given to the Application (“the Application”) which was made by Thurrock Power Limited (“the Applicant”) on 9 February 2024, and amended by way of the Applicant’s cover letter of 11 August 2024 (“the Cover Letter”) which was sent in response to the Secretary of State’s information request of 1 August 2024 (“the Information Request”), for changes which are not material to be made to the Thurrock Flexible Generation Plant Development Consent Order 2022 (“the Order”) under section 153 of, and Schedule 6 to, the Planning Act 2008 (“the PA 2008”). This letter is the notification of the Secretary of State’s decision in accordance with Regulation 8 of the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011 (as amended) (“the 2011 Regulations”).
2. The original application for development consent under the PA 2008 was granted consent on 16 February 2022 and the Order gave development consent for the construction and operation of the Thurrock Flexible Generation Plant (“the Project”).
3. The Applicant initially sought consent to amend the gas element of the Project, requesting an increase to the permitted number of gas reciprocating engines that can be installed at the site from 48 to “*up to 100*”. The engines will be located within the consented engine houses and the additional engines would not affect the overall gross rated electrical output of the gas element of the Project (being 620MW). The Applicant states that the amendment will provide them with flexibility in procuring different engine sizes through the various phases of the gas element of the Project.
4. In response to the Information Request, the Applicant changed the initial request to instead request an increase to “*up to 96 gas reciprocating engines*” stating that 96 “*is the realistic maximum number of engines that would be installed with consented 48 [exhaust] stacks*”. The

Applicant seeks this change to provide them with flexibility in the size of engines procured to deliver the consented output limit (620MW), which would, as stated above, remain unaffected by the proposed change.

Summary of the Secretary of State's decision

5. The Secretary of State has decided under paragraph 2(1) of Schedule 6 to the PA 2008 to make non-material changes (“NMCs”) to the Order to authorise the change as detailed in the initial application and the Cover Letter, referred to hereafter as the Application. This letter is the notification of the Secretary of State’s decision in accordance with Regulation 8 of the 2011 Regulations.
6. The Secretary of State has considered whether the Application for a material or non-material change. In doing so, the Secretary of State has had regard to paragraph 2(2) of Schedule 6 to the PA 2008 which requires the Secretary of State to consider the effect of the change on the Order as originally made.
7. There is no statutory definition of what constitutes a *'material'* or *'non-material'* amendment for the purposes of Schedule 6 to the PA 2008 and Part 1 of the 2011 Regulations.
8. To assist decision-makers in determining whether a proposed change is material or non-material, guidance has been produced by the Department for Communities and Local Government (now the Department for Levelling Up, Housing and Communities (“DLUHC”)), the “Planning Act 2008: Guidance on Changes to Development Consent Orders” (December 2015) (“the Guidance”)¹, which makes the following points:
 - (a) given the range of infrastructure projects that are consented through the PA 2008, and the variety of changes that could possibly be proposed for a single project, the Guidance cannot, and does not attempt to, prescribe whether any particular types of change would be material or non-material;
 - (b) however, there may be certain characteristics that indicate that a change to a consent is more likely to be treated as a material change. The Guidance gives four examples as a starting point for assessing the materiality of a proposed change, namely:
 - (1) whether an update would be required to the Environmental Statement (“ES”) (from that at the time the Order was made) to take account of new, or materially different, likely significant effects on the environment;
 - (2) whether there would be a need for a Habitats Regulations Assessment (“HRA”), or a need for a new or additional licence in respect of European Protected Species (“EPS”);
 - (3) whether the proposed change would entail compulsory acquisition of any land that was not authorised through the Order; and
 - (4) whether the proposed change would have a potential impact on local people and businesses (for example, in relation to visual amenity from changes to the size and height of buildings; impacts on the natural and historic environment; and impacts arising from additional traffic).

¹ <https://www.gov.uk/government/publications/changes-to-development-consent-orders>

- (c) although the presence of the above characteristics indicate that a change to a consent is more likely to be treated as a material change, these only form a starting point for assessing the materiality of a change. Each case must depend on thorough consideration of its own circumstances.
9. The Secretary of State has considered the change proposed by the Applicant against the four matters set out in (1), (2), (3) and (4) above:
- (a) The Secretary of State notes that the information supplied supports the Applicant's conclusions that there are no new, or materially different, likely significant effects from those assessed in the ES. Considering the analysis supplied by the Applicant and responses to the consultation, the Secretary of State has concluded that no update is required to the ES as a result of the proposed amendments to the Order.
- (b) In respect of the HRA, the Secretary of State has considered the nature and impact of the change proposed and is satisfied that there is no change to the conclusions of the HRA as a result of the proposed amendments and therefore a new HRA is not required. He is also satisfied that the proposed change does not bring about the need for a new or additional licence in respect of EPS as the amendments sought are not anticipated to give rise to any new or different effects from an ecological perspective than those assessed for the original application.
- (c) In respect of compulsory acquisition, the Secretary of State notes that the proposed change does not require any additional compulsory purchase of land.
- (d) In respect of impacts on local people and businesses, the Secretary of State notes that no changes are anticipated by the Applicant to the impacts already assessed in the ES.
10. The Secretary of State therefore concludes that none of the specific indicators referred to in the Guidance, or other relevant considerations, suggests that the change considered in this letter constitutes a material change.
11. Taking the information contained in the Application and responses received from consultees into account, the Secretary of State is therefore satisfied that the change considered in this letter is not material and should be dealt with under the procedures for NMCs.

Consultation and responses

12. In accordance with the requirements of Regulation 7 of the 2011 Regulations specified parties, such as the local planning authority, were notified by email on 14 February 2024.
13. The Applicant published a notice of the Application as required by Regulation 6 (publicising the application) of the 2011 Regulations (the "Regulation 6 notice") for two consecutive weeks in the local press (the Thurrock Gazette and the Gravesend Messenger) on 15 February 2024 and 22 February 2024 and made publicly available on the Planning Inspectorate's ("PINS") website, such that there was an opportunity for anyone not notified to also submit representations to PINS. The deadline for receipt of representations on the Application was 22 March 2024.

14. Following publication of the notice, a minor amendment was made by the Applicant to its documents on 11 August, as referred to in paragraph 1, above. Given the nature of the amendment, which consisted of a minor amendment to decrease the number of reciprocating engines applied for from 100 to 96, the Secretary of State has not considered it necessary to request that the Applicant repeat the steps taken in respect of publicity.
15. The Applicant submitted its Consultation and Publicity statement as required by Regulation 7A of the 2011 Regulations on 9 February 2024, which states that the Applicant has complied with all necessary steps set out in Regulations 6 and 7 of the 2011 Regulations in respect of stakeholder consultation and its public engagement approach. This was published on the PINS website on 19 February 2024.
16. A total of five responses were received from specified Interested Parties, including Thurrock Council and Gravesham Borough Council who did not raise any objections to the Application. Thurrock District Scout Council (“TDSC”) and Port of Tilbury London Ltd (“PoTLL”) responded to and raised issues in relation to the Application, which are detailed in the paragraphs below. The UK Health Security Agency (“UKSA”) initially raised a concern relating to noise. The Applicant responded to this concern in an email dated 21 February 2024 and UKSA subsequently confirmed they had no further comments to make in relation to the proposed change. No comments were received from Essex County Fire and Rescue Service, Essex Police and Crime Commissioner, Historic England, Kent Downs AONB, National Grid Electricity Transmission Plc, Nature England, Network Rail Infrastructure Ltd, Public Health England, the Environment Agency, the Health and Safety Executive and UK Power Networks.

TDSC

17. In its response to the consultation, TDSC noted the potential impact of the proposed change to its facility. Condoverters Scout Activity Centre (“Condoverters”), referenced as ‘Havers Lodge’ in the Applicant’s ES as submitted with the DCO, is located 580 metres from the site of the Project and is used by members of Thurrock Scouts all year round. TDSC referred to Appendix 11.4 of the ES (Operational Noise Assessment and Results) which explains that the rating level at Havers Lodge during the night, when the Project is least likely to operate, will be 11 decibels (“dB”) above the background sound level, rendering it the most affected receptor. In TDSC’s view, this is initially according to the ES, indicative of a moderate to major impact at this receptor, depending on the context. At the other receptors, predicted rating levels are between 5 dB below and 7 dB above background sound levels, which is typically indicative of minor to moderate impacts. TDSC argued that this will therefore affect all those using tents as sleeping accommodation at the site as it is not possible, as far as they are aware, to provide noise mitigation for tents.
18. For these reasons, TDSC posed the following questions in respect of the proposed change:
 - a. *“Is there any change in the noise levels by 48 engines and 100 engines when generating the consented overall gross rated electrical output of gas reciprocating engines of up to 620MW?”*
 - b. *“If there is an increase in noise levels, will they be within the DCO consented noise levels?”*

19. On 11 April 2024, the Applicant responded to this query in a letter confirming that the existing controls within Requirement 16 of the Order would remain in place for any development covered by the Order following a grant of the NMC. Requirement 16 of the Order controls operational noise by prohibiting the rating level at any residential receptor (e.g., Condovers) from exceeding 45 dB Lar, Tr between 11pm and 7am. This requirement covers both the gas and battery elements of the project. The Applicant concluded that inherent in the design and noise attenuation of the battery and gas peaker developments, including the development in the proposed change, is a need to comply with Requirement 16 and as a result there is no need to update the ES.

PoTLL

20. In its response to the consultation, PoTLL raised a concern about air quality, querying the basis on which the Applicant claims there is no need to review the Habitat Regulation Assessment (“HRA”). PoTLL stated that the Applicant had failed to provide any technical or evidential basis for their assertion that the overall quantity and nature of air pollutants generated by the Project will be unchanged, nor had they provided an updated HRA to assess any overall change in emissions.

21. PoTLL’s view was that the Applicant should either prepare a statement confirming that the overall quantity and nature of air pollutants generated will not change and setting out the basis on which this is the case; or prepare an updated HRA that incorporates an assessment of air quality impacts arising from the proposed increase in gas engine numbers, assessed alone and on a cumulative basis. They also asked that the Applicant provide confirmation of the impact of this non-material change on traffic movements, including Abnormal Indivisible Loads (“AIL”) that may need to route through Tilbury 2, which adjoins the site.

22. The Applicant responded to this representation via email to the Secretary of State on the 11 April 2024, confirming that the output in MW will not change and that GHG emissions will be controlled by the Environmental Permit (“EP”), stating that they would need to ensure that the gas elements of the Project complied with such restrictions. In the Applicant’s view, therefore, no new likely significant effects for air quality would be introduced as a result of the proposed change. They noted that no likely significant effects on air quality were anticipated when the DCO application was consented. They also noted that the Environment Agency and Natural England, who were consulted parties in respect of the NMC application, did not raise any concerns with air quality in this instance, suggesting that both were satisfied that the proposed changes would not cause any new likely effects or cause any conflicts with issues within their respective remits.

23. The Applicant stated that PoTLL are not an agreed consultee for the NMC and they did not therefore consider it necessary to produce additional material beyond what was provided in the email to the Secretary of State.

The Secretary of State’s consideration of the responses received

24. In respect of the concerns raised by TDSC, the Secretary of State considers that the Applicant has provided sufficient information during the consent process and in applying to make this

proposed change, to demonstrate that, as it is required to restrict the noise level to that imposed by Requirement 16 of the Order, a new ES will not be required with regard to noise.

25. The Secretary of State is therefore satisfied that the proposed changes to the Development will not give rise to any new or materially different environmental effects relating to noise.
26. The Application did not include any quantitative assessment of changes in emissions or traffic. The Secretary of State considered the original ES^{2,3} in relation air quality, and noted that the information therein contained suggests there is a difference in predicted NO_x concentrations dependent upon the number of engines used to generate the same electrical output. Whilst the differences between 33 and 48 engines as assessed in the original ES appear minor, it was not clear to the Secretary of State whether there is a greater magnitude in increase in predicted NO_x concentrations between 48 engines with 48 stacks and 100 engines with 48 stacks; the new worst-case scenario. In the Information Request, the Secretary of State therefore requested that the Applicant provide clarification and further supporting information to assist the Secretary of State in confirming whether 100 engines with 48 stacks is a reasonable worst-case scenario and whether there are new or materially different likely significant effects resulting from the change. The Applicant was also requested to provide details of the impact of this proposed non-material change on traffic movements, including AILs that may need to be routed through Tilbury 2 which adjoins the site.
27. The Applicant responded on 11 August 2024 and provided a supplementary Air Quality Technical Note (ref. JAR03000) and Traffic Technical Note. These documents were published on the Planning Inspectorate website on 27 August 2024.
28. The Air Quality Technical Note updates modelling contained in the original ES and concludes that whilst the Process Contributions for NO_x which would be predicted for the Proposed Development with the proposed change are higher than those predicted in respect of the DCO application, impacts on sensitive human and ecological receptors can still be screened out as insignificant.
29. The Traffic Technical Note confirms that the proposed change would require 48 additional HGV deliveries and that the impacts of these additional movements on various parts of the construction access routes are negligible and will have no material impact on the operation or safety of roads leading to and from the site.
30. The Secretary of State notes the concerns of PoTLL and acknowledges that whilst PoTLL may not have been an agreed consultee to the consultation, Regulation 6 of the 2011 Regulations notice does not restrict which parties can make representations, hence the Secretary of State's consideration of PoTLL's concerns above. Overall, the Secretary of State is satisfied that the Applicant has sufficiently addressed queries relating to traffic and air quality, also addressing PoTLL's concerns.

² https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010092/EN010092-000757-A6_Vol3_Chapter_12_Air_Quality.pdf

³ https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010092/EN010092-000804-A6_Vol6_Appendix_12.5_Results_of_Other_Scenarios.pdf

Environmental Impact Assessment

31. The Secretary of State has considered whether the Application would give rise to any new significant or materially different effects when compared to the effects set out in the ES for the development authorised by the Order.
32. The Secretary of State is satisfied that the information provided by the Applicant is sufficient to allow him to make a determination on the Application.
33. The Secretary of State has considered all relevant information provided and the comments of consultees. The Secretary of State **agrees** with the Applicant's conclusions that there will not be any new or materially different likely significant effects when compared to the effects set out in the ES for the development authorised by the Order and as such considers that there is no requirement to update the ES.
34. As there are no new or materially different likely significant environmental impacts as a result of the proposed change, the Secretary of State does not consider that there is any need for consultation on likely significant transboundary effects in accordance with Regulation 32 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

The Habitats Regulations

35. The Secretary of State has considered the relevant requirements as set out in the Conservation of Habitats and Species Regulations 2017 ("the Habitats Regulations"). The Habitats Regulations require the Secretary of State to consider whether the Proposed Development would be likely, either alone or in combination with other plans and projects, to have a significant effect on any site within the national site network, known as "protected sites". If likely significant effects cannot be ruled out, then an Appropriate Assessment must be undertaken by the Secretary of State, pursuant to Regulation 63(1) of the Habitats Regulations, to address potential adverse effects on site integrity. The Secretary of State may only agree to the Application (subject to Regulation 64) if he has ascertained that it will not adversely affect the integrity of a protected site.
36. The Secretary of State has considered the information submitted in the Application and the comments of consultees including the POTLL and is satisfied that the proposed changes do not alter the conclusions set out in the Applicant's ES and the Secretary of State's HRA for the Order, and therefore a new HRA **is not** required.

General Considerations

Equality Act 2010

37. The Equality Act 2010 includes a public sector equality duty. This requires a public authority, in the exercise of its functions, to have due regard to the need to (a) eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic (e.g.

age; sex, sexual orientation, gender reassignment; disability; marriage and civil partnerships;⁴ pregnancy and maternity; religion or belief; and race) and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

38. TDSC queried the noise impact of the proposed change on Condovers and its Thurrock Scouts members, which points to the protected characteristic of age. However, as detailed above in paragraph 17, the Applicant confirmed that Requirement 16 of the Order would be sufficient in controlling operational noise and would not therefore pose any additional adverse effects. The Secretary of State is content with this view.
39. The Secretary of State has had due regard to the need to achieve the statutory objectives referred to in s149 of the Equality Act 2010 and is satisfied that there is no evidence that granting this Application will affect adversely the achievement of those objectives.

Human Rights Act 1998

40. The Secretary of State has considered the potential infringement of human rights in relation to the European Convention on Human Rights, by the amended development. The Secretary of State considers that the grant of development consent would not violate any human rights as enacted into UK law by the Human Rights Act 1998.

Natural Environment and Rural Communities Act 2006

41. The Secretary of State notes the “general biodiversity objective” to conserve and enhance biodiversity in England, section 40(A1) of the Natural Environment and Rural Communities Act 2006 and considers the Application consistent with furthering that objective whilst having also had regard to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when granting consent. The Secretary of State is of the view that biodiversity has been considered sufficiently in this application for an amendment to accord with this duty.

Secretary of State’s conclusions and decision

42. For the reasons given in this letter, the Secretary of State considers that the changes relating to the gas elements of the project, as identified in Paragraph 3 above, **are non-material** in nature and should therefore be dealt with under the procedure for non-material changes.
43. The Secretary of State has considered the ongoing need for the Development and considers that the Project, amended with the proposed change, continues to conform with the policy objectives outlined in 2011 EN-1 (Overarching National Policy Statement for Energy) and 2011 EN-4 (National Policy Statement for Gas Supply Infrastructure and Gas and Oil Pipelines), along with the newly designated 2024 versions of these National Policy Statements. The need for the Project remains as set out in the Secretary of State’s letter of 16 February 2022.
44. As such, for the reasons set out in the paragraphs above, the Secretary of State is satisfied that the Applicant’s request is justified and that the Applicant has demonstrated that the

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

proposed changes will not result in changes to the conclusions of the ES that accompanied the original Thurrock Flexible Generation Plant application.

45. The Secretary of State has considered the nature of the proposed change, noting that the proposed change to the Project would not result in any further environmental impacts and will remain within the parameters consented by the Order.
46. For the reasons given in this letter, the Secretary of State considers that there is a compelling case for authorising the proposed changes to work no. 1A(b) Schedule 1 of the Order. The Secretary of State is satisfied that the change requested by the Applicant are not a material change to the Order and has decided under paragraph 2(1) of Schedule 6 to the Planning Act 2008 to make a NMC to the Order to authorise the change detailed in the Application.

Challenge to decision

47. 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.

Publicity for decision

48. The Secretary of State's decision on this Application is being notified as required by Regulation 8 of the 2011 Regulations.

Yours sincerely,

John Wheadon

Head of Energy Infrastructure Planning Delivery

On behalf of the Secretary of State for Energy Security and Net Zero

ANNEX A

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 (5) of the Planning Act 2008, a decision under paragraph 2(1) of Schedule 6 to the Planning Act 2008 to make a change to an Order granting development consent 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 Amendment Order as made is being published on the date of this letter on the Planning Inspectorate website at the following address:

<https://national-infrastructure-consenting.planninginspectorate.gov.uk/projects/EN010092>

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)