



Meeting note

Project name	Thurrock Flexible Generation Plant (TFGP)
File reference	EN010092
Status	Final
Author	The Planning Inspectorate
Date	6 April 2020
Meeting with	Thurrock Power Ltd
Venue	Teleconference
Meeting objectives	Project Update
Circulation	All attendees

Summary of key points discussed and advice given

The Planning Inspectorate (the Inspectorate) advised that a note of the meeting would be taken and published on its website in accordance with section 51 of the Planning Act 2008 (the PA2008). Any advice given under section 51 would not constitute legal advice upon which applicants (or others) could rely.

Project Update

The Inspectorate contacted the Applicant on 20 March 2020 to set out its principal concerns in respect of the application documents submitted on 28 February 2020. On 23 March 2020 a teleconference was held between the Inspectorate and the Applicant, Ardent, Burges Salmon and RPS. Ahead of that call, the Applicant had provided written material addressing the agenda points as they had been notified to it. The Applicant noted in particular that it did not agree with the points raised by the Inspectorate and agreed to submit a sign-posting document directing the Inspectorate to where it considered the information could be found. The Applicant also agreed to provide copies of the consultation responses under regulation 5(5) of The Infrastructure Planning (Application: Prescribed forms and Procedure) Regulations 2009. After reviewing the signposting document and the consultation responses, the Inspectorate contacted the Applicant on the 26 March 2020 and reiterated its concerns over the application. The Applicant submitted an email after this explaining why it considered that the issues raised could straightforwardly be addressed after acceptance. On 27 March 2020 the Inspectorate issued its decision not to accept the application. Further information with regard to the decision to not accept the application for examination can be found [here](#).

The Inspectorate and the Applicant convened this meeting in order for the Inspectorate to provide detailed advice to the Applicant in respect of the principal issues identified:

- I. Assessment of the tidal flood risk at the site, in particular the tidal modelling applied where the 2009 UK Climate Change Projections (UKCP09) had been used as opposed to the UKCP18 (2018 projections).

- II. Insufficient information showing the design and external appearance of buildings and emission stacks principally illustrative 3D photomontage visualisations; illustrative colours applied to elevation drawings; and illustrative information about possible cladding materials/finishes.

Flood Risk Assessment

The Inspectorate noted that the FRA diverged from the National Planning Practice Guidance (NPPG) updated in December 2019 which advises the most up-to-date climate change projections should be used in a site-specific assessment; the Thurrock 2018 Strategic Flood Risk Assessment (SFRA) on which the FRA is based, uses UKCP09 and the Inspectorate was unable to find evidence of an agreement between the Environment Agency (EA), Local Flood Authorities and the Applicant in the application documentation on this approach. The Applicant's assessment approach is not recognised in the NPPG or (on the face of the application documents) agreed with the relevant statutory bodies. Therefore, the Inspectorate took this into account when considering as to whether the application overall was of a satisfactory standard (and the extent to which the applicant has followed applicable guidance).

The Applicant noted its position that it is not a formal acceptance requirement of the Regulations that every aspect of the methodology used in the ES is agreed with stakeholder and evidence of that agreement is submitted as this would be unreasonable and would allow projects to be held to ransom by stakeholders. This was noted and acknowledged by the Inspectorate. The Applicant also noted that it had produced as part of the consultation responses, email advice from the Environment Agency dated December 2019 showing that, as late as practicable before the cut-off for finalising the ES, the Applicant had engaged with the EA.

The Inspectorate advised that the FRA should be based on the most up-to-date climate change projections to ensure that the assessment is robust, to a sufficient degree of detail that will enable the Secretary of State (and all interested parties) to appropriately consider the proposal and fit to be examined. Where the methodology deviates from this, the approach should be agreed with the relevant statutory bodies to evidence that it is appropriate.

Landscape and Visual Assessment and Design and External Appearance

Where the Applicant cited other projects to support their application and the photomontages provided, the Inspectorate advised that each NSIP is individual of others and is to be considered on its own merit against the tests of the overall satisfactory standard of the application.

The Applicant noted that, in line with the "Rochdale envelope" approach taken across topics, the ES had assumed a worst case scenario of a grey box building and that, in their view, any façade treatment would represent a lessening of impact. The Applicant therefore advised that they were unclear why this was considered to be an acceptance

issue. The Inspectorate advised that they considered it was not clear enough as to what consent was being sought for

The Inspectorate welcomed the news that new photomontages were to be produced but stated that further illustrative information was required to facilitate an understanding of what the generating station may look like and how any design parameters are secured through the DCO and supporting provisions (subject to approval of design, materials and colours by Thurrock Council under requirement) if consented and how the requirements interacted with the design principles to underpin a robust Landscape and Visual assessment.

The Inspectorate informed the Applicant that they should consider the guidance in the [Planning Act 2008:Guidance on the Pre-Application Process](#) on whether any further consultation was required with Thurrock Council and Gravesham Borough Council for the new visualisations prior to submission of the application. The Inspectorate suggested that publication of the application documents on submission would be one avenue by which Thurrock Council and Gravesham Borough Council would have the opportunity to view the material including photomontages that will be produced subsequent to the statutory consultation and Preliminary Environmental Information Report publication, to better inform the councils' responses to the Inspectorate concerning adequacy of consultation.

The Applicant stated that both Thurrock Council and Gravesham Borough Council had not raised concerns about the quality of the consultation material during the pre-application stage and in ongoing engagement with them post consultation on the PEIR and therefore didn't think a targeted consultation was necessary.

Other matters in respect of the application documents

A number of detailed points concerning the consultation report were discussed. These included clarifying explanations of the differences between the lists of parties consulted in 2018, in 2019 and the parties in the Book of Reference. The Applicant noted that it had already explained that was because the red line had changed but it would endeavour to make this clearer.

The Inspectorate raised a number of points which were not considered to be acceptance issues but which should be addressed in any resubmission. In particular, the Inspectorate advised that it does not consider that the Explanatory Memorandum provides a thorough justification for each article explaining why it is necessary for this project, noting that the entries for articles 8, 13, 20 and 21 did not have enough detail. The Applicant noted that disagreement over the level of detailed needed in an Explanatory Memorandum was a long running point in this regime and asked the Inspectorate to direct it to an example it considered to be satisfactory; the Inspectorate agreed to revert to the Applicant on that point.

The Inspectorate provided further details to the Applicant in respect of other identified omissions/discrepancies in the Explanatory Memorandum and Consultation Report. A list

from the Inspectorate's review of the application documentation (which is longer than the example points discussed on the call and also includes comments on the DCO which were not raised on the call) is set out in Appendix A of this letter.

Timescales for resubmission

End of April 2020

Any Other Business

The Applicant was informed that the Inspectorate could not advise the Applicant how to resolve the issue around the statutory requirement of deposit locations at this point in time.

It was clarified that the Inspectorate is working on solutions for dealing with issues arising from the current Coronavirus situation, including looking at the potential for virtual hearings.

Please see the Planning Inspectorate's comments regarding the application in table below. It is provided to assist the preparation of the next iteration of the Application.

Abbreviations used

PA2008	<i>Planning Act 2008</i>	BoR	<i>Book of Reference</i>	DCO	<i>draft Development Consent Order</i>
EM	<i>Explanatory Memorandum</i>	ExA	<i>Examining Authority</i>		
PINS	<i>Planning Inspectorate</i>	SoR	<i>Statement of Reasons</i>	SoS	<i>Secretary of State</i>

General Drafting points – Draft Development Consent Order (DCO) and Explanatory Memorandum

1. The Applicant should ensure that when the development consent order (DCO) is finalised all internal references and legal footnotes are checked and that the drafting follows best practice in Advice Note (AN) 13 and 15 and any guidance on statutory instrument drafting.
2. A thorough justification should be provided in the Explanatory Memorandum (EM) for every Article and Requirement, explaining why the inclusion of the power is appropriate in the specific case. The extent of justification should be proportionate to the degree of novelty and/ or controversy in relation to the inclusion of that particular power.
3. Notwithstanding that drafting precedent has been set by previous DCOs, whether or not a particular provision in this DCO application is appropriate will be for the Examining Authority (ExA) to consider and examine taking account of the facts of this particular DCO application and having regard to any views expressed by the relevant authorities and interested parties.

Q No.	Article (A)/ Requirement (R)	Draft DCO Comments
1.	General comments draft DCO (DCO)	The Applicant should ensure that all cross references within the dDCO are checked and corrected where necessary/relevant; this includes references to any plans.

Q No.	Article (A)/ Requirement (R)	Draft DCO Comments
2.	General comments draft DCO (DCO)	The Applicant will be asked to maintain a list of all plans and other documents that will require SoS certification (including plan/document references), updated throughout the examination process, and supplied to the ExA before the close of the examination
3.	General comments draft DCO (DCO)	The DCO is proposed to be a Statutory Instrument (SI) and so should follow the statutory drafting conventions. The draft DCO (and any subsequent revisions) should be in the form required by the statutory instrument template (see Planning Inspectorate AN15) and validated as such using the current SI template, including detailed footnotes to all statutory references.
4.	Article 2	Permitted preliminary works – There is some overlap between the list of permitted preliminary works (as defined in Article 2) and the “further development” listed at the end of Schedule 1.

Q No.	Paragraph	Explanatory Memorandum comments
1.	General draft EM (EM)	<p>Further explanation and evidence (including the outcomes of any consultation) is required to explain why the content of each article, schedule etc to the dDCO is relevant and required for this proposal.</p> <p>Please refer to PINS AN15. The EM should provide explanation and justification where a provision departs from the model provisions or a precedent. (See PINS AN13 and 15). This should include reference to the particular circumstances of this development and an explanation as to why this is necessary or desirable. The Applicant should also check that all references to legislation and guidance are accurate.</p>
2.	Article 3	The EM suggests that “there are not considered to be” any ancillary works in this case hence there is no reference to consent being granted for such works. A definitive view on whether there are or are not ancillary works is needed.

Q No.	Paragraph	Explanatory Memorandum comments
3.	Article 4	Should this be subject to Schedule 2 and Article 11?
4.	Article 6 (2)	This only applies to the operation of a generating station (the NSIP) but should be expanded to cover the totality of the authorised development.
5.	Article 8	The EM should explain why this power (which is not subject to prior SOS consent) is necessary in the circumstances of this NSIP.
6.	Article 13	The EM should explain why this power is necessary and identify any prior precedent which has been used.
7.	Article 15	The EM is not fully aligned with the actual wording of Article 15 (and noting that it only appears to apply to a single TRO – see Schedule 3).
8.	Article 16	The broad power in paragraph 1 should be expressly subject to the restrictions in paragraphs 3 and 4.
9.	Article 19	The compulsory acquisition powers in this Article are extremely broad and include land required to facilitate the authorised development “or incidental to it”. The EM should explain why this breadth is required for this NSIP. The corresponding para in the EM should also refer to Article 33 but does not.
10.	Article 20	The EM should explain why this power is necessary.
11.	Article 21(2)	The EM should explain why this power is necessary and identify any previous precedent for it.
12.	Article 22	This Article is broadly drafted. If restrictive covenants will be imposed, where will these be identified? Are they described in the book of reference or shown on the land plans?
13.	Article 23	This Article is broadly drafted (to apply to all private rights, not simply to private rights of way). The EM should explain in greater detail why this power is necessary.
14.	Article 24	The EM should explain the rationale for the modifications to the 1981 Act.

Q No.	Paragraph	Explanatory Memorandum comments
15.	Articles 27 and 29	The EM should explain why this power is necessary.
16.	Article 30	The EM should explain why this is subject to Article 22.
17.	Article 33	This will require careful consideration in the examination to ensure that it meets the requirements of s.131-1323 PA 2008.
18.	Article 38	The EM should explain why this provision is necessary.
19.	Article 39	The EM refers to Schedule 10 (documents to be certified) which does not seem to exist at present in the draft DCO.

Q No.	Consultation Report (CR) - Comments
1.	The statutory consultation period set for the SoCC is unclear. The CR gives different time periods (Figure 1, Table A states it commenced on 26 June – 17 August, whilst Table C states it commenced on 20 July -17 August). In Appendix 2.2 evidence is provided to show that the consultation period was extended for Thurrock Council as they did not realise they were be formally consulted on the SoCC when originally sent the SoCC. As there was no formal dated letter included it was difficulty finding out the sequence of events. This should be made clearer in a revised CR.
2.	As Thurrock Council's response to the SoCC statutory consultation was not evidenced it was hard to find specific examples of where the final SoCC had changed from the draft SoCC . You may wish to evidence this better next time.
3.	For the s42 consultation carried out in October 2018 the letters evidenced in Appendices 4.5a to 4.8 are all undated. So have to assume that the consultation letters did get sent out before or on the consultation start date of 16 October 2018.
4.	The dates on photocopies of the Newspaper notices are illegible. Should be re scanned so can be read next time

Q No.	Book of Reference (BOR) - Comments
1.	There is no explanation to why the BoR has a Part 2a and a Part 2b
2.	There are parties in the BoR that do not seem to have been consulted, for example (Amanda Harborne)

Q No.	Book of Reference (BOR) - Comments
3.	Some parties in the BoR are incorrectly named or are given different names in different sections of the BoR, for example (Port of Tilbury, Christine Marilyn Osborne and Christine Osborne)
4.	The names listed for parties identified as s42(1)(d) consultees have different names in the BoR, for example (John Dorman and John David Dorman)
5.	Some parties who have been identified as s42(1)(d) have different addresses in the BoR, for example (Jeremy Paul Godsmark Finnis)
6.	Clarification why parties identified in both 2018 and 2019 as having land interests affected by the project are not in the book of reference, for example (Hayley Emma Buck and Alexander Creed)
7.	Some s42(1)(d) consultees identified as Affected Persons are listed as Category 3 persons only, for example (Brian Dean Richardson)
8.	Some of the s42(1)(d) consultees identified as new consultees in 2019 were also consulted in 2018, for example (Isama Smith)
9.	Some parties identified as Affected Persons are listed in Appendix 7.25 with a Surname only
10.	The explanation of the methodology used to identify the s42(1)(d) consultees would benefit from more detail.