



Department
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**ELECTRICITY GENERATING STATIONS (VARIATION OF CONSENTS)
(ENGLAND & WALES) REGULATIONS 2013**

**OPERATIONAL EFFICIENCY IMPROVEMENTS AT THE RIVERSIDE
RESOURCE RECOVERY FACILITY, BELVEDERE, BEXLEY**

THE APPLICATION

1. I am directed by the Secretary of State for Energy and Climate Change ("the Secretary of State") to refer to the application dated 25 September 2014 ("the variation application") on behalf of Riverside Resource Recovery Limited ("the Applicant") to vary the consent granted by the Secretary of State under section 36 of the Electricity Act 1989 on 15 June 2006 ("the section 36 consent") to construct and operate a 72MW energy from waste generating station at Norman Road, Belvedere, in the London Borough of Bexley ("the Development"), and for a direction under section 90(2) of the Town and Country Planning Act 1990 that planning permission is deemed to be granted. The variation being requested ("section 36C variation") is for an increase in the total annual waste throughput permitted by the section 36 consent from 670,000 to 785,000 tonnes per annum, and to allow the transfer of waste by river from the Port of Tilbury in addition to the riparian waste transfer stations in Greater London currently being utilised. The Applicant is also seeking new deemed planning permission as part of the variation application to replace the previous one.



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2. The application for the section 36C variation was published in accordance with the Electricity Generating Stations (Variation of Consents)(England and Wales) Regulations 2013 (“the Variation Regulations”) and served on the relevant planning authority.
3. In accordance with the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000 (“the EIA Regulations”), which apply to the variation of a consent by virtue of regulation 7 of the Variation Regulations, the document titled “Section 36C variation application, Proposed Operational Efficiency Improvements, Environmental Statement September 2014” and associated documentation were advertised and placed in the public domain to give people an opportunity to comment. These documents are herein after referred to as the “Environmental Statement”.
4. In accordance with the EIA Regulations, the “Section 36C variation application, Environmental Statement” and associated documentation were advertised and placed in the public domain to give people an opportunity to comment. These documents are herein after referred to as the “Environmental Statement”.

SECRETARY OF STATE’S CONSIDERATION OF THE NEW PLANNING CONDITIONS

5. The Secretary of State has considered the new planning conditions carefully. He agrees that they are suitable for inclusion in any section 90 direction which he may give, subject to the modifications noted below and minor drafting variations as set out in the Explanatory Memorandum which accompanies the revised consent and new planning conditions.

SECRETARY OF STATE’S DECISION ON THE HOLDING OF A PUBLIC INQUIRY

6. Regulation 8 of the Variation Regulations gives the Secretary of State discretion to hold a public inquiry into a variation application. In considering whether to hold a public inquiry, the Secretary of State must consider any representations which have been made to him by a relevant planning authority or any other person where those representations are not withdrawn and all other material considerations.
7. No outstanding objections remain to the proposed variation from the relevant planning authority or any other person. However, the Secretary of State has given consideration to the representations received from the



Greater London Authority (GLA) and taken account of their concerns in the revised planning conditions. More detail on this is provided below at paragraphs 17 – 20.

Conclusion

8. The Secretary of State has carefully considered the views of the relevant planning authority and consultees and all other material considerations. He takes the view that there is no further information required to enable him to take a decision on the Application and that it would not, therefore, be appropriate to cause a public inquiry to be held into the section 36C variation application.

SECRETARY OF STATE'S CONSIDERATION OF THE ENVIRONMENTAL INFORMATION

9. Regulation 3 of the EIA Regulations as applied by regulation 7 of the Variation Regulations prohibits the Secretary of State from granting a section 36C variation unless he has first taken into consideration the environmental information, as defined in the EIA Regulations.
10. The Secretary of State is satisfied that the Environmental Statement is sufficient to allow him to make a determination on the section 36C variation application and that the Applicant has followed the applicable procedures in the EIA Regulations.
11. The Secretary of State has considered the environmental information carefully; in addition to the Environmental Statement, he has considered the comments made by the relevant planning authority, those designated as statutory consultees under regulation 2 of the EIA Regulations and other consultees and the additional information provided by the Applicant in response to these comments.
12. Taking into account the extent to which any environmental effects will be modified and mitigated by measures the Applicant has agreed to take or will be required to take either under the conditions attached to the section 36C variation of the planning conditions or by regulatory authorities including the Environment Agency, the Secretary of State believes that any remaining adverse environmental effect will not be such that it would be appropriate to refuse the variation to the section 36 consent for the Development or the new deemed planning permission.
13. The Secretary of State also has regard in accordance with section 40 of the Natural and Rural Communities Act 2006 to the purpose of conserving biodiversity, and considers that the matters specified in paragraph 1(2) of Schedule 9 to the Electricity Act 1989 have been adequately addressed by means of the Environmental Statement.



SECRETARY OF STATE'S CONSIDERATION OF POSSIBLE EFFECTS ON A EUROPEAN SITE

14. The Conservation of Habitats and Species Regulations 2010 ("the Habitats Regulations") require the Secretary of State to consider whether the varied Development would have a likely significant effect on a European Site, as defined in the Habitats Regulations and if so, to undertake an Appropriate Assessment of the implications for the European Site in view of its conservation objectives. In the absence of imperative reasons of overriding public interest, consent may only be granted if it can be shown that the Development will not have an adverse effect on the integrity of the European Site (regulations 61(5) and 62). Regulation 61(6) provided that when considering whether the proposed Development will adversely affect the integrity of a European Site, the competent authority can take into account measures proposed to mitigate such impacts.
15. The Secretary of State is satisfied that the Development is not likely to have a significant effect on any European Site, either alone or in combination. This conclusion is supported by Natural England. He is therefore satisfied that no Appropriate Assessment, pursuant to regulation 61 of the Habitats Regulations, is necessary and finds no reason for refusing the variation application on the grounds of potential impacts upon a European Site.

SECRETARY OF STATE'S CONSIDERATION OF ISSUES RAISED DURING CONSULTATION

Environment Agency

16. The Secretary of State notes that on 27 October 2014 the Environment Agency issued the Applicant with an Environment Permit to allow an increase in the permitted limits of waste throughput to 785,000 tonnes per annum.

Greater London Authority

17. The Secretary of State notes that although the GLA supported the principle that London's waste facilities should operate at full capacity, and acknowledged that the Development currently has underutilised capacity, the GLA raised the following concerns:
 - a restriction should be placed on the amount of waste to be transported from the Port of Tilbury so that London will continue to be the main beneficiary of the facility. This is to ensure that the Development remains a strategic facility for the management of London's residual waste; and



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- there is a need for the Applicant to continue working with both the GLA and London Borough of Bexley Council (LBB) to ensure the exploration for opportunities for heat supply from the Development.
18. The Secretary of State has considered both the GLA's request for a restriction on the amount of waste received from the Port of Tilbury, and the response from the Applicant to the GLA's request that it does not think such a restriction is necessary given that the facility is already closely tied to Greater London through its existing long term municipal waste contracts with London local authorities. The Secretary of State also notes that the Applicant has provided a draft condition limiting the amount of waste to be transported from the Port of Tilbury that it would reluctantly accept if the inclusion of such a condition is considered necessary.
 19. The Secretary of State agrees that the proposal to increase the throughput of waste is acceptable as it will help to optimise the utilisation of the Development. However, noting that the Development was originally consented on the basis that, except for 85,000 tonnes of waste per year, it should process only waste from Greater London or waste transported to it from riparian waste transfer stations in Greater London, the Secretary of State considers that limiting the amount of waste that can be received from the Port of Tilbury is reasonable in order to protect the position of London as a major supplier of waste to this Development. The Secretary of State has therefore decided to include a condition (new condition 5), as drafted by the Applicant, to address the GLA's concerns.
 20. The Secretary of State understands that the Applicant is working in partnership with the GLA and the LBB to determine the potential for the development of a district heat network. To ensure that opportunities for CHP continue to be explored, the Secretary of State has included a condition (new condition 32) which requires the Applicant to complete a CHP feasibility review to assess potential commercial opportunities for use of heat from the Development.

London Borough of Bexley Council

21. The Secretary of State notes that although the LBB raised no objection to the proposed variation of the Development, it commented that the conditions in the previous deemed planning permission relating to surface water pollution (condition 22), the management of all habitats during the operation of the Development (condition 33) and the provision and maintenance of lorry parking areas (condition 53) should be fully retained (conditions 22 and 33) or retained in part (condition 53) in the new deemed planning permission. The Secretary of State agrees with the LBB and has included these in the new deemed planning document (conditions 20, 23 and 35).



EQUALITY ACT 2010

22. The Equality Act 2010 requires public authorities to have due regard in the exercise of their functions to:
- (a) the elimination of unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Act;
 - (b) the advancement of equality of opportunity between people who share a protected characteristic and those who do not; and
 - (c) the fostering of good relations between people who share a protected characteristic and those who do not.
23. The Secretary of State has considered the potential impacts of granting or refusing the variation application in the context of the general equality duty and has concluded that it is not likely to result in any significant differential impacts on people sharing any of the protected characteristics.
24. The Secretary of State does not, therefore, consider that either the grant or refusal of the variation application is likely to result in a substantial impact on equality of opportunity or relations between those who share a protected characteristic and others or unlawfully discriminate against any particular protected characteristics.

OTHER MATTERS

25. The Secretary of State considers the following additional issues material to the merits of the variation of the section 36 consent:
- i) the fact that legal procedures for a variation of a generating station consent have been properly followed;
 - ii) adequate environmental information has been provided for him to judge its impact;
 - iii) the views of the relevant planning authority; the views of statutory consultees under the Habitats Regulations, the EIA Regulations and the Variation Regulations; the views of other consultees; the environmental information and all other relevant matters have been considered; and
 - iv) the proposal is consistent with his policies on the need for and development of new electricity generating infrastructure, as set out in the Overarching National Policy Statement for Energy (EN-1) and National Policy Statement for Renewable Energy Infrastructure (EN-3), designated by him on 19th July 2011 under the Planning Act 2008 following their approval by Parliament and the reasons given for those policies in those National Policy Statements.



SECRETARY OF STATE'S DECISION ON THE VARIATION APPLICATION

26. The Secretary of State, having regard to the matters specified above, has decided to make a variation to the section 36 consent for the Development pursuant to section 36C. The section 36 consent as varied is annexed to the variation decision and subject to the conditions set out in the varied consent.
27. The Secretary of State also believes the Planning Conditions as revised form a sufficient basis on which the Development might proceed, and he has therefore decided to issue a section 90(2ZA) direction to vary the planning permission on the basis of the conditions specified in the annex to that direction. The reasons for the variation to particular conditions are as explained in the Explanatory Memorandum that forms an annex to this letter.
28. Accordingly I enclose the Secretary of State's variation of consent under section 36C of the Electricity Act 1989 and under section 90(2ZA) of the Town and Country Planning Act 1990 varying the deemed planning permission.

GENERAL GUIDANCE

29. The validity of the Secretary of State's decision may be challenged by making an application to the High Court for leave to seek a judicial review. Such application must be made as soon as possible. Parties seeking further information as to how to proceed, including time limits, should seek independent legal advice from a solicitor or legal adviser, or alternatively may contact the Administrative Court at the Royal Courts of Justice, Strand, London WC2 2LL (General Enquiries 020 7947 6025/6655).
30. This decision does not convey any approval or consent or waiver that may be required under any enactment, by-law, order or regulation other than section 36 and 36C of, and Schedule 8 to, the Electricity Act 1989 and section 90 of the Town and Country Planning Act 1990.

Yours sincerely

Giles Scott
Head of National Infrastructure Consents