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16 February 2023

Dear Ms Taylor,

**PLANNING ACT 2008
APPLICATION FOR A NON-MATERIAL CHANGE TO RIVERSIDE ENERGY PARK ORDER
2020 – S.I. 2020/419**

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 Cory Environmental Holdings Limited (“the Applicant”) on 5 October 2022 for non-material changes to be made to the Riverside Energy Park Order 2020 (“the Order”) under section 153 of, and Schedule 6 to, the Planning Act 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 Planning Act 2008 was granted consent on 9 April 2020 and gave development consent for the Riverside Energy Park (“REP”) including the construction, operation and maintenance of a new energy recovery facility at Belvedere in the London Borough of Bexley. It comprises an electricity generating station with a capacity of more than 50MW comprising waste energy recovery, waste anaerobic digestion, battery storage, solar generation and associated electrical connection . The REP will be located adjacent to the existing operational facility, Riverside Resource Recovery Facility (“RRRF”).
3. The Applicant is seeking consent for a change to the Order to ensure consistency between the Order and a new planning permission (deemed to have been granted under section 90(2) of the Town and Country Planning Act 1990)) for the RRRF since the making of the Order (and the enforcement of conditions attached to the planning permission). Specifically it comprises amendments to article 6(4) and inserts two new definitions in article 2(1) of the Order.

Summary of the Secretary of State's decision

4. The Secretary of State has decided under paragraph 2(1) of Schedule 6 to the Planning Act 2008 to make non-material changes (“NMCs”) to the Order, thereby authorising the changes as detailed in the Application. This letter is notification of the Secretary of State's decision in accordance with regulation 8 of the 2011 Regulations.
5. The Secretary of State has considered whether the Application is for a material or non-material change. In doing so, he has had regard to paragraph 2(2) of Schedule 6 to the Planning Act 2008 which requires the Secretary of State to consider the effect of the change on the Order as originally made.
6. There is no statutory definition of what constitutes a 'material' or 'non-material' amendment for the purposes of Schedule 6 to the Planning Act 2008 and Part 1 of the 2011 Regulations.
7. So far as decisions on 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 Planning Act 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. Four examples are given in the Guidance 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 business (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).
 - (c) although 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.
8. The Secretary of State has considered the change proposed by the Applicant against the four matters given in paragraph 7 (b) subsections (1), (2), (3) and (4) above:

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

- (1) 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. In light of the analysis supplied by the Applicant and responses to the consultation that have raised no concerns regarding environmental issues, the Secretary of State has, therefore, concluded that no update is required to the ES as a result of the proposed amendment to the Order.
 - (2) 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 not likely to be a significant effect on any protected sites either alone or in combination with any other plans or projects as a result of the proposed change and therefore an Appropriate Assessment 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.
 - (3) In respect of compulsory acquisition, the Secretary of State notes that the proposed changes do not require any additional compulsory purchase of land.
 - (4) 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.
9. The Secretary of State therefore concludes that none of the specific indicators referred to in the Guidance, or other relevant considerations, suggest that the changes considered in this letter constitute a material change.
 10. The Secretary of State is satisfied that the changes considered in this letter are not material and should be dealt with under the procedures for NMCs.

Consultation and responses

11. In accordance with the requirements of regulation 7 of the 2011 Regulations specified parties, such as the local planning authority, were notified by email from the Applicant of the application on 5 October 2022.
12. The Applicant publicised the Application in accordance with regulation 6 of the 2011 Regulations, the Application was also published for two successive weeks in the local press (Bexley News Shopper on 5th October 2022 and 12 October 2022) and copies of the regulation 6 notice and the Application were 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;
13. Representations were received from the London Borough of Bexley, the Greater London Authority and the Port of London Authority. No response was received from London Power Networks.

London Borough of Bexley ("LBB")

14. LBB raised no objections and advised the proposed amendments to Articles 2(1) and 6(4) are limited and technical in nature and do not alter the conditions imposed within the Order.

Greater London Authority ("GLA")

15. GLA had no comments to make on this Application.

Port of London Authority (“PLA”)

16. PLA had no objection to the proposed amendment to the Order

London Power Networks

17. London Power Networks did not respond to the consultation email.

Environmental Impact Assessment

18. 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.
19. 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.
20. 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.
21. As there are no new 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.

Habitats

22. The Secretary of State has considered his obligations 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 REP development would be likely, either alone or in combination with other plans and projects, to have a significant effect on a protected site, as defined in the Habitats Regulations. 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 if he has ascertained that it will not adversely affect the integrity of the protected sites within the National Site Network.
23. The Secretary of State has considered the information submitted in the Application and the comments of consultees and is satisfied that the proposals do not alter the conclusions set out in the Applicant’s ES and the Habitats Regulations Assessment for the Order and the Application will not have a likely significant effect on any protected sites within the National Site Network and therefore no Appropriate Assessment is required.

General Considerations

Equality Act 2010

24. 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 unlawful 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 and sexual orientation; gender reassignment; disability; marriage and civil partnership;² pregnancy and maternity; religion or belief; and race) and

² In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

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.

25. The Secretary of State has had due regard to the need to achieve the statutory objectives referred to in section 149 of the Equality Act 2010 and is satisfied that there is no evidence that granting the changes considered in this letter will affect adversely the achievement of those objectives.

Human Rights Act 1998

26. The Secretary of State has considered the potential for the proposed changes to the REP development to infringe upon human rights in relation to the European Convention on Human Rights. The Secretary of State considers that the grant of the changes considered in this letter would not violate any human rights as enacted into UK law by the Human Rights Act 1998.

Natural Environment and Rural Communities Act 2006

27. The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006, has to have regard to the purpose of conserving biodiversity, and in particular to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when granting development consent or varying such a consent. The Secretary of State is of the view that the Application considers biodiversity sufficiently to accord with this duty.

Secretary of State's conclusions and decision

28. The Secretary of State has considered the ongoing need for the development. The Secretary of State notes that the Overarching National Policy Statement for Energy (EN-1) and the National Policy Statement for Renewable Energy (EN-3) both set out that for the UK to meet its energy and climate change objectives, there is continuing need for new electricity generating plants of the type proposed by the Applicant. The Secretary of State considers, therefore, that the ongoing need for the project is established given the contribution it will make to securing energy supply. On 27 June 2019, following advice from the Committee on Climate Change, the UK Government announced a new carbon reduction 'net zero' target for 2050 which resulted in an amendment to the Climate Change Act 2008 (the target for the net UK carbon account for 2050 changed from 80% to 100% below the 1990 baseline).
29. The Secretary of State notes that the energy National Policy Statements continue to form the basis for decision-making under the Planning Act 2008. The Energy White Paper, Powering our Net Zero Future, was published on 14 December 2020. It announced a review of the suite of energy National Policy Statements but confirmed that the current National Policy Statements were not being suspended in the meantime. The relevant energy National Policy Statements therefore remain the basis for the Secretary of State's consideration of the Application. The Secretary of State considers, therefore, that the ongoing need for the Development is established and that granting the non-material change would not be incompatible with the amendment to the Climate Change Act 2008.
30. The Secretary of State is satisfied that the Applicant's information demonstrates that the proposed changes will not result in changes to the impact conclusions of the REP ES.
31. The Secretary of State has considered the nature of the proposed changes, noting that the proposed changes to the REP development would not result in any further environmental impacts and will remain within the parameters consented by the Order.
32. For the reasons given in this letter, the Secretary of State considers that there is a compelling case for authorising the proposed changes to the Order. The Secretary of State is satisfied

that the changes requested by the Applicant are not material changes 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 so as to authorise the changes detailed in the Application.

Challenge to decision

33. 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

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

Yours sincerely,



David Wagstaff
Deputy Director, Energy Infrastructure Planning Delivery

ANNEX

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 Amending Order as made is being published on the date of this letter on the Planning Inspectorate website at the following address:

<https://infrastructure.planninginspectorate.gov.uk/projects/eastern/east-anglia-three-offshore-wind-farm/?ipcsection=docs&stage=7&filter1=Non-Material+Change&filter2=NMC+3>

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).