



Meeting note

Project name	Riverside Energy Park
File reference	EN010093
Status	Final
Author	The Planning Inspectorate
Date	27 September 2018
Meeting with	Cory Riverside Energy (CRE)
Venue	TQH, Bristol
Meeting objectives	Review of draft application documents
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 Applicant submitted the following draft DCO application documents to the Inspectorate for review and comments: Development Consent Order, Explanatory Memorandum, Book of Reference, Statement of Reasons, Consultation Report, Work Plans and Land Plans, and five initial Chapters of the Environmental Statement, all submitted in August 2018. Detailed advice on the documents submitted is provided in the Annex to this note.

Development Consent Order (DCO) and Explanatory Memorandum (EM)

A summary of points raised are contained in more detail in Appendix A to this note. The Inspectorate advised the Applicant to ensure that all internal references and legal footnotes in the final DCO are checked, and that the drafting follows the best practice advice contained in Planning Inspectorate [Advice Note 15](#). The comments provided by the Inspectorate at the meeting focused on the main elements of DCO and EM drafting which are certainty, justification and effect.

The Inspectorate advised that the EM would benefit from further explanation to help the Examining Authority and anyone involved in the examination of the application. Also when a precedent that has been set by a previous DCO is provided, it should be explained why it might be applicable on the facts of this particular application.

Other documents

Statement of Reasons – Appendix A



Consultation Report – Appendix B

Environment Statement chapters – Appendix C

Plans – Appendix D

Specific decisions/ follow-up required

The Inspectorate advised the Applicant to look at the document called 'Guide to the Application' which was provided by National Grid for the Richborough Connection Project for each deadline, with a view to including something similar with this application at submission and to be updated at every examination deadline. It will shortly be included in the list of 'good examples of documents' available on the Inspectorate's website when the judicial review period for the Richborough project passes.

The Applicant confirmed that they are already preparing a document for this purpose. The Inspectorate also advised that it would be very helpful if the Applicant could provide a covering letter with a list of all documents submitted and a summary for each deadline during examination to enable a quick search for any changes. When submitting documents via email, stating number of documents and emails would be helpful.

The Inspectorate advised the Applicant to start looking at potential hearing venues and engaging with the programme officer should the application be accepted for examination. The Applicant confirmed that they had already considered potential venues and identified a location which would likely be the most suitable to meet the needs of PINS and attendees.

The Inspectorate advised that only one printed hard copy of the application will be required, and will provide more information regarding other practicalities ahead of submission of the DCO application as soon as the Applicant confirms that date, which is currently November 2018.

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Comments on draft Development Consent Order (DCO), Explanatory Memorandum (EM) and Statement of Reasons (SoR)

General
<p>The Applicant should ensure that the draft DCO follows guidance and practice for Statutory Instrument (SI) drafting (for example avoiding “<i>shall/ should</i>”) and is in the SI template when submitted – see Advice Note 13.</p> <p>The Applicant should also follow best practice drafting guidance in Advice Note 15.</p>
<p>The Explanatory Memorandum (EM) should state whether each article is based on a model provision or precedent article. Where there has been a change from the precedent Article or model provision this should ideally be shown in a track changed draft DCO. It would also be helpful if the EM clarified whether the change is minor and has been made where in the Applicant’s view the model provision is unclear or does not follow standard/ modern SI drafting practice. Where a model provision or precedent article is substantially changed the EM should clearly explain how that alters the effect. Particularly where an article is novel, the power on which each article is based should be identified.</p>
<p>Notwithstanding that drafting precedent has been set by previous DCOs or other orders, whether or not a particular provision in this DCO is appropriate, necessary and justified 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.</p>
<p>The Applicant should ensure that all typos and formatting issues are corrected and there should be no unpopulated gaps and no “rogue” wording (eg “<i>Error! Reference source not found</i>”) and the Applicant should ensure that when the DCO is finalised all internal references and legal footnotes are checked.</p>

Article – number and title	Comments on pre application draft documents
2 - <i>Interpretation</i>	“ <i>apparatus</i> ” – the EM should provide more information about the nature of street works and why this justifies having such a broad definition of “ <i>apparatus</i> ”.
	“ <i>commencement</i> ” - it will be necessary for the Applicant to justify the flexibility created by this ‘carve out’ clarifying any impacts of the ‘exemption works’ (whether or not significant and/or adverse) so that the ExA can consider whether they need to be controlled by requirement.

	" <i>maintain</i> " - notwithstanding precedent in other DCOs the Applicant must still justify the extent of works which fall within the definition in the context of this particular draft DCO and development.
	" <i>undertaker</i> "- it isn't clear from the EM why both Cory and REP Co should have the benefit of the DCO and how this would work in practice.
3 – <i>development consent granted by the Order</i>	The examination will, amongst other things, consider the need for and acceptability of the flexibility included within the DCO having regard to the relevant NPS (as applicable). It would be in the Applicant's interests to provide as much justification as possible.
6 - <i>Disapplication of legislation etc</i>	<p>It is recommended that the Applicant provides extracts from the relevant legislation which is being disappplied, information about the purpose of the byelaw/ regulation/ consent, an explanation as to the effect of disapplication and cross-reference to the relevant part of the protective provision which would prevent any adverse impact as a result of removing byelaw control or the necessity for consent.</p> <p>Where the consent falls within a schedule to the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015 the Applicant will need to provide evidence that the regulator has consented to removing the need for the consent.</p> <p>For completeness, the Applicant should confirm (by reference to section 120 and schedule 5) how each disappplied provision constitutes a matter for which provision may be made in the DCO.</p>
7 – <i>Benefit of this Order</i>	As above, the Applicant should clarify why the undertaker is both Cory and REP Co. Further details could be provided in the EM and/ or SoR.
8 – <i>Consent to transfer benefit</i>	The Applicant is asked to consider the more recent drafting in The National Grid (Richborough Connection Project) Development Consent Order 2017 and corrections made by The National Grid (Richborough Connection Project) (Correction) Order 2018 and whether this represents preferred drafting
12 – <i>Construction and maintenance of new or altered means of access</i>	Notwithstanding the precedent in the Hinkley Point C (Nuclear Generating Station) Order 2013 the Applicant should explain why this article is necessary (including the incorporation of the defences in particular) in the circumstances of this NSIP.
18 – <i>Discharge of water</i>	The Applicant should consider any drafting changes required as a consequence of the Homes and Communities Agency being replaced by Homes England
20 – <i>Protective work to</i>	The Applicant should explain why this article is necessary in the circumstances of this NSIP.

<i>buildings</i>	
<i>21 – Felling or lopping of trees</i>	The Applicant should explain why this article is necessary in the circumstances of this NSIP.
<i>24 – compulsory acquisition of rights [including power to impose restrictive covenants]</i>	<p>Full justification should be provided for the power to impose restrictive covenants.</p> <p>The Applicant should note paragraph 26 of Advice Note 15: “Before deciding whether or not the power is justified the Secretary of State will need to consider issues such as proportionality; the risk that the use of land above or below a structure could be sterilised if it has to be acquired outright in the absence of a power to impose restrictive covenants”.</p>
<i>27 – power to override easements and other rights</i>	The Applicant should note paragraph 62 the Secretary of State DfT’s decision on the M4 Motorway (Junctions 3 to 12) (Smart Motorway) DCO “to delete article 23 (power to override easements and other rights) as these provisions have now been superseded by sections 203 to 205 of the Housing and Planning Act 2016”. The Applicant should consider the implications of the Housing and Planning Act 2016 on the need for this DCO power.
<i>33 – statutory undertakers and TTTL</i> <i>34 – apparatus and rights of statutory undertakers in stopped up streets</i>	<p>It’s not clear why this article has been drafted to include TTTL (not being a statutory undertaker as defined by s127 of PA2008 and therefore benefitting from the protections under s127). Why doesn’t the power to compulsorily acquire land and rights over land (articles 22 and 24) not apply also to land and rights belonging to TTTL?</p> <p>The Applicant should note that where a representation is made under s127 of the PA2008 and has not been withdrawn, the Secretary of State will be unable to authorise article 33 unless satisfied of specified matters set out in s127.</p> <p>The Secretary of State will also be unable to authorise removal or repositioning of apparatus unless satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the order relates in accordance with s138 of the PA2008. The Applicant should provide relevant justification either in the EM or Statement of Reasons.</p>
<i>36 – application of landlord and tenant law</i>	This may be an article which is frequently used but it still requires justification in the circumstances of this particular draft DCO.
<i>37 – Operational land for the purposes of the</i>	This may be an article which is frequently used but it still requires justification in the circumstances of this

<i>1990 Act</i>	particular draft DCO.
<i>42 – Service of notices</i>	Why is a Transport and Work Model Provision for Railways and Tramways appropriate drafting in this case?
<i>42 – Procedure in relation to certain approvals</i>	The Applicant’s attention should be drawn to the standard drafting for articles dealing with approvals and discharge of requirements in Advice Note 15 and justify why the Applicant’s wording should be preferred.
<i>43 – No double recovery</i>	Why is a Transport and Work Model Provision for Railways and Tramways appropriate drafting in this case?
<i>Special category land – no article</i>	<p>It’s noted that the Applicant is seeking powers to acquire rights under open space for the purposes of installing the electrical connections and it’s considered that the land when burdened with that right will be no less advantageous. The EM (or SoR) should provide more justification for this identifying the persons in whom the land is vested, and any other persons, if any, entitled to rights of common or other rights, and should provide more details about the public recreation use of the land. The SoR could be clearer about s132 – eg being “not less disadvantageous” doesn’t mean that the use is exempted from the protections of s132 but that SPP is not required.</p> <p>It’s not clear whether the Applicant intends to (or needs to) discharge the open space from all rights so far as inconsistent with the DCO rights. There is no article to this effect. Neither is it acknowledged in the EM (or SoR) that the Secretary of State must certify that the land will be no less disadvantageous. See The Dogger Bank Creyke Beck Offshore Wind Farm Order 2015</p>
General	It would assist the examination for a document to be provided with the application explaining how each Requirement, in the Applicant’s opinion, satisfies the tests in Planning Practice Guidance: Use of planning conditions .

EN010093 Riverside Energy Park: Planning Inspectorate’s Comments on the Consultation Report (CR), September 2018 (Appendix B)

These comments relate solely to matters raised by the drafting of the Consultation Report, and not the merits of the proposal. They are limited by the time available for consideration, and raised without prejudice to the acceptance or otherwise of the eventual application. They are provided to assist the preparation of the next iteration of the report.

Q No.	Extract / reference	Question / Comment
1	General	The Inspectorate recommends the Applicant uses the s55 Acceptance Checklist to ensure compliance with the PA2008, and the Applicant must clearly show how it has met s49 of the PA2008 (having regard to any relevant consultation response). The recently updated s55 Checklist can be found as Appendix 3 to the Advice note six .
2	General	Appendix D.2 included in the Appendices will provide a list of visitors to Cory RRRF open day (10.04.18 – 11.04.18). Is it necessary? Maybe just a number of people? Paragraph 2.2.4 refers to ‘ <i>approximately 50 stakeholders from the local community attended the site visits</i> ’. Please ensure compliance with GDPR.
3	General	It is noted that the Executive Summary is missing from the draft version of the document.
4	Paragraph 1.1.4	States the following: ‘ <i>A glossary of defined terms used in the Consultation Report is presented in the REP Glossary (Document Reference xx)</i> ’. It might be helpful if a list of terms is included in the CR itself.
5	Paragraph 1.7.11	Table 1.1: <i>Pre-Application Engagement and Consultation Activities undertaken within and beyond the Consultation Zone</i> . It has a clear layout and very useful.
6	Paragraph 1.7.12	Table 1.2: <i>Pre-Application Consultation Process Summary</i> . As above. It also refers to relevant sections in the CR.
7	Paragraph 2.2.13	<i>Table 2.1: Key Non-Statutory Engagement Activities</i> provides clear chronology of all

		relevant events.
8	Paragraph 5.8.9	Returned Letters. The paragraph refers to Table 5.2 which should be providing details of the returned and actioned post. However, Table 5.2 on page 51 lists Changes to the IAB, after several minor refinements were made to the Indicative Application Boundary. Please provide a full name <i>Indicative Application Boundary</i> in the table as IAB might not be easy to decipher, though it is mentioned in paragraph 5.9.2.
9	Paragraph 2.3.3	Table 2.2: <i>Correspondence with local community and local representatives regarding non-statutory consultation</i> includes a list of eleven Local Authorities to which 'postcards with details of the non-statutory public exhibitions' were emailed. They are identified as 'A' authorities; however, four of them are 'D' authorities.
10	Paragraphs 5.8.13 – 5.8.17, and 5.9.12	The Applicant summaries the actions carried out following identification of additional land interests. Please ensure that the relevant land interests have been included in the final version of the Book of Reference (BoR).
11	Sections 7 and 8	Although Sections 7 (<i>Summary of Relevant Responses</i>) and 8 (<i>Regard Taken to Relevant Responses</i>) are only in draft forms, the structure of both sections will potentially provide a very clear picture of the emerging consultation themes, with the proposed addition of the references to the relevant Environmental Statement's Chapters if applicable.
12	Section 9	In the <i>Continued Stakeholder Engagement</i> Section the Applicant summarises 'minor refinements non-statutory consultation', outlined in Section 5.9 of the CR. It would assist to again provide full name of the relevant document (a Supplementary Information to the PEIR (SIP) in paragraph 5.9.7) rather than just using 'SIP' which is used in paragraph 9.2.4. Also, the Applicant is advised to ensure consistency as the <i>consultation on minor refinements</i> (carried out between 31 July and 7 September 2018) is referred to as both statutory (Section 5.9) and non-statutory (Section 9.2) within the draft report.
13	Annex 1	Section 46 refers to ' <i>the Commission</i> ' which has been substituted with [Secretary of State]

		<p>by Localism Act 2011. Similarly, in s50(2) the word 'Commission' has been repealed.</p> <p>As the CR is in a draft form it is anticipated that the final version of the <i>Annex 1. Consultation Compliance Checklist</i> will be populated to demonstrate how the Applicant complied with the duties regarding pre-application consultation on the proposed development.</p>
14	Appendices	<p>Draft Appendices have not been submitted with the draft Consultation Report. Whilst it is expected they will be provided with the final document, we advise the Applicant to review the report to ensure that all omitted information has been included, and the cross-referencing is correct.</p>

EN010093 Riverside Energy Park. Draft Documents ES Review. Chapter 3 Site and Project Description.

Ref	Extract	Question/ Comment
3.2.8 3.5.34 – 3.5.38		Not clear how many construction compounds in total. Main temporary compounds and cable route temporary compounds. Temporary for how long?
3.2.9	Alternative routes	Have potential impacts from all routes been assessed?
3.2.11		Have they assessed impacts if trenchless isn't possible?
3.3.5		Is this the worst case scenario?
3.3.14	Removal of unacceptable waste	Where does unacceptable waste go to?
3.3.19	The combustion process is controlled to ensure the combustion gases are within stringent emissions limits set by the IED.	How is it controlled? Combustion control system? What exactly is this? Automated system?
3.3.27	Ammonia (NH ₃) is added at various positions in the first and second stage passes to ensure that the gases from the process are within environmental limits.	Possibly more explanation here about how ammonia keeps the gases within environmental limits.
3.3.31	Solids from the process would be collected in filter hoppers and discharged to collecting silos.	And then what? Recycled at treatment plant but into what?
3.3.33	Emission levels would be regularly reported to the EA in line with an EP.	State how often.
3.3.36	Barge movements	Assume barge movements is discussed more fully in specific transport chapter?

3.3.41	CNG or CHP	Compressed Natural Gas or Combine Heat and Power – has a decision been made? Are these both options in the dDCO?
3.3.63		After this paragraph the numbering is re-started at 3.3.1.
3.3.14 Electrical connection section	This connection would necessarily require a new substation within the REP site.	Is this sentence correct?
Table 3.1	Size parameters	The figures contained in this table are not contained within the dDCO. These need to be consistent in both documents. Other dimensions of structures should be included in here and DCO too – ie length, width. Maximum dimensions should be included in order to understand if the ES has assessed worst case scenarios.
Table 3.1	Stack (s)	How many?
3.5.6 3.5.12	The waste bunker walls would be constructed using a slip form technique, which would require 24 hour construction 7 days per week for a period of approximately 2 months.	Para 3.5.6 discusses exceptions to working hours. Are all exceptions reflected in the dDCO?
3.5.32	Trenchless installation	Is this confirmed to be possible? If it may not be possible then alternatives methods of installation should be discussed.

Riverside Energy Park: Planning Inspectorate’s comments on draft Plans (Appendix D)

Works and Land Plans - Planning Inspectorate Comments	
Land Plans	<p>The Inspectorate is aware that the Land Plans have yet to be assigned drawing and plan reference numbers. Before submission please ensure referencing is complete and ensure that referencing between the Plans, the Draft DCO, BoR and Statement of Reasons are correct and there are no discrepancies.</p>
Land Plans	<p>At Acceptance the Inspectorate checks the plots identified in the Book of Reference (BoR) against the Land Plans.</p> <p>It would be helpful if the Land Plan plot numbers are contained in the BoR and Statement of Reasons are accompanied by the plan reference numbers so they can be easily identified and are user friendly for everyone.</p> <p>This makes it easier for Affected Persons and members of the public to identify which plan relates to which plot and to be able to cross reference with information contained in the BoR, DCO and Statement of Reasons.</p>
Land Plans	<p>Ensure that when cross referencing information contained in the BoR with the Land Plans that it is correct.</p> <p>For example, paragraph 1.8 of the Introduction in the BoR, refers to land where the Applicant is seeking temporary possession as coloured green.</p> <p><i>“Plots that are subject to powers of temporary possession only, such as for the purpose of access to and/or use as a temporary construction compound, are listed in Schedule 7 of the Order and shown coloured green on the land plans”.</i></p> <p>However this land is shaded yellow on the Land Plans. Schedule 7 of the draft DCO refers to <i>“Streets to be Stopped up”</i> and contains no text.</p>

Work plans	No Key plan has been provided. Please ensure that Works plans that consist of three or more sheets also contain a Key Plan.
General Advice	<p>Please refer to advice contained in Advice Note 6 How to submit your application which provides advice on file referencing for each plan or document including, for example, the title, a unique plan or document reference and the appropriate APFP Regulation 5(2) paragraph number to which the plan relates.</p> <p>Any plans, drawings or sections should be consistent with the requirements set out in The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.</p>