



Preliminary Meeting Note

Summary of key points discussed and advice given

Application: VPI Immingham OCGT

Reference: EN010097

Time and date: 10:00 on Thursday 8 August 2019

Venue: The Royal Suite, The Humber Royal Hotel, Littlecoates Road, South Humberside DN34 4LX

This meeting note is not a full transcript of the Preliminary Meeting. It is a summary of the key points discussed and responses given. An audio recording of the event is available on the National Infrastructure Planning website.

Item 1: Introduction

Rory Cridland (RC) welcomed everyone to the Preliminary Meeting (PM) and introduced himself, stating that he has been appointed by the Secretary of State (SoS) as the Examining Authority (ExA) to examine the proposed Immingham Open Cycle Gas Turbine project. **RC** stated he is a solicitor and works as a full time Planning Inspector as well as an Examining Inspector for Nationally Significant Infrastructure Projects (NSIPs).

RC also introduced **Tracey Williams (TW)**, the case manager, and **Ewa Sherman (ES)**, the case officer, and advised to speak to them regarding any issues outside the scope of the meeting. He also advised of housekeeping matters at the venue. **RC** stated that the attendees comprise the following: the Applicant or representative of the Applicant; representatives of the local authority or a neighbouring authority; representatives of the statutory parties; people who have sent in a Relevant Representation (RR) and so become an Interested Party (IP); individuals or bodies affected by the application for compulsory acquisition of land or rights over land ("Affected Person" (AP)); or a combination of these categories.

RC advised that the focus of the meeting was to discuss the procedural aspects of the Examination and that the merits would only be considered once the Examination of the application begins which follows the close of the PM.

In running the meeting, **RC** explained that he intended to temper efficiency with fairness and to allow all to have their say, provided it was relevant. **RC** also sought to make sure that all contributions were as to the point and focussed as possible to make best use of the time available and allow to everyone who wished to speak an opportunity to do so. A note and an audio recording were being made and they would be placed on the Immingham page of the Planning Inspectorate's website.

RC advised that because the digital recordings are retained and published, they form a public record that can contain personal information and to which the General Data Protection Regulation (GDPR) applies. The Planning Inspectorate's practice is to retain and publish the recordings for a period of 5 years from the SoS decision on the Development Consent Order (DCO). **RC** stated that he would only ever ask for information to be placed on the public record that is important and relevant to a planning decision, and it will only be in the rarest of circumstances that he might ask for personal information of the types that most people would prefer to keep private or confidential. To avoid the need to edit the digital recordings, **RC** asked that information is not added to the public record that anyone wishes to be kept private and confidential. **RC** explained the process by which information that was private and confidential could be introduced into the Examination.

RC asked the attendees to introduce themselves.

Jake Barnes-Gott (JBG) of DWD introduced members of the Applicant's team attending the PM: **Marvin Seaman (MS)** and **Adam Lewis (AL)** VPI; **Geoff Bullock (GB)**, **Clara Rands (CR)** and **Jordan Martin (JM)** from DWD; Malcolm Sangster (MS) from AECOM; and **Emma O'Gorman (EOG)**, **Nick McDonald (NMD)** and **James Gibson (JG)** from Pinsent Masons.

Helen Lindey (HL) representing Phillips 66 and **John Galloway (JG)** representing Hornsea 1 Limited and Hornsea 2 Companies.

Lauren Birkwood (LB) and **Lara Hattle (LH)** representing North East Lincolnshire Council and **Andrew Law (AL)** from North Lincolnshire Council.

Annette Hewitson (AH) from the Environment Agency.

RC also asked whether there were any members of the press (none were present), or if anyone intended to record or film the event (none did).

Item 2: The Examination process

RC outlined the principles of the Examination and how he proposes to conduct it. He explained that section 87 of the Planning Act 2008 (PA2008) states that it is for the ExA to decide how to examine the application. In **RC's** view this system has six attributes which he intends to follow:

(i) Independence and impartiality

Examining Inspectors are employed by the Planning Inspectorate which is an Executive Agency of the Ministry of Housing, Communities and Local Government (MHCLG). For the examination of NSIPs, the ExA produces an independent and impartial report with a recommendation to the relevant SoS. In this case, this is the SoS for Business, Energy and Industrial Strategy. **RC** advised that his recommendation will be based solely on the evidence that has been presented before him in the Examination, and will either be:

- that the Order should be made (i.e. that development should be granted), or
- that the Order should not be made (i.e. that development should be refused).

RC emphasised that it is not the ExA but the SoS, not bound to accept the recommendation, who will make the decision on the application. Therefore throughout

the forthcoming Examination **RC** will need to test, and eventually prepare a DCO to accompany his report and recommendation regardless of what his recommendation will be.

(ii) Rigour

RC advised that NSIPs under the PA2008 are underpinned by an inquisitorial rather than an adversarial system which means that the Examination is led, and questions are posed by the ExA rather than by advocates from IPs. It relies primarily on written evidence and is gained through a rigorous process of IPs providing written representations; of the ExA asking a wide range of focussed questions; requiring adequate responses to these; and of IPs commenting on the responses of other parties. **RC** will also ask for specific reports and other information including Local Impact Reports prepared by Local Authorities.

The written evidence is supported, where required, by three types of hearings:

- Open Floor Hearings (OFHs) are intended for all IP's who wish to have an opportunity to speak more generally on the project. Such a hearing will be held if any IPs requests this by Deadline 1 of the Examination Timetable. If no such request is made, **RC** may choose not to hold any OFH.
- Issue Specific Hearing which may deal with some or all of the key issues that are relevant to the Examination. The process is led by **RC** and will focus on a particular matter e.g. ecology. Importantly, these hearings may include the nature of the scheme itself and are very likely to focus on the draft DCO.
- Compulsory Acquisitions Hearings (CAHs) are related to an application for Compulsory Acquisition (CA). As with an OFH, these are held again if one AP requests this. **RC** advised that there is already an indication that at least one AP will be likely to request a CAH and he is proceeding at present on the basis that one will be held. MHCLG (then DCLG) issued guidance on procedures for the compulsory acquisition of land¹, and those affected are encouraged to read this.

(iii) A focus on evidence and justification

RC advised that the Examination and his ultimate recommendation will be evidence based and so he will expect that any evaluation or assessment is supported by evidence. **RC** pointed out that the PA2008 allows the ExA to disregard representations if they:

- are vexatious or frivolous;
- relate to the merits of policy set out in a national policy statement;
- are repetitive; or
- relate to compensation for the CA of land or of an interest in or right over land (section 87(3)).

¹ Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land (DCLG September 2013).

(iv) Openness

RC stated that all the Examination material related to this application is placed on the Planning Inspectorate website. Advice prior to the submission of the application given by the Planning Inspectorate to the Applicant, including notes of meetings and of telephone conversations, is also published. This commitment to openness will continue once the Examination starts. **RC** advised that the proper running of the Examination demands that all his questions, all the evidence provided by IPs, all the responses to that evidence and all other material is placed on the website for all to see. This aim is supported by the publication of an Examination Library which is updated at regular intervals to list all the documents that have been submitted to the Examination and all the documents issued by the ExA. All future communication the ExA issues will reference the Examination Library reference and not those used by the Applicant.

(v) Fairness

RC advised that the procedure for examining applications for NSIPs is designed to give all IP's and AP's an equal right to put forward their views and evidence and an equal access to all the information related to the application.

(vi) Timeliness

As the legislation sets an absolute time limit on the Examination of this application **RC** confirmed that he is required to complete the Examination by the end of a period of six months beginning with the day after the PM. Therefore, the close of the Examination is listed for Saturday 8 February 2020.

RC stressed that the effectiveness of this process depends on everyone meeting the deadlines that are set out in the Examination Timetable, and he actively discourages late submissions and there is no guarantee they will be accepted into the Examination.

RC referred to the issue of costs which has been mentioned in the Rule 6 letter. The revised guidance on costs sets out details of two areas where costs may be awarded. The first is where the party against whom the award is sought has acted unreasonably; and the unreasonable behaviour has caused the party applying for the award of costs to incur unnecessary or wasted expense during the examination. Secondly, separate provisions apply to the award of costs in relation to an application for CA. The guidance contains useful detail and examples. **RC** advised that, for costs purposes only, the Examination is treated as starting at the beginning of the PM.

Unaccompanied Site Inspection

RC stated that he undertook an unaccompanied site inspection on Wednesday 7 August 2019 where he observed the site and surroundings from a number of vantage points, all of which were on publicly accessible land. Details of this Inspection will be published along with the Rule 8 Letter and Written Questions (WQs). **RC** confirmed that he has a good understanding of the site and its surroundings and does not feel it necessary to visit such sites again, unless a specific request is made.

ExA's Procedural Decisions (Annex E and F)

RC commented briefly on the submission of an updated Book of Reference which was submitted following the Applicant's notice that an extra right of way on Parcel 99 was added by Cadent Gas. In making the decision on whether to accept, reject or consult

on the acceptance of documents, **RC** confirmed that he had had regard to the guidance in paragraphs 109 to 115 of the DCLG Guidance for the examination of applications for development consent². In the case of the outlined change, **RC** found that it was minor and did not change the nature and description of the project and consequently, he was content to accept it into the Examination.

Statements of Common Ground (SoCG)

RC advised that the draft Examination Timetable provides a deadline for the submissions of SoCG at Deadline 2. **RC** accepts that SoCG may not be completed by then and so he has set regular position updates on their progress within the Examination Timetable. **RC** requested that for the SoCG between the Applicant and the following parties: Environment Agency (EA), Natural England (NE) and both arms of National Grid (NG).

AH representing the EA confirmed that work was in progress.

JBG advised the Applicant has drafted SoCG with EA, NE and NG and is in the process of reviewing documents. The Applicant also chose to prepare SoCG with North East Lincolnshire Council, North Lincolnshire Council, Highways England and Historic England.

RC stated that he intends to issue a blank pro-forma which he would hope and expect the Applicant to populate on progress in respect of CA.

NMD confirmed that the Applicant is happy to use the Planning Inspectorate's CA template.

RC advised that deadlines will be set for regular position updates on progress on CA within the Examination Timetable.

Item 3: Initial Assessment of the Principle Issues (Annex B)

RC referred to Annex B of the Rule 6 letter which sets out his initial assessment of the principal issues. He pointed out that it is neither a comprehensive nor an exclusive list of all principal issues but an indicative list to start the examination. He explained that it does not determine the scope of the Examination and it will inevitably be the case that other relevant issues will arise during the course of the Examination, and those other issues will be considered, and examined thoroughly when that happens. Equally, issues on the list may turn out to be not as important as they appear to be now.

Item 4 & Item 5: Draft Examination Timetable (Annex C)

RC outlined his draft Examination Timetable provided in Annex C of the Rule 6 letter and noted that it contained an error at Item 21 which should read Friday 31 January 2020. He informed the meeting that this would be amended prior to the issuing of the Rule 8 letter.

² Planning Act 2008: Examination of applications for development consent (DCLG, March 2015).

RC advised of two alterations already suggested by the Applicant in writing; the first related to Deadline 2 and the suggestion to move it back a week to 12 September 2019.

NMD representing the Applicant explained that the Applicant had requested that Deadline 2 is moved as Deadlines 2 & 3 tend to require most input from the Applicant. **NMD** also stated that there is only one week only between Deadline 7 and 8 allowing for comments and reviewing of RIES. Therefore he suggested that Deadline 7 is moved to Friday 24 January 2020.

There were no other comments or questions on the draft Examination Timetable.

Item 6: Other submissions to the Planning Inspectorate in advance of the Preliminary Meeting

RC advised that as part of the section 51 advice issued by the Planning Inspectorate with its letter of acceptance, the Applicant was asked to provide an updated version of the Non-Technical Summary with various tracked changes removed. This was submitted on 26 July 2019. **RC** also received a copy of a document entitled Confirmatory Great Crested Newt Surveys Report dated May 2019. **RC** understands that this was submitted to Natural England and the host local authorities after the submission of the application but before the deadline for the submission of RRs. The document sets out the survey findings and confirms the Applicant's position that Great Crested Newt are not present and no further surveys or mitigation are required as part of the Proposed Development in relation to this species. This document was commented on by Natural England as part of their RR.

RC confirmed that he made a procedural decision to accept both documents into the Examination having regard to the relevant guidance already mentioned. They have since been published on the project website and an opportunity will be made within the Examination Timetable for other parties to comment on these documents.

Item 7: Availability of RRs and application documents

RC advised that Annex D of the Rule 6 letter sets out where the application documents and the RRs can be viewed electronically free of charge, and that they are also available on the project page. If anyone has any difficulty accessing the documents from these locations please contact the case team.

Item 8: Any other matters

There were no other matters notified to be dealt with. No other matters were raised at the meeting.

Close

RC advised that he would consider the final Examination Timetable and any other procedural decisions made as a result of the meeting. The Rule 8 letter, together with his WQs and a note on the unaccompanied site inspection undertaken on 7 August 2019, will be issued on or before Thursday 15 August 2019. The audio recording of

the PM will be made available, as soon as is practicable, on the Inspectorate's website.

RC thanked attendees for their contributions and closed the Preliminary Meeting at 10:41