



Mr Rob Booth
DWD
69 Carter Lane
London
EC4V 5EQ

27 March 2024

Dear Mr Booth,

PLANNING ACT 2008

PROPOSED NON-MATERIAL CHANGE TO THE IMMINGHAM OPEN CYCLE GAS TURBINE DEVELOPMENT CONSENT ORDER 2020 – S.I. 2020 NO. 847

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 VPI Immingham B Limited (“the Applicant”) on 13 December 2023 for changes which are not material to be made to the Immingham Open Cycle Gas Turbine 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 Order was made on 7 August 2020 under the Planning Act 2008 and gave development consent for the construction, operation and maintenance of an electricity generating station comprising an Open Cycle Gas Turbine (“OCGT”) power station with a gross electrical output of up to 299 megawatts (“MW”). A non-material change to the Order came into force on 1 February 2023 which made amendments to the Flood Risk Requirement, 11(3) at Schedule 2, permitted inclusion of a synchronous condenser under Work No.1 at Schedule 1 and clarified the definition of “commissioning”.
3. The Applicant is seeking consent for changes to Schedule 12 ‘Design Parameters’ of the Order. The Applicant seeks these changes to increase the maximum length of the single gas turbine and generator and increase the maximum length and width of the gas turbine building.

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 a non-material change (“NMC”) to the Order to authorise 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.

Secretary of State's Consideration of the Application

5. The Secretary of State has considered whether the Application is for a material or non-material change. In doing so, she 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6 to the Planning Act 2008 which requires the Secretary of State to consider the effect of the change on the Order as originally made.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 set out in (1), (2), (3) and (4) above:

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

- (a) 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. Considering the analysis supplied by the Applicant and responses to the consultation from Environment Agency, Natural England and North Lincolnshire Council, the Secretary of State has concluded that no update is required to the ES as a result of the proposed amendments to the Order.
 - (b) 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 no change to the conclusions of the HRA as a result of the proposed amendments and therefore a new HRA is not required. She 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.
 - (c) In respect of compulsory acquisition, the Secretary of State notes that the proposed changes do not require any additional compulsory purchase of land.
 - (d) 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 is a material change.
 10. Taking the information contained in the application and responses received from consultees into account, the Secretary of State is therefore 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. On 21 November 2023, under Regulation 7(c) of the 2011 Regulations, the Secretary of State consented to a reduced list of consultees proposed by the Applicant. In accordance with the requirements of Regulation 7 of the 2011 Regulations, specified parties from this reduced list of consultees, such as the local planning authority, were notified of the Application on 13 December 2023.
12. The Applicant published a notice of the Application in accordance with Regulation 6 (publicising the application) of the 2011 Regulations (the "Regulation 6 notice") for two consecutive weeks in the local press, the Grimsby Telegraph and the Scunthorpe Telegraph, on 14 December 2023 and 21 December 2023 and 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. The deadline for receipt of representations on the Application was 1 February 2024.
13. The Applicant submitted its Consultation and Publicity Report to the Secretary of State as required by Regulation 7A of the 2011 Regulations on 4 January 2024, which states that the Applicant has complied with all necessary steps set out in Regulations 6 and 7 of the 2011

Regulations in respect of stakeholder consultation and its public engagement approach. This was published on the PINS website on 21 March 2024.

14. A total of three responses were received from specified Interested Parties as detailed below.

Environment Agency (“EA”)

15. EA responded to the consultation by email on 19 January 2024. EA stated that the Applicant has been granted an environmental permit for the operation of the proposed power station and that EA is satisfied that the changes within the Application do not affect the emission points for the operating permit. Accordingly, EA had no objection to the Application.

Natural England (“NE”)

16. NE responded to the consultation by email on 9 January 2024. NE stated that it had no comments to make on the Application and provided general advice on the consideration of EPS and other natural environment issues in an annex.

North Lincolnshire Council (“NLC”)

17. NLC responded to the consultation by email on 1 February 2024. NLC stated that the proposed amendments did not present any material changes to the Order, were minor in nature and unlikely to result in any significant additional or materially different environmental considerations. NLC had no objection to the Application.

18. The Secretary of State has considered the representations received in response to the consultation and does not consider that any further information needs to be provided by the Applicant or that further consultation is necessary.

Environmental Impact Assessment

19. 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.

20. The Secretary of State is satisfied that the information provided by the Applicant is sufficient to allow her to determine the Application.

21. 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.

22. As there are no new significant environmental impacts as a result of the proposed changes, 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.

The Habitats Regulations

23. The Secretary of State has considered the relevant requirements 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 Development would be likely, either alone or in combination with other plans and projects, to have a significant effect on any site within the national site network, known as “protected sites”. 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 make an appropriate assessment of the implications of the plan or project for that site in view of that site’s conservation objectives*”. The Secretary of State may only agree to the Application (subject to Regulation 64) if she has ascertained that it will not adversely affect the integrity of a protected site.
24. The Secretary of State has considered the information submitted in the Application and the comments of consultees and is satisfied that the proposed changes do not alter the conclusions set out in the Applicant’s ES and the Secretary of State’s HRA for the Order, and therefore a new HRA is not required.

General Considerations

Transboundary Impacts

25. Under Regulation 32 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (as amended), the Secretary of State has considered whether the proposed development is likely to have a significant effect on the environment in a European Economic Area (“EEA”) State. The Secretary of State has considered whether the changes sought through this Application will have any potential impacts on an EEA State and has concluded that there is no change in the environmental impacts considered within the existing environmental statement for the project. Consequently, the Secretary of State has concluded that there would not be likely significant effects on the environment of any EEA state whether the Application is considered of itself or cumulatively with the environmental effects already considered for the Order.
26. The Secretary of State has also considered whether there may be potential impacts on protected sites in EU Member States, known as transboundary sites, from this Application. Noting that the Secretary of State has reached a conclusion that there will be no likely significant effects on protected sites, the Secretary of State has also concluded that there are no realistic impact pathways whereby transboundary sites may be impacted by this Application.
27. The Secretary of State therefore concludes there is no need for transboundary consultation with EEA States.

Equality Act 2010

28. 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 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, sexual orientation, gender reassignment; disability; marriage and civil partnerships;² pregnancy and maternity; religion or belief; and race) and 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.

29. The Secretary of State has had due regard to the need to achieve the statutory objectives referred to in s149 of the Equality Act 2010 and is satisfied that there is no evidence that granting this Application will affect adversely the achievement of those objectives.

Human Rights Act 1998

30. The Secretary of State has considered the potential infringement of human rights in relation to the European Convention on Human Rights, by the amended development. The Secretary of State considers that the grant of this Application would not violate any human rights as enacted into UK law by the Human Rights Act 1998.

Natural Environment and Rural Communities Act 2006

31. 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 amended development consent. The Secretary of State is of the view that biodiversity has been considered sufficiently in this Application for an amendment to accord with this duty.

Secretary of State's Conclusions and Decision

32. The Secretary of State has considered the ongoing need for the Development and considers that the Development continues to conform with the policy objectives outlined in the Overarching National Policy Statement ("NPS") for Energy (EN-1) and the National Policy Statement for Fossil Fuel Electricity Generating Infrastructure (EN-2). The Energy White Paper, Powering Our Net Zero Future, was published on 14 December 2020. It announced a review of the suite of energy NPSs but confirmed that the current NPSs, designated in 2011, were not being suspended in the meantime. Draft NPSs were published on 6 September 2021 and subject to a consultation which closed on 29 November 2021. Updated versions of these draft NPSs were published on 30 March 2023 and subject to a further consultation which closed on 23 June 2023. Revised draft NPSs were released on 22 November 2023 and designated in Parliament on 17 January 2024 ("2024 NPSs").
33. The Secretary of State notes that the 2011 NPSs are still relevant to this Application and notes that 2011 EN-1 and 2011 EN-2 both set out that for the UK to meet its energy and climate change objectives there is a continuing need for new electricity generating plants of the type proposed by the Applicant given the contribution it will make to securing energy supply. The Secretary of State has had regard to the newly designated 2024 NPSs, in particular 2024 EN-

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

1 and 2024 EN-2, in deciding the Application, but does not consider that there is anything contained within them that would lead her to reach a different decision on the Application than has been reached by consideration of the 2011 NPSs. The Secretary of State notes that the new 2024 EN-1 and 2024 EN-2 recognise that some unabated natural gas fired generation may be required for affordable reliability and to assist the transition to a new zero economy in 2050.

- 34. As such, for the reasons set out in the paragraphs above, the Secretary of State is satisfied that the Applicant's request is justified and demonstrates that the proposed changes will not result in changes to the impact conclusions of the ES that accompanied the original Immingham Open Cycle Gas Turbine application.
- 35. The Secretary of State has considered the nature of the proposed changes, noting that the proposed changes to the Development would not result in any further environmental impacts and will remain within the parameters consented by the Order.
- 36. For the reasons given in this letter, the Secretary of State considers that there is a compelling case for authorising the proposed changes to Schedule 12 of 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 to authorise the changes detailed in the Application.

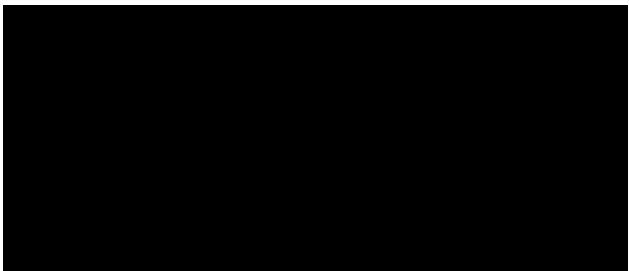
Challenge to Decision

- 37. 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

- 38. 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 OBE
Head of Energy Infrastructure Planning
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 Amendment Order as made is being published on the date of this letter on the Planning Inspectorate website at the following address:

<https://national-infrastructure-consenting.planninginspectorate.gov.uk/projects/EN010097>

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)