



Department for
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& Net Zero

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Dear Mr Williams

PLANNING ACT 2008

PROPOSED NON-MATERIAL CHANGE TO THE LITTLE CROW SOLAR PARK ORDER 2022 (S.I. No. 436)

1. I am directed by the Secretary of State for 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”) made by INRG Solar Limited (“the Applicant”) on 04 October 2022 for a change which is not material to the Little Crow Solar Park Order 2022 (“the 2022 Order”) under section 153 of, and Schedule 6 to, the Planning Act 2008 (“the 2008 Act”). This letter is 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 2008 Act was granted by the Secretary of State and notified in a Decision Letter dated 5 April 2022 (“the original Decision Letter”), for the construction, operation, and decommissioning of a solar photovoltaic generating station with a gross output capacity of more than 50 MW, located approximately 0.6 km east of the British Steel site at Scunthorpe, North Lincolnshire. The 2022 Order was subsequently corrected by the Little Crow Solar Park (Correction) Order 2023.
3. The Applicant is seeking consent for a change to:
 - the lifetime of the project, extending development from 35 years up to 45 years and consequently amending Requirement 3(1) of Schedule 2 of the 2022 Order; and for
 - the decommissioning requirements to be aligned with the proposed extension, amending Requirement 4(1) of Schedule 2 of the 2022 Order as a result.

Summary of the Secretary of State’s decision

4. The Secretary of State has decided under paragraph 2(1) of Schedule 6 to the 2008 Act to make non-material changes (“NMCs”) to the 2022 Order and he has decided to authorise the changes detailed in the Application. This letter is the notification of the Secretary of State’s decision in accordance with Regulation 8 of the 2011 Regulations.

Consideration of the materiality of the proposed change

5. The Secretary of State has given consideration to 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 2008 Act which requires the Secretary of State to consider the effect of the change on the development consent 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 2008 Act 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:
 - First, given the range of infrastructure projects that are consented through the 2008 Act, 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.
 - Second, there may be certain characteristics that indicate that a change to a consent is more likely to be treated as a material change, namely:
 - (a) whether an update would be required to the Environmental Statement (“ES”) (from that at the time the original DCO was made) to take account of likely significant effects on the environment;
 - (b) 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”);
 - (c) whether the proposed change would entail compulsory acquisition of any land that was not authorised through the existing DCO; or
 - (d) whether the proposed changes have a potential impact on local people and businesses.
 - Third, that 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 began his consideration of the materiality of the proposed variation by considering the 4 matters lettered (a), (b) (c) and (d) above:
 - (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, 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. 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.

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

- (c) The Secretary of State notes that the proposed change does not entail any new compulsory acquisition 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 this proposed change is a material change.
 10. He has had regard to the effect of the changes on the 2022 Order, together with the changes made by the Correction Order in 2023 and has also considered whether there are any other circumstances in this particular case which would lead him to conclude that the proposed change is material, but he has seen no evidence to that effect and notes that none of the consultation responses have raised any issues that would lead him to reach a different conclusion. The Secretary of State's consideration of any changes to impacts previously assessed is set out below.
 11. The Secretary of State is therefore satisfied that the change proposed in the Application is not material and should be dealt with under the procedures for non-material changes.

Consultation

12. The Applicant publicised this Application in accordance with Regulation 6 of the 2011 Regulations, arranging for a notice to be published twice in the Scunthorpe Telegraph on 6 October 2022 and 13 October 2022.
13. In compliance with Regulation 7 of the 2011 Regulations, the Applicant sent a Regulation 6 notice to all persons notified of the original DCO application on 4 October 2022. The deadline for receipt of representations on the Application was 14 November 2022. The Application was also made publicly available on the Planning Inspectorate's website on 11 October 2022, satisfying Regulation 7A of the 2011 Regulations ('Statement of Consultation') in the process.
14. A total of 7 representations were received from interested parties, West Lindsey District Council, the Coal Authority, North Lincolnshire Council, Natural England, NATS Safeguarding, Historic England, and the Forestry Commission, who all confirmed that they had no comment to make on the application.
15. 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

16. The Secretary of State has considered whether the Application would give rise to any new significant effects or materially different effects when compared to the effects set out in the ES for the development authorised by the 2022 Order.
17. 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.
18. 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.

The Habitats Regulations

19. 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 address potential adverse effects on site integrity. The Secretary of State may only agree to the Application (subject to Regulation 64) if he has ascertained that it will not adversely affect the integrity of a protected site.
20. 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.

Site Selection and Landscape

21. The Secretary of State has particularly considered the extended lifetime of the project and acknowledges potential impacts in relation to the use of agricultural land and effect on landscape character. The Secretary of State notes the conclusions of the original decision letter in relation to site selection and landscape, including the period of use and that the effects on agricultural land and character of landscape would be reversible. The Secretary of State does not consider that the changes proposed in the Application alters those conclusions.

General Considerations

Transboundary Impacts

22. 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 change 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 2022 Order.
23. 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.
24. The Secretary of State therefore concludes there is no need for transboundary consultation with EEA States.

Equality Act 2010

25. 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.

26. 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

27. 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 development consent would not violate any human rights as enacted into UK law by the Human Rights Act 1998.

Natural Environment and Rural Communities Act 2006

28. 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

29. The Secretary of State has considered the ongoing need for the development and the continuing demand for the UK to meet its energy and net zero objectives. The Secretary of State has also considered the benefits accruing from generating energy for a longer time-period.
30. 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 Little Crow Solar Park application.
31. The Secretary of State notes the review of the energy National Policy Statements ("NPSs") that is currently underway and does not consider that there is anything contained within the relevant draft documents that would lead him to reach a different decision.
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 **Requirement 3(1) of Schedule 2** and **Requirement 4(1) of Schedule 2** 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

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.

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

Yours sincerely,



John Wheadon
Head of 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/yorkshire-and-the-humber/little-crow-solar-park/>

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)