

APPENDIX 1: EGGBOROUGH DCO - CROWN ESTATE'S RESPONSE TO THE SOS'S REQUEST FOR FURTHER COMMENTS (ON 01 AUG 2018)

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National Infrastructure Planning
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AND BY EMAIL: [REDACTED]

20 August 2018

Dear Sirs

**Planning Act 2008 and the Infrastructure Planning (Examination Procedure) Rules 2010
Application by Eggborough Power Limited ("the Applicant") for an Order Granting
Development Consent for the Eggborough CCGT Project**

I write further to the above.

In this letter:

"the book of reference" shall have the meaning given to it in the Order;

"the Commissioners" shall mean the Crown Estate Commissioners;

"Draft DCO" shall mean the Applicant's draft development consent order (reference 2.1 – Rev 7.0 and dated March 2018); and

"Order" shall mean the Eggborough CCGT (Generating Station) Order once made by the Secretary of State.

As you are aware, the Commissioners disagree with any view that section 135(1) of the Planning Act 2008 ("the Act") provides that any provision authorising the acquisition of third party interests in Crown land may only be included in a development consent order if the unconditional consent of the appropriate Crown body to the acquisition is obtained before the development consent order is made.

However, and without prejudice to the Commissioners' position, the Commissioners have reached a separate agreement with the Applicant which provides the Commissioners with sufficient assurance as to the way in which compulsory acquisition powers (as contained in Part 5 of the Draft DCO) may be exercised in respect of third party interests in Crown land forming part of the Crown Estate. As such, and subject to the below, the Commissioners confirm their consent to the compulsory acquisition of the third party interests in Plots 245, 255 and 690 for the purpose of section 135(1) of the Act.

The Commissioners' consent is granted subject to:

1. the inclusion and continuing application of the following "Crown rights" wording in the Order at Article 42 (such wording is the same as that included in the Draft DCO but with different formatting of paragraphs; the Commissioners and the Applicant are agreed that the form of Article 42 should be as per the below):

"42.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any licensee to take, use, enter on or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

(a) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;

(b) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or

(c) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department.

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in any Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown.

(3) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions; and is deemed to have been given in writing where it is sent electronically."

and;

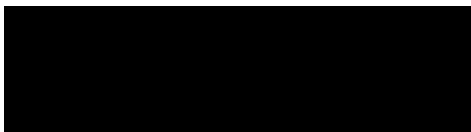
2. the Commissioners being consulted further if any variation to the Draft DCO is proposed which could affect any other provisions of the Order which are subject to section 135(1) and/or section 135(2) of the Act.

Subject to:

1. the inclusion of Article 42 in the Order as referred to above and its continuing application; and
2. the Commissioners being consulted further if any variation to the Draft DCO is proposed which could affect any other provisions of the Order which are subject to section 135(1) and 135(2) of the Act

the Commissioners confirm their consent to Articles 3, 4, 5, 15 and 34 of the Draft DCO, to the extent that they are included in the Order, applying in relation to Plots 245, 255 and 690 for the purpose of section 135(2) of the Act.

Yours sincerely



Rob Booth
General Counsel and Company Secretary
For and on behalf of the Crown Estate Commissioners