

Date: 7 October 2022
Your Ref: EN010114
Our Ref: 14592A



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Gareth Leigh
Head of Energy Infrastructure
Department for Business, Energy & Industrial Strategy
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Via Email: keadby3@planninginspectorate.gov.uk

Dear Sir

PLANNING ACT 2008 AND THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES 2010

APPLICATION BY KEADBY GENERATION LIMITED ("THE APPLICANT") FOR AN ORDER GRANTING DEVELOPMENT CONSENT FOR THE PROPOSED KEADBY 3 CARBON CAPTURE EQUIPPED GAS FIRED GENERATING STATION ("THE PROPOSED DEVELOPMENT")

We refer to your letter dated 22 September 2022 regarding the above matter, seeking responses by 7 October 2022, and respond on behalf of the Applicant as follows.

We have discussed this response with representatives of the Environment Agency, Network Rail and The Crown Estate prior to issue. We understand that the Environment Agency and Network Rail will respond independently but have attached an email from Carter Jonas confirming their agreement to our comments as set out below.

We have set out each of the proposed requests together with our responses as follows:

The Secretary of State requests that both the Applicant and the Environment Agency provides an update in regard to the completion of any side agreement.

There are five matters which require the formal acquisition of land or interests from the Environment Agency.

Mabey and Skew Bridge (Plots 3, 10 and 26)

The Applicant requires rights over the identified plots for the purposes of replacing and upgrading the existing Mabey Bridge structure which crosses Hatfield Waste Drain. The Applicant will use Skew Bridge as a temporary site access during the bridge replacement works, and for abnormal indivisible loads as described in the construction traffic management plan, figure 4 (**REP6a-016**).

Terms have been agreed by the parties and the Environment Agency have instructed their in-house solicitor to review the draft Deed of Variation provided by the Applicant, the completion of which would remove any need for the exercise of compulsory purchase powers in that regard.

North Pilfrey Bridge (Plot 30)

The Applicant wishes to amend the existing Lease with the Environment Agency to permit the use of the existing bridge structure which crosses North Soak Drain for the same purposes as Mabey and

Partners

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Skew Bridge. Heads of Terms have been agreed and a draft Deed of Variation provided by the Applicant's solicitors. The Environment Agency have instructed their in-house solicitor to progress this.

Subsoil Rights for the installation of the Canal Abstraction Pipe (Plot 52)

Heads of Terms have been agreed and solicitors for the Applicant have drafted easement documentation. However, the exact position and specification of the pipe (within the parameters are set out in the draft DCO) to be laid in the ground cannot be finalised at present due to the ongoing discussions between the Applicant and the Canal & River Trust in respect of the Canal Abstraction Agreement which will directly impact upon the size, position, and depth of the required pipe.

It is not, therefore, currently possible to complete the plans that would need to be attached to the eventual Deed of Easement.

In the circumstances, the parties have agreed to await the finalisation of the Canal Abstraction Agreement.

Haul Road Over Sail Rights Plots (31, 46, 47, 53 and 54)

Heads of Terms have been agreed and the solicitors for the Applicant have issued draft documentation. However, the final details of the part of the land that is likely to be over sailed by delivery vehicles is subject to further discussions with the contractors who will be responsible for constructing the proposed development.

The parties have therefore agreed to await the outcome of those discussions.

Access to the Canal (Plots 75, 76 and 80a)

The Environment Agency currently take access over plots 75 and 76 and park vehicles on plot 80a to access the canal for maintenance purposes.

Plot 80a is owned by the Canal and River Trust and is required for the construction of a pumping station in connection with the canal water abstraction. The Applicant has provided the Environment Agency with a unilateral undertaking to provide replacement car parking on nearby land which is within its ownership.

The precise location of the car parking is dependent upon the extent of land required for the installation of the pumping station and associated cables and pipes. This detail will not be finalised until the Canal Abstraction Agreement with the Canal & River Trust is completed.

The Secretary of State requests that the Applicant and Network Rail Infrastructure Limited provides an update on protective provisions and the completion of any side agreements

North Pilfrey Bridge is located in airspace owned by the Environment Agency, Canal and River Trust, SSE and Network Rail. The Network Rail plots are 28 and 29.

The bridge was constructed and is owned, used and maintained by SSE Group companies in connection with the existing operations undertaken on the land located to the north of the bridge. There are existing agreements in place with all the landowners in whose airspace the bridge is located. It is therefore an existing bridge that is already in use solely for purposes that have no connection with the operation of the railway.

As set out in the submissions to the ExA, the Applicant simply wishes to extend the use of the existing bridge to benefit the proposed development and potentially install a communications cable on the structure.

Heads of Terms have been agreed with Network Rail to amend the existing agreement to explicitly allow for the bridge to be used in connection with the proposed development. A draft Deed and Licence has also been issued by the Applicant's solicitors. Network Rail have instructed solicitors who have reviewed these documents and taken internal instructions. Formal completion of these agreements is awaited.

Network Rail does not have any interest in the bridge, and no part of the airspace within which the bridge is located comprises operational land. Network Rail is also unable to use the existing bridge for the purposes of its statutory function.

Similarly, neither the current nor proposed use of the bridge impacts in any way upon Network Rail's ability to maintain the safe, efficient and economic use of the railway, nor impact upon the use of the railway by passenger and freight operators.

In simple terms, the rights are being sought over an existing privately owned bridge that provides access to existing power generation operations and no railway operational land is affected in any way.

Network Rail maintains that the Protective Provisions must exempt Network Rail from the exercise of compulsory purchase powers. In this regard, the Applicant cannot accept that Network Rail be made exempt from the exercise of compulsory acquisition powers until and unless Network Rail formally enter into the proposed terms, whereby the required rights can be drawn down in a timely manner without any ability on the part of Network Rail to hinder, frustrate or otherwise create an impediment on the scheme.

We also refer you to document **REP7a-014**, and, in particular, paragraph 4.2(c) which confirms that the protective provisions currently included in the draft Order in favour of Network Rail provide sufficient protection for their assets and are consistent with Network Rail's standard form. For the reasons explained above, the only element not covered by the protective provisions is the restriction on the Applicant utilising its CPO powers, which in the particular circumstances of this case are distinguishable on the basis that other SSE companies already have the benefit of rights over plots 28 and 29 and the rights sought by the Applicant pursuant to the DCO are no different to those existing rights.

As set out in the submissions to the ExA, the Applicant has been seeking the agreement of terms for the grant of the required rights since 17 March 2021 to avoid having to rely upon the exercise of compulsory acquisition powers. There has therefore been ample time for Network Rail to engage and agree voluntarily terms. In this regard, compulsory purchase powers have only been sought as a matter of last resort.

Whilst the Applicant is hopeful that the parties are now in a position to finalise agreement, there remains sufficient uncertainty in this regard such that the Applicant still requires the ability to exercise compulsory purchase powers to avoid any risk of Network Rail blocking the implementation of the scheme.

In the event that Network Rail complete voluntary terms for the required rights such that there is no need for, or benefit in, maintaining the ability to exercise compulsory purchase powers, the Applicant

would be willing and able to enter to accept the additional Protective Provisions on the basis that Network Rail would no longer comprise a potential impediment to the scheme.

The Secretary of State requests that the Applicant and The Crown Estate provides confirmation that the necessary Crown authority, in regard to powers sought in relation to Crown Land and/or Crown rights consistent with the Book of Reference at Deadline 6a, has been obtained.

The Applicant continues to discuss the land and rights required from the Crown with Carter Jonas as the Crown's appointed agents. The current position is as follows:

Outfall Pipe (Plots 158 and 163)

The Applicant does not intend to make any alterations to the existing structures located on Crown land within the River Trent. Whilst the existing structures were constructed to service the existing operations, the Crown agrees with the Applicant that these structures can be used for the proposed development without any requirement to amend the existing agreements.

River Abstraction (Plots 157, 159 and 160)

The proposed development requires the abstraction of water from either the River Trent or the Stainforth and Keadby Canal. The preferred solution is to use the canal but, to do so, the Applicant needs to complete a Canal Abstraction Agreement with the Canal & River Trust which is currently outstanding. In the event that the Canal Abstraction Agreement is finalised, the alternative river solution may no longer be required, and no rights will be required from the Crown for this purpose.

In the unlikely event that the Canal Abstraction Agreement cannot be finalised, the Applicant will need to upgrade the existing river abstraction infrastructure including that part located on the bed of the River Trent which is within the Crown ownership.

The Crown has advised that if any works are restricted to the area already demised, then their consent will not be required. In the event that works are required outside of this demise, the Crown is agreeable with the principle of varying the existing agreements subject to the payment of an appropriate consideration.

The Wharf (Plot 154)

The Crown owns the riverbed of the River Trent. Plots 154 and 172 comprise that part of the riverbed which is leased to Railway Wharf (Keadby) Limited who have constructed a concrete wharf for the purpose of unloading boats in conjunction with their ownership of Plot 136.

The Crown has advised that, in principle, they will allow the Applicant to cross over these plots, and discussions have taken place as to the likely terms. However, as this land is leased to Railway Wharf (Keadby) Limited and can only be accessed and usefully occupied in conjunction with Plot 136, it is necessary to first reach agreement with Railway Wharf (Keadby) Limited, or exercise compulsory acquisition powers over Plot 136 before formal terms can be completed.

The Mooring (Plots 156, 156a, 172 and 172a)

These plots comprise the part of the River Trent and airspace that is likely to be occupied by boats whilst unloading at the wharf. The Crown agrees, in principle, that the Applicant would be permitted to moor alongside the wharf subject to the agreement of terms in respect of, inter alia, the dredging of the riverbed.

Carter Jonas (agents for the Crown) have reviewed our draft comments and provided their comments by email on 7 October 2022. We have attached a copy of that email to this letter.

We trust this update is of assistance. Should you require further updates, please contact Colin Turnbull at this office using the details provided.

Yours faithfully,

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DWD

Encs.

Carter Jonas e-mail dated 7 October 2022

C.c.

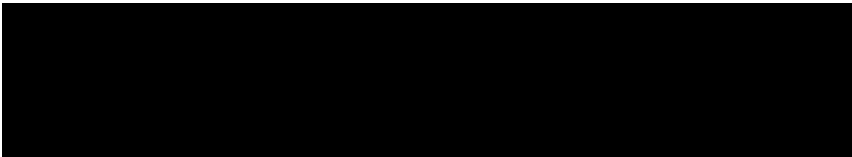
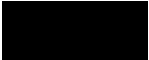
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Peter,

Thank you for your note set out below.

The position is as you state for the Outfall Pipe (Plots 158 & 163) and the River Abstraction (157, 159 & 160). Regarding the Wharf (154 & 172), the principle of the use is agreed subject to the correct terms and mechanism for such rights being agreed. Crown consent will be required for The Mooring (156, 156a & 172), the principle of which is agreed, subject to the correct terms and agreement being reached and can be dealt with as part of, or adjacent to, any arrangements regarding the Wharf.

Kind regards,



The White House, Greenalls Avenue, Warrington, WA4 6HL

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