

Date: 28 November 2022
Your Ref: EN010114
Our Ref: 14592A



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Dear Sir

THIRD CONSULTATION LETTER

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 November 2022 regarding the above matter and seeking responses by midday 28 November 2022. We respond on behalf of the Applicant as follows.

We note that:

"The Secretary of State requests that the Applicant provide an update on the outstanding matters referred to above, including what changes, if any, should be made to the DCO as a result of the update."

Agreement with the Crown Estate has been completed, a copy of which has been provided to BEIS. There is therefore no need to amend the DCO on account of the Crown's interests and the Applicant has not made further comments in this regard. The remainder of this response therefore refers solely to the position with the Environment Agency.

In relation to Environment Agency the Applicant understands that the only matters remaining to be resolved comprise a limited number of land and property matters. This letter sets out the status of documentation supplied to the Environment Agency and which remain with them for their review, and the dates they were supplied by the Applicant.

We refer in this response to the following attached documents:

- Undertaking Given by Keadby Generation Limited to The Environment Agency (dated 6 June 2022)
- Undertaking Given by Keadby Generation Limited to The Environment Agency (dated 28th November 2022)

Partners

R J Greeves BSc (Hons) MRICS
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Introduction

The original objection from the Environment Agency [AS-002] stated that:

“In summary, we can confirm that we have no objection in principle to the proposed development, as submitted, but we may pursue an objection in relation to the Environment Agency land interests the applicant seeks to acquire. The objection in respect of flood risk is capable of being resolved and we will provide further details on this issue in our Written Representations.”

The Environment Agency further advised in their letter dated 6 June 2022 [REP7a-016] that:

“The Environment Agency has an outstanding objection (lodged on 2 September 2021 – see additional submission AS-002) in respect of the Applicant’s intention to acquire rights affecting several plots of land where existing easements will be impacted etc. At the time the objection was lodged it was unclear if/how the proposed acquisitions would affect the Environment Agency’s flood risk management operations...”

... The Environment Agency is of the view that all the outstanding issues are capable of resolution by agreement. Accordingly, we will continue to work on finalising the required agreements during the decision period and we will write directly to the Secretary of State when we are in a position to withdraw the outstanding objection.”

The Applicant understands that the Environment Agency does not object to the principle of the acquisition of the required interests, and they do not claim serious detriment whereby they would benefit from the protections afforded to statutory undertakers. However, they have advised that they are not prepared to withdraw their objection until all land and property agreements have been completed.

We have set out below further details in respect of each matter as follows:

Serious Detriment

Whilst the Environment Agency have not explicitly claimed serious detriment, the Applicant, for clarity, sets out its position in this regard below.

Section 127 of the Planning Act 2008 (the “Act”) requires, in broad terms, the Secretary of State to be satisfied, in considering the grant of powers of compulsory purchase, that the resultant acquisition of land and/or rights from statutory undertakers and/or creation of new rights will not give rise to serious detriment to the carrying of their undertaking.

The Applicant set out the position in respect of “Serious Detriment” in the context of Statutory Undertakers and Section 127 of the Act within the “Legal Submission – Response to Examiner Question 5 (Deadline 7a) Document Ref: 9.24” [REP7a-014].

As explained therein (see paragraph 3.2 of the Legal Submission), the Applicant does not seek any permanent land acquisition from the Environment Agency and is only securing new rights (i.e., access rights over Mabey, Skew and North Pilfrey Bridge together with the canal water subsoil easement). Furthermore, there is no obligation pursuant to Section 127 of the Act to consider the impact of temporary possession powers (i.e., oversailing rights) on the undertaking of a statutory undertaker.

Paragraphs 4.4 to 4.9 of the Legal Submission sets out, in detail, the position in respect of the Environment Agency. In summary, the following points are material to this matter:

- a) The Environment Agency has not requested its own protective provisions (see paragraph 4.4)
- b) The draft DCO has been altered expressly to accommodate all of the Environment Agency's requests (see paragraph 4.4)
- c) Article 14 (Discharge of Water) sets out absolute restrictions and requirements on the Applicant (see paragraph 4.4)
- d) Requirements 13, 14, 15, 17 and 30 set out specific matters which are subject to consultation with the Environment Agency (see paragraphs 4.5 and 4.6)
- e) The Applicant provided a legal undertaking dated 6 June 2022 in respect of parking and access to the Canal (see paragraph 4.7)

As stated at paragraph 4.8 of the Legal Submission:

"there are more than sufficient controls within the Undertaking, Articles, Requirements and Deemed MMO Licence for the benefit of the EA such that any rights sought will not cause any serious detriment to its undertaking, as any new rights acquired will always need to be exercised within the limitations of the identified Articles, Requirements and Deemed MMO Licence conditions."

The Applicant then continues at paragraph 4.9:

"As is set out in detail in Document 9.12 none of the existing rights afforded to each of the statutory undertakers are to be extinguished or acquired. Accordingly Section 127(6)(a) is met and the Secretary of State can be satisfied that new rights can be purchased without serious detriment to the carrying on of each of these undertakers."

In conclusion, the Legal Submission states at paragraph 6.2:

"It is submitted, for the reasons and justification explained above that the Secretary of State can be satisfied that the requirements of either S127(3)(a) or 127(6)(a) are met and the development consent order can be made in the form submitted at Deadline 7a."

The Environment Agency have not challenged this conclusion.

In summary, the Applicant's proposals do not give rise to serious detriment to the Environment Agency's undertaking and the proposed acquisition and/or creation of rights by the Applicant is entirely reasonable and proportionate.

Fees

Whilst the Applicant has been clear from the outset that they would pay all reasonable surveying and legal fees, the Applicant provided a detailed and generous fee undertaking for both legal and surveying fees on 29 July 2022 in the hope that the Environment Agency would commission legal assistance.

Four months have passed since that undertaking was provided but no legal documents requiring the agreement of the Environment Agency have been completed and, as detailed below, the

Environment Agency's solicitor had not, as at 23 November 2022, been instructed in respect of all aspects.

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

Mabey Bridge comprises a permanent road bridge linking the Applicant's site with the A18. It was constructed and owned by the Applicant pursuant to an existing lease and occupies airspace over Hatfield Waste Drain which is owned by the Environment Agency. As such, the bridge already exists and is in use in connection with the existing wind farm and power station. Furthermore, the bridge does not touch or otherwise impact upon the Environment Agency's ownership.

The Applicant is proposing to replace the existing Mabey Bridge with a new structure as part of the development and understands that the Environment Agency accepts that this would not have any adverse impact on their ownership, operations and maintenance of Hatfield Waste Drain.

Skew Bridge also comprises an existing road bridge linking the Applicant's site with the A18. It was originally constructed and used for the purpose of delivering wind turbines. Skew Bridge is required as a replacement site access for the duration of the replacement works to Mabey Bridge following which it would be retained for emergency use only in the event that Mabey Bridge was blocked for any reason.

The Applicant does not intend to carry out any works to Skew Bridge and it is therefore the case that there will no physical changes. In this regard, the Environment Agency has not raised any concerns with the Applicant in respect of any impact of the proposed use on their ownership, operations and maintenance of Hatfield Waste Drain.

A draft deed of variation for the existing lease was prepared and issued by the Applicant to the Environment Agency on 20 May 2022. This has been progressed and has now reached an advanced stage following engagement with the Environment Agency; it is anticipated this will be entered into shortly.

North Pilfrey Bridge (Plot 30)

This bridge was constructed by SSE and crosses over the ownerships of Network Rail, Canal and River Trust, Environment Agency and SSE.

Other than the potential attaching of cables to the bridge structure within the current demise, it is not proposed to make any alterations. In this context, the bridge is already used in connection with the wind farm and existing power station use pursuant to the terms of the current lease. As such, the use of the bridge by vehicles for the purposes of the Applicant's proposed development does not impact in any way upon the Environment Agency's use, operation and maintenance of its land.

The payment offered to the Environment Agency in exchange for consenting to the proposed use is entirely consistent with that agreed with the Canal and River Trust and Network Rail.

A draft deed of variation was issued by the Applicant to the Environment Agency on 31 May 2022 but has yet to be completed. This has been progressed and has now reached an advanced stage following engagement with the Environment Agency; it is anticipated this will be entered into shortly.

Canal Access

The Environment Agency has claimed rights to take vehicular access from Chapel Lane to the canal and park in the vicinity of Plot 80A which is required for the construction of a pumping station. The final details of the position and specification of the pumping station are yet to be concluded.

Nevertheless, the Applicant provided the Environment Agency with a unilateral undertaking dated 6 June 2022 to provide rights of access and parking.

In this regard, the Environment Agency advised in its letter dated 7 October 2022 that:

“The Applicant has provided the Environment Agency with a unilateral undertaking to provide replacement car parking on land under its ownership. The precise location of this replacement car parking is dependent upon the extent of land required for the installation of the pumping station and associated cables and pipes. Again, this detail will not be finalised until negotiations with the Canal and River Trust are completed. However, we are satisfied that the unilateral undertaking protects the Environment Agency’s interest in this respect.”

The Applicant therefore understands that this matter has been fully resolved to the Environment Agency’s satisfaction.

Subsoil Easement (Plot 52)

This plot comprises a narrow triangle of scrubland located next to a tower pylon.

The plot is required in connection with Work No. 4A which relates to the installation of underground equipment for the carriage of cooling water from the canal to the power station. There are no existing surface structures or subsoil equipment and there will therefore be no interference with access over the plot by the Environment Agency.

The terms offered by the Applicant are consistent with those agreed with other landowners within the DCO from whom subsoil rights are required for the installation of pipes and/or cables.

The Applicant has, in advance of final design work being completed, provided the Environment Agency with work parameters and issued a draft easement on 16 September 2022. The Applicant understands that, as at the 23 November 2022, these had not yet been passed to the Environment Agency’s solicitor.

The Applicant is unaware of any potential for the proposed works to interfere in any way with the Environment Agency’s operations.

Oversailing (Plots 31, 46, 47, 53 and 54)

These plots comprise the embankment to the canal located on the southern edge of the highway running parallel to the canal.

The Applicant is seeking oversailing rights for the duration of the development project to permit the passage of abnormal loads. As such, the Applicant’s activities will only be in respect of the occupation of airspace and then only for the periods during which construction traffic will be passing by.

For reasons that remain unclear, the Environment Agency wishes to restrict the area of airspace over which oversailing would take place and the Applicant has therefore undertaken further studies and produced detailed plans that limit the extent of the permitted encroachment.

A draft easement was issued by the Applicant on 16 September 2022. The Applicant understands that, as at the 23 November 2022, this had not yet been passed to the Environment Agency's solicitor.

There will be no impact on the Environment Agency's operations, and they will continue to benefit from access at all times.

Undertakings

The Applicant is aware that the Environment Agency do not intend to withdraw their objection until all the legal agreements are fully completed. The Applicant has therefore sought to assure the Environment Agency that it fully intends to honour the proposed terms and continue to rely on compulsory purchase powers only as a matter of absolute last resort.

In the Applicant's opinion, the compensation likely to be determined by the Upper Tribunal Lands Chamber would be significantly less than that currently offered to the Environment Agency. As such, it was hoped by the Applicant that the proposed terms would incentivise the Environment Agency to reach early agreement.

An undertaking was offered by Keadby Generation Limited to The Environment Agency on 24th November 2022 in order to provide commitments on outstanding points but at the date of this letter has not been responded to, other than that a week would be required to review it.

The Applicant therefore decided to enter into (i.e. issue a signed) Unilateral Undertaking on 28 November 2022. This undertaking secures the commitments given to the Environment Agency to meet its legal and surveyor fees in relation to the negotiation of the necessary property agreements, a commitment to the agreed licence fee for the oversail licence and a commitment to continue to use reasonable endeavours to engage with the Environment Agency for the purposes of finalising the require property agreements.

Conclusion

The only matters remaining to be resolved with the Environment Agency comprise a limited set of land and property matters.

As set out above, the Applicant understands that it is accepted by the Environment Agency that none of the required rights cause any detriment and there is therefore no reason not to allow the compulsory acquisition thereof under the provisions in the Act. In this regard, any disputes in respect of the calculation of compensation are a matter for the Upper Tribunal Lands Chamber. In the event that any of these matters were to be determined by the Upper Tribunal, the Applicant considers that nominal compensation would be awarded.

In any event, the principles of each voluntary agreement are not in dispute between the parties and the Applicant has provided the Environment Agency with full funding.

The Applicant therefore considers that the DCO as currently proposed is in principle capable of being made in the timeframe currently provided.

Should you have any queries please contact Colin Turnbull at this office.

Yours sincerely



DWD

Encs.

Undertakings dated 6 June 2022 and 28 November 2022 (redacted)

**THE KEADBY 3 (CARBON CAPTURE EQUIPPED GAS FIRED GENERATING STATION)
ORDER**

UNDERTAKING GIVEN BY KEADBY GENERATION LIMITED

TO

THE ENVIRONMENT AGENCY

DATE: 06 June 2022

THIS DEED OF UNDERTAKING is given by **KEADBY GENERATION LIMITED** (registered number 029729513) whose registered office is at Keadby Power Station Trentside, Keadby, Scunthorpe, DN17 3EF ("**Keadby**") to **The ENVIRONMENT AGENCY** of Horizon House, Bristol, BS1 5AH ("**EA**")

RECITALS

- (A) On 1 June 2021 Keadby applied to the Secretary of State for Business, Energy and Industrial Strategy for a Development Consent Order pursuant to Section 37 of the Planning Act 2008 for an order titled The Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order (**Order**) to authorise the construction, operation, maintenance of the Keadby 3 Low Carbon Gas Power Station Project (**Development**)
- (B) The EA made representations to Keadby's application for the Order (the **EA Representation**).
- (C) The EA currently takes vehicular access and parking over plot 80a (as identified on the Land Plans) for the purposes of maintaining its flood defence for the Stainforth and Keadby Canal.
- (D) Pursuant to the Order, Keadby is seeking powers of compulsory acquisition to permanently acquire plot 80a.

- (E) Keadby is willing to provide this Undertaking to the EA in order to secure the withdrawal of its representations in consideration of a commitment from Keadby to provide satisfactory vehicular access and parking area for the EA for the purposes of maintaining its flood defences following the permanent acquisition of plot 80a..

OPERATIVE PROVISIONS

“Secretary of State” means the Secretary of State for Business Energy and Industrial Strategy.

"Land Plans" means the plans identified of that name which form part of Keadby's application for the Order.

UNDERTAKING

- (1) Keadby undertakes to the EA as follows:
- (a) To work with and liaise with the EA to identify and agree appropriate alternative parking provision (which for the avoidance of doubt shall include adequate turning provisions for vehicles and be consistent with parking provision currently enjoyed by the EA) if the permanent acquisition of plot 80a by Keadby impacts on the EA's existing parking arrangements for purposes related to the maintenance of flood defences of the Stainforth and Keadby Canal;
 - (b) To make available such additional land as is within Keadby's ownership comprised in plot 77 (as identified on the Land Plan) as may be required to facilitate it's commitment pursuant to paragraph (a) above; and
 - (c) To provide the alternative parking provision as agreed with the EA for the benefit of the EA and to grant the EA such rights as may be appropriate to use the alternative parking provision.

THIS UNDERTAKING is executed by Keadby Generation Limited as a deed on the date specified above


Executed as a deed by)

KEADBY GENERATION LIMITED acting by)

a director in the presence of:)

Director



Signature of witness: 

I confirm I was physically present when John Johnson signed this deed.

Name of witness: Karen Killoran
.....

Address: 
.....
.....

**THE KEADBY 3 (CARBON CAPTURE EQUIPPED GAS FIRED GENERATING STATION)
ORDER**

UNDERTAKING GIVEN BY KEADBY GENERATION LIMITED

TO

THE ENVIRONMENT AGENCY

DATE: 28 November 2022

THIS UNDERTAKING is given by **KEADBY GENERATION LIMITED** (registered number 029729513) whose registered office is at Keadby Power Station Trentside, Keadby, Scunthorpe, DN17 3EF ("**Keadby**") to **The ENVIRONMENT AGENCY** of Horizon House, Bristol, BS1 5AH ("**EA**")

RECITALS

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- (B) The EA made representations to Keadby's application for the Order (the **EA Representation**).
- (C) Keadby has already given an undertaking to the EA dated 6 June 2022.
- (D) Keadby is willing to provide this further Undertaking to the EA in order to secure the withdrawal of its representations in consideration of a commitment from Keadby in relation to the obligations set out in clause 1 below.

OPERATIVE PROVISIONS

"EA Agreements" means the property related agreements to be entered into between Keadby and the EA comprising:

- (a) Oversail licence in relation to plots 31, 46, 47, 53 and 54;
- (b) Pipe easement in relation to plot 52; and
- (c) Deeds of Variation for new rights over plots 3, 10, 26 and 30

such plots being identified in the Book of Reference which forms part of Keadby's application for the Order

"Secretary of State" means the Secretary of State for Business Energy and Industrial Strategy.

"Land Plans" means the plans identified of that name which form part of Keadby's application for the Order.

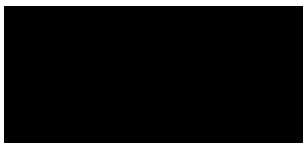
"Order" Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 202[x]

UNDERTAKING

- (1) IN CONSIDERATION of and conditional on the EA first writing to the Secretary of State to withdraw its representation relating to Keadby's application for the Order Keadby undertakes to the EA as follows:
 - (a) to meet the EA's reasonable legal and surveyor fees in negotiating and entering into the EA Agreements up to the sum of [REDACTED] such sum to be paid on completion of the EA Agreements;
 - (b) that the oversail licence to be entered into with the EA (being one of the EA Agreements) shall make provision for the payment of a licence fee of [REDACTED] for the duration of the licence period; and
 - (c) to use reasonable endeavours to continue to liaise and engage with the EA for the purposes of finalising and entering into the EA Agreements.

and for the avoidance of doubt if the Secretary of State issues his decision on the Order prior to the EA having withdrawn its representation then this Undertaking shall

determine and Keadby shall have no further liability under the terms of this undertaking.



Signed by: John Johnson (Director)

For and on behalf of **KEADBY GENERATION LIMITED**