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Ref: EN010129

David Curry
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No.1 Forbury Place
43 Forbury Road
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28 November 2023

Dear Mr Curry,

PLANNING ACT 2008

APPLICATION FOR DEVELOPMENT CONSENT FOR THE SLOUGH MULTIFUEL EXTENSION PROJECT

1. Introduction

- 1.1. 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 Examining Authority’s (“the ExA”) report dated 11 September 2023. The ExA consisted of one examining inspector, Simon Warder. The ExA conducted an Examination into the application received on 30 September 2022 (“the Application”) by SSE Slough Multifuel Limited (“the Applicant”) for a Development Consent Order (“DCO”) (“the Order”) under section 37 of the Planning Act 2008 (“PA2008”) for the Slough Multifuel Extension and associated development (“the Proposed Development”).
- 1.2. The Application was accepted for Examination on 26 October 2022. The Examination began on 22 February 2022 and closed on 26 June 2023. The Secretary of State received the ExA’s Report on 11 September 2023. On 6 October 2023, the Secretary of State issued a letter requesting clarification on certain matters (“the Clarification Letter”). On 20 October 2023, the Secretary of State sought comments from Interested Parties (“IPs”) on the information the Applicant provided in response to the Clarification Letter.
- 1.3. The Order, as applied for, would grant development consent for works to increase the efficiency and output of a previously consented energy from waste generating station which has a capacity of up to 50 megawatts (“MW”). The previously consented generating station received planning permission under the Town and Country Planning Act 1990 (“TCPA1990”) (“the TCPA Consented Development”). The TCPA Consented Development was under construction at the time of the examination.
- 1.4. The Proposed Development would achieve a capacity of up to 60MW by carrying out the following physical works:
 - a boiler primary air preheating system comprising heat exchanger bundles, pipework, valves, pipe supports, thermal insulation, instrumentation, cabling and containment;

- a boiler secondary air preheating system comprising heat exchanger bundles, pipework, valves, pipe supports, thermal insulation, instrumentation, cabling and containment; and
 - mechanical modifications to the actuated stream turbine inlet control valve to allow steam capacity to be increased.
- 1.5. The works would be located predominately within the boiler house and the turbine hall of the TCPA Consented Development's Multifuel Facility which is already under construction. The Proposed Development's only external work would be a single pipe that runs between these two buildings. The Application does not seek powers of compulsory acquisition or temporary possession.
- 1.6. As the Proposed Development will increase the capacity of the TCPA Consented Development from 50MW to 60MW, the Proposed Development is above the threshold for which development consent is required under the PA2008.
- 1.7. Published alongside this letter on the Planning Inspectorate's National Infrastructure Planning website¹ is a copy of the ExA's Report of Findings and Conclusions and Recommendation to the Secretary of State ("the ExA's Report"). The ExA's findings and conclusions are set out in Chapters 4-6 of the ExA Report, and the ExA's summary of conclusions and recommendation is at Chapter 8. All numbered references, unless otherwise stated, are to paragraphs of the ExA's Report ["ER *.*.*"].

2. Summary of the ExA's Report and Recommendation

- 2.1. The principal issues considered during the Examination on which the ExA has reached conclusions on the case for development consent are set out in the ExA Report under the following broad headings:
- the principle of the development;
 - air quality, dust and odour;
 - biodiversity;
 - climate change;
 - noise and vibration;
 - traffic and transport;
 - other issues including flood risk, drainage and surface water, major accidents and disasters, and combined and cumulative effects;
 - the scope of the proposed development and Environmental Impact Assessment;
 - the Habitats Regulations Assessment ("HRA"); and
 - the draft Development Consent Order ("dDCO").
- 2.2. The ExA concluded that the Proposed Development meets the tests in section 104 of the PA2008 and recommended that the Secretary of State should make the Slough Multifuel Extension Order in the form attached at Appendix C of the ExA's Report [ER 8.3.1].

3. Summary of the Secretary of State's Decision

- 3.1. Section 104(2) of the PA2008 requires the Secretary of State, in deciding an application, to have regard to any relevant National Policy Statement ("NPS"). Subsection (3) requires that

¹ <https://infrastructure.planninginspectorate.gov.uk/projects/south-east/slough-multifuel-project/>

the Secretary of State must decide the application in accordance with the relevant NPS except to the extent that one or more of subsections (4) to (8) apply.

- 3.2. The Secretary of State has considered the ExA's Report and all other material considerations, including representations received after the close of the ExA's Examination, all of which are dealt with as appropriate in the decision letter below. The Secretary of State has also had regard to the Local Impact Report ("LIR") submitted by Slough Borough Council ("SBC") [REP2-015], environmental information as defined in regulation 3(1) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("the EIA Regulations"), and to all other matters which are considered to be important and relevant to the Secretary of State's decision as required by section 104 of the PA2008 including relevant policy set out in the NPSs EN-1 and EN-3.
- 3.3. Five Relevant Representations ("RRs") were originally made in respect of the Application by statutory authorities, businesses, and non-governmental organisations. Cadent Gas Limited withdrew its RR on 03 March 2023 [AS-011]. Written Representations, responses to questions and oral submissions made during the Examination were also taken into account by the ExA. Royal Mail Group Limited withdrew its Written Representation ("WR") at Deadline 2 of the Examination, 24 May 2023. The ExA notes that the Applicant came to agreement with SEGRO plc [REP4-003] and that the other two RRs were neutral, meaning that there were no outstanding RRs or WRs at the close of Examination [ER 4.3.3].
- 3.4. On 6 October 2023, the Secretary of State issued the Clarification Letter requesting clarification from the Applicant on the biosecurity measures secured within the Construction Environmental Management Plan ("CEMP"). The Secretary of State then sought comments from IPs on the new information provided by the Applicant in response to the Clarification Letter, but no comments were received by the close of the consultation on 17 November 2023. The Secretary of State has reviewed the Applicant's response and considers that the new information does not affect her overall conclusions on the Application. However, as a result of the information and suggested drafting provided by the Applicant, the Secretary of State has decided to include an additional requirement in Requirement 3 of the Order which gives her confidence in the effectiveness of the applicant's biosecurity measures for the Proposed Development during construction.
- 3.5. The Secretary of State has considered the overall planning balance and, for the reasons set out in this letter, has concluded that the benefits associated with the Proposed Development outweigh the harm identified, and that development consent should therefore be granted. The Secretary of State has decided under section 114 of the PA2008 to make, with modifications, an Order granting development consent for the Proposed Development.
- 3.6. This letter is the statement of the reasons for the Secretary of State's decision for the purposes of section 116 of the PA2008 and the notice and statement required by regulations 31(2)(c) and (d) of the EIA Regulations. In making her decision, the Secretary of State has complied with all applicable legal duties and has not taken account of any matters which are not relevant.

4. The Secretary of State's Consideration of the Application

- 4.1. This letter is intended to be read alongside the ExA's Report. The Secretary of State agrees with the findings, conclusions and recommendations of the ExA, unless specifically stated otherwise, and any perceived difference in emphasis between the summaries in this letter and the ExA's Report should not be inferred as conveying disagreement with the ExA's Report.

5. Habitats Regulations Assessment

- 5.1. The Conservation of Habitats and Species Regulations 2017 (“the Habitats Regulations”) aim to ensure the long-term conservation of certain species and habitats by protecting them from possible adverse effects of plans and projects. Following the United Kingdom’s departure from the European Union, these domestic regulations continue to apply. The Habitats Regulations provide for the designation of sites for the protection of habitats and species of international importance. These sites are called Special Areas of Conservation (“SACs”). They also provide for the classification of sites for the protection of rare and vulnerable birds and for regularly occurring migratory species within the United Kingdom and internationally. These sites are called Special Protection Areas (“SPAs”). SACs and SPAs together form part of the UK’s National Site Network (“NSN”).
- 5.2. The Convention on Wetlands of International Importance 1972 (“the Ramsar Convention”) provides for the listing of wetlands of international importance (“Ramsar sites”). Government policy is to afford Ramsar sites in the UK the same protection as sites within the NSN (collectively with SACs and SPAs referred to in this decision letter as “protected sites”).
- 5.3. Regulation 63 of the Habitats Regulations provides that: *“...before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which (a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in-combination with other plans or projects), and (b) is not directly connected with or necessary to the management of that site, [the competent authority] must make an appropriate assessment of the implications for that site in view of that site’s conservation objectives.”*

And that: *“In the light of the conclusions of the assessment, and subject to regulation 64 (considerations of overriding public interest), the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).”*

- 5.4. The Proposed Development is not directly connected with, or necessary to the management of a protected site. Therefore, under regulation 63 of the Habitats Regulations, the Secretary of State is required (as Competent Authority) to consider whether the Proposed Development would be likely, either alone or in combination with other plans and projects, to have a significant effect on any protected site. If likely significant effects (“LSE”) cannot be ruled out, the Secretary of State must undertake an appropriate assessment (“AA”) addressing the implications for the protected site in view of its conservation objectives.
- 5.5. Where an adverse effect on the integrity (“AEoI”) of the site cannot be ruled out beyond all reasonable scientific doubt, regulations 64 and 68 of the Habitats Regulations provide for the possibility of a derogation which allows such plans or projects to be approved provided three tests are met:
- there are no feasible alternative solutions to the plan or project which are less damaging to protected sites;
 - there are imperative reasons of overriding public interest (“IROPI”) for the plan or project to proceed; and
 - compensatory measures are secured to ensure that the overall coherence of the NSN is maintained.

- 5.6. The Secretary of State may grant development consent only if it has been ascertained that the Proposed Development will not, either on its own or in-combination with other plans or projects, adversely affect the integrity of protected sites unless she chooses to continue to consider the derogation tests as above. The complete process of assessment is commonly referred to as a HRA.
- 5.7. The Applicant submitted a 'Habitat Regulations – No Significant Effects Report' ("NSER") [APP-067] with the Application and supporting Environmental Statement ("ES"). As no other evidence or comment against this was submitted by any other IP, the ExA considered that a Report on the Implications for European Sites ("RIES") would not be required.
- 5.8. The NSER considered the potential for LSE on protected sites within 15km of the Order Limits boundary, in line with Environment Agency guidance. Natural England considered in their Statement of Common Ground ("SoCG") [REP2-011], that the Applicant had identified the relevant protected sites and qualifying features on which LSE could occur as a result of the Proposed Development. These sites are:
- Burnham Beeches SAC, approximately 2.9km from the site;
 - Windsor Forest and Great Park SAC, approximately 6km from the site;
 - Southwest London Waterbodies SPA, approximately 7.6km from the site;
 - Southwest London Waterbodies Ramsar, approximately 7.6km from the site; and
 - Chilterns Beechwoods SAC, approximately 9.7km from the site.
- 5.9. Given the largely internal nature of the Proposed Development, as well as the distance between the Proposed Development and the identified protected sites, the only potential impact pathway identified for consideration of LSE was that of air quality impacts associated with stack emissions. No matters were raised by Natural England, the other IPs, or the ExA regarding the identification of other potential impact pathways on the five protected sites.
- 5.10. The Secretary of State has carefully considered the information presented before and during the examination, including the Environmental Statement, NSER, representations made by IPs, and the ExA's Report. The Secretary of State has considered the conservation objectives and qualifying features for each of the five protected sites against the potential effects of the Proposed Development:
- **Air quality impacts associated with stack emissions:** As there will be no additional stack emissions beyond those associated with the TCPA Consented Development, no significant effects on the qualifying features of the identified protected sites are likely from air quality impacts during the construction, operation, and decommissioning phases of the Proposed Development. The ExA noted that no IP disputed this conclusion.
 - **In-combination effects:** Other than the TCPA Consented Development, the Applicant identified no other plan or project that would act in combination with the Proposed Development. The in-combination effects considered to have the potential to result in LSE are the air quality impacts associated with stack emissions. The Proposed Development, in-combination with the TCPA Consented Development, are unlikely to result in significant effects on the qualifying features of the identified protected sites, as the in-combination air quality impacts would fall below the 1% of

the critical level/load threshold identified by Natural England as denoting an imperceptible impact. The ExA noted that no IP disputed this conclusion.

- 5.11. The Secretary of State considers, on the basis of the above, that the Proposed Development either alone or in combination with other plans or projects, is not likely to have a significant effect on any protected site and that an AA is therefore not required. This conclusion and its reasoning are consistent with the advice provided during the examination by Natural England, the Environment Agency, and the ExA's recommendation [ER 5.3.5].
- 5.12. The Secretary of State also agrees with the ExA that sufficient information has been provided for her to determine that an AA is not required, and to fulfil her duties under the Habitats Regulations.
- 5.13. The Secretary of State notes that mitigation measures have been proposed by the Applicant to avoid local environmental effects. She agrees with the inclusion of these measures, but whilst they strengthen the above conclusions they are not intended or necessary to avoid significant effects on protected sites, nor have they been considered when reaching the above conclusion.

6. Secretary of State's Consideration of the Planning Balance and Conclusions

- 6.1. Where NPSs have effect, section 104 of the PA2008 requires the Secretary of State to have regard to a range of policy considerations including the relevant NPSs, Development Plans and LIRs prepared by local planning authorities in reaching a decision.
- 6.2. The Secretary of State agrees with the ExA's conclusions and the weight it has ascribed in the overall planning balance in respect of the following issues:
 - The need for the Proposed Development (substantially positive) [ER 4.5.15, ER 4.6.4, ER 4.7.2, ER 4.8.1];
 - Air quality, dust and odour (neutral) [ER 4.11.32];
 - Biodiversity (neutral) [ER 4.12.38];
 - Climate change (slightly positive) [ER 4.13.24];
 - Noise and vibration (neutral) [ER 4.14.25];
 - Traffic and transport (neutral) [ER 4.15.26]; and
 - Other matters including flood risk and major accidents and disasters (neutral) [ER 4.16.12, ER 4.16.19, ER 4.16.23].
- 6.3. The Secretary of State acknowledges that all Nationally Significant Infrastructure Projects ("NSIPs") are likely to give rise to adverse impacts. In the case of the Proposed Development, the potential impacts have been assessed by the ExA as being in accordance with NPS EN-1 and NPS EN-3 [ER 6.5.5] and the emerging draft NPSs [ER 3.3.5, ER 4.13.19, ER 4.13.22], subject in some cases to suitable mitigation measures being put in place to minimise or avoid impacts as required [ER 7.2.6 et seq., ER 7.2.14, ER 7.6.1, ER 8.2.7]. The Secretary of State also considers that the proposed mitigation measures have been appropriately secured.
- 6.4. Further, the Secretary of State agrees with the ExA that the Proposed Development will not give rise to LSE on European Sites, species or habitats as defined by the Habitats Regulations.

- 6.5. In reaching this decision, the Secretary of State confirms that regard has been given to the ExA's Report, the LIR submitted by SBC, the NPSs, draft NPSs, and to all other matters which are considered important and relevant to the Secretary of State's decision as required by section 104 of the PA2008. The Secretary of State confirms for the purposes of regulation 4(2) of the EIA Regulations that the environmental information as defined in regulation 3(1) of those Regulations has been taken into consideration.
- 6.6. The Secretary of State has considered the overall planning balance and the benefits associated with the Proposed Development, including its contribution to the urgent need for renewable electricity generation and to combined heat and power [ER 4.5.15]. The Secretary of State notes that there are no identified adverse impacts arising from the Proposed Development to be considered in the planning balance. As such, adverse impacts would not outweigh the benefits of the Proposed Development [ER 8.2.7]. The Secretary of State concludes that consent should be granted for the Proposed Development.

7. Other Matters

Equality Act 2010 and Human Rights Act 1998

- 7.2. The Equality Act 2010 includes a public sector "general equality duty" ("PSED"). This requires public authorities to have due regard in the exercise of their functions to the need to eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Equality Act 2010; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not in respect of the following "protected characteristics": age; gender; gender reassignment; disability; marriage and civil partnerships²; pregnancy and maternity; religion and belief; and race.
- 7.3. In considering this matter, the Secretary of State (as decision-maker) must pay due regard to the aims of the PSED. This must include consideration of all potential equality impacts highlighted during the Examination. There can be detriment to affected parties but, if there is, it must be acknowledged and the impacts on equality must be considered.
- 7.4. The Secretary of State has had due regard to this duty and has not identified any parties with a protected characteristic that might be discriminated against as a result of the decision to grant consent to the proposed Development.
- 7.5. The Secretary of State is confident that, in taking the recommended decision, she has paid due regard to the above aims when considering the potential impacts of granting or refusing consent and can conclude that the Proposed Development will not result in any differential impacts on people sharing any of the protected characteristics. The Secretary of State concludes, therefore, that granting consent is not likely to result in a substantial impact on equality of opportunity or relations between those who share a protected characteristic and others or unlawfully discriminate against any particular protected characteristics.
- 7.6. Noting that no compulsory acquisition or temporary possession powers are sought as part of the Application, the Secretary of State has no reason to believe that making the Order

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

would give rise to any unjustified interference with human rights so as to conflict with the provisions of the Human Rights Act 1998.

Natural Environment and Rural Communities Act 2006

- 7.7. The Secretary of State notes the “general biodiversity objective” to conserve and enhance biodiversity in England, section 40(A1) of the Natural Environment and Rural Communities Act 2006 and considers the application consistent with furthering that objective, having also had regard to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when granting development consent.
- 7.8. The Secretary of State is of the view that the ExA’s Report, together with the Environmental Impact Assessment, considers biodiversity sufficiently to inform her in this respect. In reaching the decision to give consent to the Proposed Development, the Secretary of State has had due regard to conserving biodiversity.

Draft National Policy Statements

- 7.9. 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 designated 2011 NPSs were not being suspended in the meantime. The transitional guidance in the consultation paper makes clear that the assessment of any decision-making about NSIP applications in progress should continue to be made with reference to the currently designated 2011 NPS suite which remains in force and therefore forms the basis of the Secretary of State’s consideration of the Application. Although the new NPSs are in draft form and have not been designated, the Secretary of State considers them to be important and relevant for the purpose of section 104 of PA2008. As such, the Secretary of State has had regard to the draft energy NPSs in deciding the Application but does not consider that there is anything contained within either versions of the relevant NPS documents that would lead her to reach a different decision on the Application.

The British Energy Security Strategy and Powering Up Britain

- 7.10. The Secretary of State has also had regard to the British Energy Security Strategy published on 7 April 2022, which outlined the steps to accelerate the government’s progress towards achieving Net Zero by 2050, and Powering Up Britain, announced on 30 March 2023, which set out the goal of reaching energy security through a low-carbon energy transition. The Secretary of State does not consider that there is anything within these policies which would lead her to reach a different decision on the Application.

8. Modifications to the draft Order

- 8.1. Following consideration of the draft Order provided by the ExA, the Secretary of State has made the following modifications to the draft Order.
- 8.2. The Secretary of State has included a reference to condition 18 of the TCPA permission within Requirement 3(b), requiring the authorised development to be constructed in accordance with the fauna management plan approved pursuant to that condition. This is because the details in the fauna management plan include matters relating to construction.
- 8.3. The Secretary of State has inserted paragraphs (2) and (3) into requirement 3 (Construction). These new requirements relate to the construction biosecurity strategy and the draft

provision was provided by the Applicant in response to Clarification Letter referred to above (minor changes were made to the draft provision in the interests of clarity). This addition gives the Secretary of State confidence in the effectiveness of the Applicant's biosecurity measures for the proposed development during construction.

- 8.4. In addition to the above, the Secretary of State has made various changes to the draft Order which do not materially alter its effect, including changes to conform with the current practice for statutory instruments and changes in the interest of clarity and consistency and to achieve consistency with other DCOs.

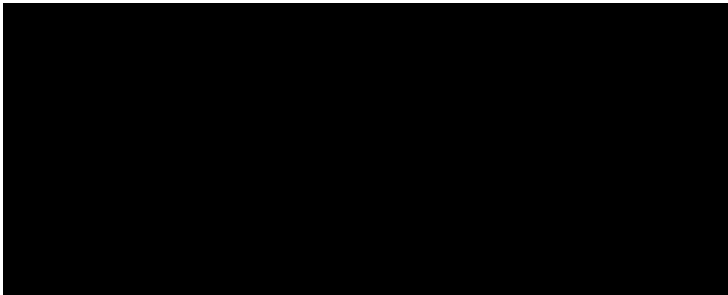
9. Challenge to decision

- 9.1. The circumstances in which the Secretary of State's decision may be challenged are set out in the Annex to this letter.

10. Publicity for decision

- 10.1. The Secretary of State's decision on this Application is being publicised as required by section 116 of the Planning Act 2008 and regulation 31 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

Yours sincerely,



David Wagstaff OBE
Head of Energy Infrastructure Development

ANNEX A: LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, 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 or decision is published. The decision documents are being published on the date of this letter on the Planning Inspectorate website at the following address:

<https://infrastructure.planninginspectorate.gov.uk/projects/south-east/slough-multifuel-project/>

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).

ANNEX B: LIST OF ABBREVIATIONS

Abbreviation	Reference
AA	Appropriate Assessment
AEoI	Adverse Effect on Integrity
BESS	British Energy Security Strategy
CA	Compulsory Acquisition
CHP	Combined Heat and Power
DCO	Development Consent Order
EA	The Environment Agency
EIA	Environmental Impact Assessment
ES	Environmental Statement
ExA	The Examining Authority
HRA	Habitats Regulations Assessment
IP	Interested Party
IROPI	Imperative Reasons of Overriding Public Interest
LIR	Local Impact Report
LSE	Likely Significant Effect
MW	Megawatt
NE	Natural England
NPS	National Policy Statement
NSN	National Site Network
NSIP	Nationally Significant Infrastructure Project
PSED	Public Sector Equality Duty
RIES	Report on the Implications for European Sites
RR	Relevant Representation
RSPB	The Royal Society for the Protection of Birds
SAC	Special Area of Conservation
SBC	Slough Borough Council
SoCG	Statement of Common Ground
SPA	Special Protection Area
PA2008	The Planning Act 2008
TP	Temporary Possession