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To Applicant

Your Ref:

Our Ref: EN10131

Date: 27 September 2023

Amended letter to address incorrect version of AN16 that was referenced in the original and updating any references to the latest version, Version 3 March 2023, as now referenced in the amended letter.

~~Double strikethrough~~ identifies removed text, **highlighted text** identifies new text.

Dear Ms Leeder,

Planning Act 2008 - Section 89

Application by Gate Burton Energy Park Limited for Gate Burton Energy Park

Notice by Applicant of intention to submit a request for changes to the application

Thank you for your e-mail dated 20 September 2023 with the attached letter of the same date. The letter states its purpose is to notify the Examining Authority that the Applicant intends to submit a change request. It does not directly request advice on the procedural implications of the proposed changes and the need, scale and nature of consultation to be carried out but sets out the Applicants views on these matters and concludes by requesting that if there are any comments or questions with regards to the Applicant's proposed change request, or procedure to contact you. The document has been published on the National Infrastructure Planning website here:

[EN010131-001172-Gate Burton - Notification of Change Request.pdf](https://infrastructure.planninginspectorate.gov.uk/EN010131-001172-Gate%20Burton%20-%20Notification%20of%20Change%20Request.pdf)
(planninginspectorate.gov.uk)

The letter sets out the nature of the changes, some background and the procedure the Applicant proposes to follow. The Applicant suggests that the limited nature of the changes would not be so substantial as to constitute a materially different project but does note that that the Applicant considers that the provisions of the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (the CA Regulations) will apply and makes reference to the process associated with material changes as set out in The Planning Inspectorate Advice Note 16: ~~Requesting Changes~~

Requests to change applications after they have been accepted for examination (version 23, ~~March 2016~~ March 2023) (AN16). It does not however comment on whether the Applicant views the changes as material or not material changes. I have therefore taken this letter as notification of a material change request in accordance with Step 1 of figure 1 of the recommended procedure in AN16.

The letter identifies three proposed changes and sets out brief details of these including the extension of the Order limits and a request to seek powers of compulsory acquisition. It is also noted that there would be a reduction in the Order limits due to previous design changes. An indicative programme is also included and this anticipates a formal material change request, in accordance with step 4 of figure 1 of AN16, around 3 October 2023. Moreover, the document sets out the consultation/discussions the Applicant has undertaken to reach the present position and intended consultation it proposes to undertake in advance of the submission.

Materiality of the proposed changes

The Applicant has not expressed a view as to whether the proposed changes may be considered to be material, other than insofar as to suggest that they would not be so substantial as to constitute a materially different project. It is ultimately for the ExA to decide whether or not a proposed change is material and the ExA does not at this stage have sufficient information to reach a view as to materiality. It is however noted that the Applicant states the changes will necessitate the Compulsory Acquisition of "additional land" as defined in The Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (the CA Regulations) or secure additional rights over land but that the changes would not result in changes to the environmental effects reported in the Environmental Statement (ES) with supplementary environmental information to demonstrate that there would be no materially new or different environmental effects as a result of the change request in preparation. The Applicant's assertions around environmental effects as a result of the changes is not, at this time supported by appropriate evidence, and therefore conclusions cannot be drawn.

On receipt of the formal change request, the ExA will consider whether the changes are substantial and, if not such that would result in a materially different project, whether they are material changes. Such factors as discussed above may lead the ExA to conclude that the changes are material. This means that before accepting the material changes for examination, the ExA will need to have:

- the information identified in paragraphs (a) to (d) in Figure 2b of AN16;
- confirmation that the CA Regulations are engaged. The Applicant will need to update the information to support CA or TP and whether any additional land is necessary and meets the appropriate tests and any existing land is no longer needed and therefore there is no longer justification for its CA/TP. The Book of Reference, Statement of Reasons and Funding Statement and any other relevant documents should be updated to reflect any conclusions drawn, the information to be included must include that information set out in Regulation 5. Furthermore, you make reference to 'unregistered land' please ensure that the steps taken to identify the potential owners of the plots of unregistered land are set out clearly and what steps have been taken to serve notice on the land and the timescales and how this may impact upon the notification and publicity timelines; and

- confirmation that any new environmental effects have been adequately assessed and explain any consultation bodies that have been consulted (see paragraphs (6 & 7) of Figure 2b of AN16) or any other parties who have been consulted in order to front load the change request as potentially anticipated by AN16 at step 3 of figure 1 where it is suggested that step 3 could be initiated earlier in order to potentially save time and inform the Applicant's approach. A consultation Report as noted at point 7 on figure 2b of AN16 should be provided. This should explain why the targeted consultation undertaken is appropriate and sufficient to inform the approach adopted.

The Applicant is also advised that it is, of course, possible that the ExA may consider the proposed changes are not acceptable as a change or that there is insufficient time within the timetable to accommodate the proper examination of the changes. The Applicant is therefore asked to ensure that all documentation submitted to support the change request is submitted as a discrete and separate contained set of information with each document clearly identified in both the document heading and the file name as relating to the change request. If this documentation is provided alongside other changes to the Application that would otherwise be forthcoming those other changes to the original documentation not including the proposed changes as a result of the change request should also be submitted as separate versions and identified as such. This will in effect retain the ability of the Application to proceed if the change is not accepted and the documentation should clearly allow for that eventuality.

Consultation

Whether or not the proposed changes are material the ExA needs to ensure that the examination is carried out having regard to fairness, part of that consideration will revolve around the extent to which appropriate and proportionate non-statutory consultation has or should be carried out before the change request is accepted.

You have stated that the Applicant is of the view that it is not necessary or desirable to consult or publicise the supplementary environmental information it is proposed to submit prior to making the change request. It is suggested that AN16 recognises there is no formal or statutory requirement to undertake consultation on or publicise any environmental information prepared to support a change request. It does however at point 6 of figure 2b state that 'If the proposed changes results in any new or different likely significant environmental effects , **provision of other environmental information and confirmation that : A** ~~confirmation should be provided that the effects have been adequately assessed and the information subject to publicity~~'. It notes that whilst this is not statutorily required it should reflect the statutory requirements and the Applicant should submit copies of representations received in response. Whilst you may seek to confirm that the changes would not result in likely significant environmental effects above those already identified and hence not require publicity the ExA has not seen this information nor any targeted consultation that may have been or is proposed to be undertaken in advance of the change application and so cannot comment at this stage as to the appropriateness of the scale and nature of consultation that has or should be carried out. As set out above a consultation report should be submitted to identify any early consultations undertaken along with copies of any responses and a justification for the position adopted and in particular to include the further engagement planned with the Host Authorities, Natural England and the Environment Agency as identified in your letter.

When submitting the change request it is recommended that the Applicant submits a statement which:

- lists the persons (affected by the changes) under section 42 (a) to (d) who have been consulted (identifying particularly any new persons ie those who were consulted in relation to the proposed change but not in relation to the original application);
- identifies (within the above list) those section 42 (d) persons who are “affected persons”, meaning those persons over whose land Compulsory Acquisition powers will be exercised;
- provides justification as to why any person under section 42 (a) to (d) is not affected by the proposed changes and has not therefore been consulted (if any); and
- appends as an annex to a Consultation Statement to be submitted with the formal change request any consultation responses received.

If the ExA decides to accept the changes into the Examination, all Additional Affected Persons, Additional Interested Parties and Interested Parties will have an opportunity to make representations on the changed application in writing or orally at hearings as the Examination progresses. Nonetheless, if the ExA is not satisfied with the extent of non-statutory consultation undertaken by the Applicant the ExA may request that further non-statutory consultation is carried out to safeguard the interests of and/ or inform those potentially impacted by the changes who are not already involved in the Examination.

With regard to any notice to be published regarding the proposed changes under the CA regs you are advised to contact the Case Team with regard to the wording of any such notice to ensure that this identifies the appropriate mechanism for the submission and receipt of any responses to ensure they are properly captured as Relevant Representations.

Effect on timetable

Having reviewed the proposed timetable there are a number of issues within it which may not give adequate time to meet the statutory requirements. For example, Written Representations to be received by 1 December. Regulation 13(2) requires 21 days to be provided for submission. If the timetable is published by 22 November 2023, as per your suggestion, this only provides for 8 days. The timetable is also very tight only providing at most 3 days to respond to the application for change to be accepted whereas the Rules allow for 28 days (Regulation 6(1)) and only providing for 2 days following the receipt of the certificates of compliance until the notice for the hearings to be published. In the context of notice for hearings in your timetable this would be given on 22 November 2023 for hearings on 14/15 December this is only just 21 days which the Regulations require (Regulations 14, 15 and 16) however you have previously informed of additional time for press notices in relation to hearings how would this be accommodated in your proposed timetable? Further justification should also be set out as to why it would be appropriate and proportionate to hold any such hearings by virtual means only, as this would be a change from how other hearings during the examination have been conducted.

Consideration is being given to concurrent timing of Relevant Representations and Written Representation periods and the early publication of a timetable which reserves dates for hearings (with formal notification of the hearings provided at a separate date) and identifies future deadlines or additional information to be submitted for existing deadlines etc which may be able to address some of these matters. However, until the change request is submitted and the details are before the ExA conclusions cannot be drawn.

On the assumption that the necessary documentation and change request is submitted in line with the date suggested in your notification, then the ExA will review the effect this will have on the overall timetable for the examination. However, given the point in the Examination timing is critical and extremely tight and should any submission not be made in line with the timetable, or containing the necessary information, then there is significant potential there would not be sufficient time in the Examination to undertake all the necessary steps.

Next steps

The Applicant is asked to ensure that the change request, that is intended to be submitted in October 2023, responds fully to the points made above and contains sufficient information to enable the ExA to prepare further questions, if necessary.

If you have any questions about any of the matters raised in this correspondence, please contact the Case Team using the details provided in this letter.

Yours sincerely

Ken Stone

Examining Inspector

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