



Department for
Business, Energy
& Industrial Strategy

Paul Lee
National Grid Gas plc
1-3 Strand
London
WC2N 5EH

**Department of Business,
Energy and Industrial Strategy**
3 Whitehall Place,
London SW1A 2AW
T: +44 (0)300 068 5770
E: giles.scott@beis.gsi.gov.uk
www.gov.uk/decc

Your ref: EN060004

25 August 2016

Dear Mr Lee

PLANNING ACT 2008

**APPLICATION FOR THE PROPOSED RIVER HUMBER GAS PIPELINE
REPLACEMENT PROJECT**

1. Introduction

1.1. I am directed by the Secretary of State for Business, Energy and Industrial Strategy ("the Secretary of State") to advise you that consideration has been given to:

- a) the report dated 27 May 2016 of the findings and conclusions of the Examining Authority ("ExA"), Mr Jeremy Aston who conducted an examination ("the Examination") into the application submitted to the Planning Inspectorate on 10 April 2015 ("the Application") by National Grid Gas plc for a Development Consent Order ("the Order") under section 37 of the Planning Act 2008 ("the 2008 Act") for the River Humber Gas Pipeline Replacement Project ("the Development");
- b) Representations received by the Secretary of State in respect of the Application; and
- c) Further consultation engaged in by the Secretary of State in respect of issues raised in the planning process and by the draft Order as submitted to the Secretary of State.



Department for
Business, Energy
& Industrial Strategy

- 1.2. The Examination of the Application began on 9 September 2015 and was completed on 7 March 2016. The Examination was conducted on the basis of written evidence submitted to the ExA, site inspections and discussion at two separate Issue-Specific Hearings on 17 and 18 November 2015 and a Compulsory Acquisition ("CA") Hearing on 18 November 2015.
- 1.3. The Order, as applied for, sought development consent under the 2008 Act for the construction and operation of a new replacement section of a gas transporter pipeline approximately 6km in length and up to 1050mm in diameter crossing under the Humber Estuary. The new section of pipeline would commence approximately two miles north east of Goxhill in North Lincolnshire and terminate approximately one mile south east of Paull in the East Riding of Yorkshire. The proposed Development would comprise the following:
 - approximately 5.03km of concrete lined tunnel under the Humber Estuary with a minimum internal diameter of 3.65m and a maximum internal diameter of 4m;
 - approximately 120m of pipeline laid onshore at Goxhill and 400m at Paull for the connection to each above ground installation ("AGI");
 - connection works to the existing pipeline at the Goxhill AGI and Paull AGI;
 - two construction compounds, one each side of the river at Goxhill and Paull, adjacent to the existing AGIs; and
 - associated works for permanent and temporary accesses, highways works, drainage works, temporary spoil storage, temporary lay-down and work areas and ancillary works.
- 1.4. Published alongside this letter is a copy of the ExA's Report of Findings and Conclusions ("the Report") and errata sheet contained within the Report. The ExA's findings and conclusions are set out in the Report, and the ExA's summary of findings and conclusions are at section 11.

2. Summary of the ExA's Report and Recommendation

- 2.1. The Secretary of State notes that the ExA's report included findings and conclusions on the following principal issues:
 - construction and project delivery;
 - biodiversity, ecology and natural environment;
 - noise, disturbance and vibration;
 - transportation and traffic;
 - debris, waste and contamination;
 - historic environment;
 - design, landscape and visual impact;



Department for
Business, Energy
& Industrial Strategy

- socio economic effects;
- the draft Development Consent Order; and
- compulsory acquisition.

2.2 The ExA recommended that the Secretary of State grants development consent for the Development in the form of the Order set out in the ExA's Report [ER 10.2.1].

3. Summary of the Secretary of State's Decision

3.1 **The Secretary of State has decided under section 114 of the 2008 Act to make, with modifications, an Order granting development consent for the proposals in the Application.** Published alongside this letter on the Planning Inspectorate web-site is a copy of the Order, the Habitats Regulations Assessment and a note on the circumstance in which the Secretary of State's decision can be challenged. This letter with the Order and the Habitats Regulations Assessment constitutes both the statement of reasons for the Secretary of State's decisions for the purposes of section 116 of the 2008 Act and the notice and statement required by regulation 23(2)(c) and (d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 ("2009 Regulations").

4. Secretary of State's Consideration

4.1 The Secretary of State has considered the ExA's Report, the representations made in respect of the Application and all other material considerations. The Secretary of State's consideration of the Report is set out in the following paragraphs. All numbered references, unless otherwise stated, are to paragraphs of the Examination Report ("ER") (specified in the form ER x.xx.xx).

4.2 The Secretary of State has had regard to the National Policy Statements referred to in paragraph 4.5 below, the Local Impact Reports ("LIR") submitted by North Lincolnshire Council ("NLC") and East Riding of Yorkshire Council ("ERYC"), the relevant local plans and to all other matters which the Secretary of State must have regard to or considers to be important and relevant to his decision as required by section 104 of the 2008 Act. The Secretary of State also confirms for the purposes of regulation 3(2) of the 2009 Regulations that he has taken into consideration the environmental information as defined in regulation 2(1) of those Regulations. In making his decision, the Secretary of State has complied with all applicable legal duties on him and has not taken account of any matters which are not relevant to his decision.

4.3 Except as indicated otherwise in the paragraphs below, the Secretary of State agrees with the findings, conclusions and recommendation of the ExA as set out in the Report, and the reasons for the Secretary of State's



Department for
Business, Energy
& Industrial Strategy

decision are those given by the ExA in support of his conclusions and recommendation.

Need for the Proposed Development

- 4.4 The Secretary of State notes that the Applicant is the sole owner and operator of the National Transmission System (“NTS”), a network of gas pipelines supplying gas from natural gas terminals to power stations and distribution companies that supply homes and other users in the United Kingdom. The Secretary of State also notes that the Applicant has a duty, imposed by its Gas Transporter Licence, to develop and maintain an efficient and economical pipeline system for the conveyance of gas.
- 4.5 The Overarching National Policy Statement (“NPS”) for Energy, EN-1, recognises that the UK is highly dependent on natural gas and that it is critical that the UK continues to have secure and reliable supplies of gas as it makes the transition to a low carbon economy. Section 3.8.5 in EN-1 states that the UK’s gas supply infrastructure must be sufficient to meet peak demand and to allow for a sustained delivery of large volumes of gas. The NPS for Gas Supply Infrastructure and Gas and Oil Pipelines, EN-4, sets out the need for gas supply infrastructure, and recognises that efficient import, storage and transmission of natural gas is crucial in meeting the UK’s energy needs during the transition to a low carbon economy, and that the UK cannot achieve its national objectives relating to security of supply without enabling investment in new infrastructure.
- 4.6 The ExA noted that the Development is required because the existing pipeline crossing under the River Humber is becoming exposed due to erosion, and the temporary remedial works undertaken in 2010-2011 and then again in 2013 were assessed as likely to be effective until about 2020. The Applicant requires therefore a permanent solution to meet its licence obligations and safeguard network supply [ER 4.5.4]. The ExA also noted that the Applicant stated that should the pipeline be taken out of service, entry capacities would be reduced to less than 50% of current levels south of the River Humber. This could reduce the available gas supply capacity by between 12.2 % and 17.2% [ER 4.5.5].
- 4.7 The Secretary of State has also had regard to the comments of the ExA set out in Chapter 7 and Chapter 10 of the Report, and in particular the conclusions set out regarding the need for the Development. The ExA considers making the Order would be consistent with energy NPS EN-1 and EN-4 for infrastructure of the type proposed by the Applicant [ER 10.1.1]. Accordingly, the Secretary of State is satisfied that the need for the Development has been established.
- 4.8 In addition, the Secretary of State notes that a range of issues related to socio-economic impacts were examined by the ExA during his



Department for
Business, Energy
& Industrial Strategy

consideration of the Application. The ExA concluded that, with the mitigation included in the Order in Article 26(6) and discussed in paragraph 4.22 below, the Development meets the socio-economic considerations set out in NPS EN-1 [ER 5.13.47]. The Secretary of State agrees with the ExA's conclusions in this matter.

Compulsory Acquisition

- 4.9 The Secretary of State notes that the ExA considered whether the evidence provided during the Examination justified the grant of Compulsory Acquisition ("CA") powers sought by the Applicant having regard to the statutory and other requirements and representations made by affected parties. The Secretary of State has considered the CA powers sought in respect of all of the Order land in relation to the CA of land and rights in land, and the seeking of Temporary Possession ("TP") rights over the Order land. The rights sought are for the purposes of constructing, operating and maintaining the Development.
- 4.10 The Secretary of State notes that the Applicant has sought to acquire rights by voluntary agreement in parallel with seeking to compulsorily acquire rights in land through the Order. The Secretary of State agrees with the ExA that the pipeline, at approximately 6km in length, crossing beneath the River Humber and affecting 112 plots, is a complex and long linear project and therefore paragraph 25 of the 2008 Act guidance on compulsory acquisition procedures, which supports the dual tracking of voluntary negotiations alongside provision in the Order for authorising CA, applies [ER 8.8.26]. The Secretary of State also notes that although progress was being made on negotiating voluntary agreements and heads of terms for easements outside the CA [ER 1.5.16], the Applicant is still seeking CA powers because it requires the certainty provided by such powers to acquire the rights stated in order to finance and deliver the project, if for any reason the voluntary acquisition of rights in land is unsuccessful [ER 8.6.9].
- 4.11 The Secretary of State is satisfied with the ExA's overall conclusion that the legal interests in all plots described and set out in the revised Book of Reference and on the land plans (as amended) would be required in order to implement the proposed Development; that the national need for this infrastructure has been demonstrated; that it represents a significant public benefit for which there is a compelling case in the public interest; that the need to secure the land rights required to construct the Development within a reasonable timescale represents a significant public benefit; that the private loss to those affected has been appropriately mitigated; and that the Applicant has shown that all reasonable alternatives to compulsory acquisition have been explored [ER 8.11.45].



Department for
Business, Energy
& Industrial Strategy

The Secretary of State is satisfied that the Development complies with section 122(2) and 122(3) of the 2008 Act [ER 8.11.48].

Adequacy of Funding

4.12 The Secretary of State notes that no concerns were raised by any Interested Parties over the availability of funding during the CA Hearing or Examination [ER 8.2.24]. The Secretary of State also notes that the ExA is satisfied that the resource implications in terms of CA and temporary possession obligations have been adequately met, and that the requirements of the 2008 Act and NPS in respect of funding are met [ER 8.2.25].

Protective Provisions – Environment Agency

4.13 During the Examination, the Environment Agency (“EA”) requested that wording relating to indemnity be included in paragraph 23 of Part 3 in Schedule 10 to the Order. The ExA notes that at the close of the Examination the final details of the wording for including an indemnity provision had not been agreed between the EA and the Applicant. The EA confirmed by way of email to the Planning Inspectorate on 19 April 2016, that the wording of the indemnity provision had been agreed with the Applicant. The Secretary of State has amended paragraph 23 of Part 3 of Schedule 10 accordingly.

Section 127 & 138 (Statutory Undertakers)

4.14 Section 127(2) of the 2008 Act provides that an Order may include provisions authorising the CA of statutory undertaker’s land, and section 138(4) provides that an Order may include provisions for the extinguishment of the relevant right or removal of the relevant apparatus. The Secretary of State notes the Applicant seeks CA powers to acquire land, interfere with interests, override interests and remove apparatus along the route of the Development on Statutory Undertakers’ land and Electronic Communications Code Operators’ land [ER8.6.28]. The Report records that at the close of the Examination, there was an outstanding representation under section 127(1)(b) of the 2008 Act in respect of statutory undertakers’ land [E.R. 8.3.7]. (Where such a representation is made and has not been withdrawn, the Secretary of State’s powers to grant compulsory acquisition in respect of statutory undertakers’ land may be exercised only if the Secretary of State is satisfied of specified matters.)

4.15 The Secretary of State notes that negotiations between the Applicant and Northern Powergrid (Yorkshire) plc (“NPG”) to protect the interests of NPG had not concluded by the end of Examination. The Secretary of State has received the letter dated 27 April 2016 submitted by Watson Burton LLP, acting on behalf of NPG, to the Planning Inspectorate withdrawing NPG’s



Department for
Business, Energy
& Industrial Strategy

objections as a contractual agreement with the Applicant had been concluded.

- 4.16 The Order provides in relation to statutory undertakers for the extinguishment of “relevant rights”, the removal of “relevant apparatus” (within the meaning of section 138 of the 2008 Act) and the acquisition of new rights and land belonging to statutory undertakers as described in the Book of Reference and shown on the land plans, subject to the protective provisions in Schedule 10. The Secretary of State is satisfied that the extinguishment of relevant rights, the removal of relevant apparatus, the acquisition of land and new rights in land belonging to NPG is necessary for the purpose of carrying out of the Development. The Secretary of State agrees and accepts that the statutory test in section 138(4) for the inclusion of such provision in the Order is met.

Section 135 (Crown Land)

- 4.17 The Secretary of State notes that rights over Crown land are sought at the crossing of the River Humber Plots 55-59 (Permanent rights) and 62-63 (Temporary rights). The relevant Crown Authority responsible for these land interests is The Crown Estate Commissioners (“TCE”).
- 4.18 The ExA notes in ER 8.10.3 that for this Development, compulsory acquisition powers relating to the Crown land can be included in the Order (provided consent is granted by TCE) as the Crown land is not held ‘*by or on behalf of the Crown*’ as it is leased to Associated British Ports (“ABP”). Following the close of the Examination, the Secretary of State received a letter dated 7 June 2016 from Eversheds LLP, acting on behalf of The Crown Estate, confirming that The Crown Estate had given consent for the grant of the bed and foreshore of the River Humber by ABP to the Applicant. Consequently, the Secretary of State wrote to the Applicant and The Crown Estate to request confirmation as to whether there was no longer any need for compulsory purchase powers in respect of third party rights in Crown Land.
- 4.19 In their response of 25 August 2016, The Crown Estate confirmed that paragraph (1)(b) should be deleted from the Crown Rights article, at article 43, and a new paragraph, paragraph (2), be included restricting the application of that article such that it does not apply to compulsory purchase. The Secretary of State has therefore amended article 43 of the made Order accordingly.

Other Parties

- 4.20 The Secretary of State has considered the ExA’s summary of the potential socio-economic impacts on parties who occupy property or land nearby



Department for Business, Energy & Industrial Strategy

the Development and have a potential to be affected by it [ER8.7.12] covered in Chapter 5 and Chapter 8 of the ExA's report. The Secretary of State agrees with the ExA that although such parties may have a potential claim for compensation, it is not within the ExA's powers to examine such claims [ER 8.7.37]. The Secretary of State agrees with the ExA that such claims make no overarching difference to the planning merits case for this Development [ER 8.7.36].

- 4.21 The Secretary of State has considered the compulsory acquisition powers sought by the Applicant against the conditions in sections 122 & 123 of the 2008 Act and the Human Rights Act 1998, and has taken into account the outstanding objections in the case of the parties set out at ER 8.7.17 – 8.7.34. The Secretary of State agrees with the ExA that these matters are capable of resolution through Article 26(6) as amended which provides a mechanism for compensation procedures, and that the Order is consequently capable of being granted with inclusion of compulsory powers to obtain the permanent or temporary rights over land without conflicting with the 2008 Act, the DCLG guidance on CA procedures, or the Human Rights Act 1998 [ER 8.8.30].

Ecology and Biodiversity

a) Habitats Regulations Assessment

- 4.22 Regulation 61 of the Conservation of Habitats and Species Regulations 2010 ("the Habitats Regulations") requires the Secretary of State to consider whether the Development is likely to have a significant effect, either alone or in combination with other plans and projects, on a European site, as defined in the Habitats Regulations. If likely significant effects ("LSE") cannot be ruled out, then an Appropriate Assessment ("AA") must be undertaken by the Secretary of State to address the implications for the site in view of its conservation objectives. In light of any such assessment, the Secretary of State may grant development consent only if the Secretary of State has ascertained that the Development will not, either on its own or in combination with other plans and projects, adversely affect the integrity of a European site, unless there is no alternative solution and imperative reasons of overriding public interest apply.

- 4.23 European sites protected include Special Areas of Conservation ("SACs") established under Council Directive 92/43/EC on the conservation of habitats and species and of wild flora and fauna (the "Habitats Directive") and Special Protection Areas ("SPAs") established under Council Directive 2009/147/EC on the conservation of wild birds (the "Wild Birds Directive"). It is also Government policy that sites listed under the Ramsar Convention



Department for Business, Energy & Industrial Strategy

should be given the same protection as European sites, and the Secretary of State has treated them as such.

- 4.24 The Secretary of State notes that the Applicant considered the potential for likely significant effects on three European sites; the Humber Estuary Special Area of Conservation ("SAC"), the Humber Estuary Special Protection Area ("SPA") and the Humber Estuary Ramsar site.
- 4.25 The ExA's overall findings and conclusions in relation to the Habitats Regulations are found in section 6 of the Report. The Secretary of State agrees with the ExA's conclusion that likely significant effects arising from the Development can be excluded for the Humber Estuary SAC but cannot be excluded in relation to the Humber Estuary SPA and Ramsar site. The Secretary of State, therefore, agrees that an AA is required under the Habitats Regulations to consider the effects of this Development alone and in-combination with other plans or projects on the integrity of these two European sites. On this basis, the Secretary of State has conducted an AA to assess the implications for these sites in view of their conservation objectives.
- 4.26 The ExA considered evidence supplied by the relevant Interested Parties and examined it at issue-specific hearings and concluded that there would not be adverse effects on the integrity of the two European sites either alone or in combination with other plans or projects as a result of the Development, provided that suitable mitigation was put in place [ER 6.5.34]. Mitigation measures have been incorporated into the Order.
- 4.27 The Secretary of State notes that the agreed mitigation measures referred to the installation of permanent lockable barriers at two locations (one on East Marsh Road and one at East Halton Skitter) to reduce disturbance to SPA birds using fields 6, 7 and 8 and to prevent vehicles from accessing the saltmarsh over the sea wall.
- 4.28 The ExA report notes at 6.5.31 that subsequent to the agreement of the mitigation measures between the Applicant, NE and the RSPB, affected landowners expressed concerns over some elements of the mitigation. The landowners stated that "*it is hoped that Heads of Terms can be agreed with the Applicant concerning the installation of the barriers, the application of farmyard manure and the non-use of bird scares [sic]*". The ExA report notes at 6.5.32 that Heads of Terms had not been agreed by the close of Examination and even if agreed would not be legally binding. The ExA considered that the mitigation measures could be secured adequately on the basis of temporary possession rights exercisable if voluntary agreement is not reached. 4.30 The Secretary of State notes that permanent barriers could not be secured solely on the basis of temporary possession rights. The Secretary of State considers that disturbance reduction to Fields 6, 7 and 8 is necessary mitigation during



Department for
Business, Energy
& Industrial Strategy

construction of the project. The Secretary of State considers restriction of access to the saltmarsh to be enhancement. The Secretary of State has therefore made changes to Work No 4, Work No 4D and Work No 13 to ensure the mitigation required during construction is secured.

- 4.29 On the basis of the AA's consideration of the issues raised, the Secretary of State agrees with the ExA's conclusions that there will be no adverse effects on integrity on the Humber Estuary SPA and Ramsar sites as a result of the Development and finds no reason in respect of this issue not to make the Order.
- 4.30 A copy of the Secretary of State's AA is published alongside this letter on the Planning Inspectorate's website.

b) Effects on other protected Species and Sites

Protected Species

- 4.31 The Applicant identified after pre-construction surveys, that European Protected Species ("EPS") licences might be required for great crested newts and water voles. Badgers are not an EPS but are protected under the Protection of Badgers Act 1992. Badgers were identified as potentially disturbed by the project, such that a licence permitting the disturbance under the 1992 Act may be required. The ExA considered that there was no reason to believe that such licences as required would not be granted and, consequently, that there is no reason for the Secretary of State to withhold the granting of an Order [ER 5.3.87]. The Secretary of State agrees with this conclusion of the ExA on this matter.

Sites of Special Scientific Interest and other non-designated sites

- 4.32 The ExA noted that the Applicant and Natural England ("NE") confirmed their agreement that for operations likely to damage the special interests of a SSSI, SSSI consent would be obtained by the Applicant if NE deemed this to be required [ER 5.5.35]. No specific impacts of concern were noted but a mechanism for dealing with such works should they be identified during detailed design was agreed [ER 5.5.36].
- 4.33 The ExA concluded that there would either be no adverse impact on Sites of Special Scientific Interest ("SSSI"), or that such matters are capable of control under the process of SSSI Assent from NE. The ExA also concluded that there would be no significant adverse impact on any non-designated sites that would outweigh the public benefit of the project [ER 5.3.83]. The Secretary of State agrees with the conclusions of the ExA on this matter.



Other Matters

Disapplication of legislative provisions

4.34 Article 3 in Part 1 of the recommended Order contained, with the consent of the EA, a provision dis-applying section 109 of the Water Resources Act 1991. The effect of section 109 was to prohibit *inter alia* the erection of structures in watercourses forming part of a main river without consent. Section 109 has now been repealed, and activities that previously required consent under section 109 now require a permit under the Environmental Permitting Regulations 2010. The Secretary of State has reflected the repeal in the made Order.

Statutory Undertakers

4.35 In addition to NPG's outstanding negotiations at the end of Examination covered in paragraph 4.14 above, the Secretary of State notes that there were also outstanding agreements in the case of KCOM Group plc, Northern Gas Networks and Network Rail. However, as these Statutory Undertakers had not made formal representations objecting to the Development, section 127 is not engaged.

4.36 In a response to the Secretary of State's consultation of 13 July 2016 requesting an update on the status of negotiations, the Applicant confirmed by letter dated 21 July that all outstanding agreements relating to the protection of statutory undertakers had been completed.

Environment Agency - Environment Permits and Licences

4.37 The Secretary of State notes that in addition to the Order, the Development may require an Environmental Permit ("EP") and other licences from the Environment Agency ("EA"). It is also noted that in the Issue Specific Hearing on 17 November 2015, the EA advised that although it could not advise definitively on the necessary permits/licenses, "*the Environment Agency is comfortable, based on the information available, that there are no showstoppers to National Grid Gas obtaining the necessary permits/licences*" [ER 5.7.27]. This is in accordance with the Statement of Common Ground (SoCG) between the Applicant and EA. In the circumstances, the Secretary of State considers there are no reasons to believe the Environmental Permit will not be granted in due course.

Transboundary Impacts

4.38 A screening exercise for transboundary impacts was undertaken by the Secretary of State for Communities and Local Government ("SoSCLG") for the purposes of regulation 24 of the 2009 Regulations on 22 August 2014, and again on 9 June 2015 following the Planning Inspectorate's



Department for
Business, Energy
& Industrial Strategy

acceptance of the Application documents. SoSCLG applied the precautionary approach set out in the Planning Inspectorate's "Advice Note 12: Transboundary Impacts Consultation", and took the view that the Development was not likely to have a significant effect on the environment of another European Economic Area state. The Secretary of State agrees with this assessment.

5. Representations Received After the Close of the Examination

- 5.1 During the Examination, a representation from EA dated 13 January 2016 was submitted to the Planning Inspectorate to notify the ExA that the EA's response to the Examiner's second written question number 18 for deadline 6 would be delayed due to a flood event. However, although the response from the EA was received by the Planning Inspectorate on 15 January 2016, it was not published by the Planning Inspectorate. On 25 April 2016, the Secretary of State consulted all Interested Parties on the EA's response. The Secretary of State received a response from Anglian Water Services Limited confirming they had no comments. No other party responded to express concern or an opinion over the matters raised within the EA's representation.
- 5.2 The Secretary of State received confirmation on the 19 April 2016 from the EA that wording of paragraph 23 of Part 3 of Schedule 10 relating to indemnity had been agreed between the Applicant and the EA (see paragraph 4.13 above).
- 5.3 As noted in paragraph 4.15 above, the Secretary of State received a letter dated 27 April 2016 confirming that NPG had concluded matters with the Applicant and that it had withdrawn its objection.
- 5.4 The Secretary of State received a letter dated 7 June 2016 confirming that The Crown Estate had given consent for the lease of the bed and foreshore of the River Humber by ABP to the Applicant and a letter dated 25 August 2016 confirming amendments to the Crown rights Article. (see paragraph 4.17 - 4.19).
- 5.5 The ExA's report noted that agreements to protect the interests of Network Rail, NGN and KCOM Group plc were not in an agreed form at the end of Examination. The Secretary of State requested the Applicant provide an update on the status of these agreements in his consultation of 13 July 2016. The Applicant's response confirmed that: a confidential agreement for the protection of NGN's assets and interests addressing the concerns raised by NGN had been agreed on 18 April 2016 and that NGN had not submitted an objection to the Development; KCOM is satisfied that Part 2 of Schedule 10 of the Order provides satisfactory protection of their interests; and the Applicant and Network Rail have concluded a basic



Department for Business, Energy & Industrial Strategy

asset protection agreement for the protection of Network Rail's interests and apparatus. (see paragraph 4.35 – 4.36 above).

- 5.6 The Secretary of State has received a letter dated 15 August 2016 from Wilkin Chapman LLP addressed to the Planning Inspectorate confirming that Mr John H Finch, one of the objectors whose case is considered in 4.20 above, has withdrawn his objection to the Development.

6. General Considerations

Equality Act 2010

- 6.1 The Equality Act 2010 includes a public sector "general equality duty". 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 Act; 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 partnerships¹; pregnancy and maternity; religion and belief; and race. This Secretary of State is satisfied that there is no evidence of any harm, lack of respect for equalities, or disregard to equality issues in relation to the Application.

Human Rights Act 1998

- 6.2 The Secretary of State has considered the possible interference with human rights protected by the Human Rights Act 1998 by the Development and compulsory purchase powers.
- 6.3 The Secretary of State has considered the effect of the Development on the property rights of individuals and businesses. In particular, the Secretary of State has considered whether the interference with the rights protected under Article 1 of Protocol 1 and Article 8 of the European Convention on Human Rights is necessary and proportionate.
- 6.4 As discussed in paragraph 4.21 above, the Secretary of State notes that the ExA had regard to the impact upon the occupants of the various residential properties, farms and businesses along the route of the Development. The ExA noted the concerns with regards to the perceived impact upon their private and family life and the potential interference with the peaceful enjoyment of their land and property.

¹ In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.



Department for
Business, Energy
& Industrial Strategy

- 6.5 The Secretary of State agrees with the ExA that the use of temporary possession powers as an alternative to CA has ensured that the need for CA is minimised; and in view of the compensation provisions included in the Order, the temporary possession powers do not engage any of the provisions of the Human Rights Act 1998 [ER 8.8.30]. The Secretary of State therefore takes the view that the grant of development consent would not violate any human rights protected by the Human Rights Act 1998.
- 6.6 In compliance with Article 6, the Secretary of State agrees that those parties affected by CA powers sought for the project have been provided with the opportunity for a fair and public hearing of their objections through the examination process [ER 8.11.40 bullet point 2].

Natural Environment and Rural Communities Act 2006

- 6.7 The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006, has to have regard to the purpose of conserving biodiversity, and in particular to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when granting development consent. The Secretary of State is of the view that the Report considers biodiversity sufficiently to accord with this duty.

7. Secretary of State's conclusions and decision

- 7.1 For the reasons given in this letter, the Secretary of State considers that there is a compelling case for granting development consent, given the national need for the proposed Development and that the potential adverse local impacts of the Development do not outweigh the benefits of the scheme, as mitigated by the terms of the Order. The Secretary of State is also content that granting consent would be consistent with EN-1 and EN-4.
- 7.2 The Secretary of State has therefore decided to accept the ExA's recommendation in paragraph 10.2.1 of the Report to make the Order granting development consent and to impose the requirements recommended by the ExA, but subject to the modifications described below.

8. Modifications to the Order

- 8.1 In considering the draft Order submitted with the ExA's report, the Secretary of State has decided to make modifications to the recommended Order. The principal modifications, and the reasons for them, are set out below:



Article 2 and Schedule 1

The Secretary of State split that which was listed as authorised development into authorised development and ancillary works forming an authorised project. This reflects better section 115 of the Planning Act 2008, and accords with earlier drafting practice. Appropriate amendments to the Order to take into account the change have been made.

Article 3 (disapplication of legislative provisions)

- The Secretary of State has replaced a reference in article 3(a) to section 109 of the Water Resources Act 1991 (now repealed) with a reference to the Environmental Permitting (England and Wales) Regulations 2010

Article 4 (Development consent, etc. granted by the Order)

- Amendment to the article to reflect the powers in the Planning Act 2008, and to clarify the drafting.

New Article 6 (Operation of authorised project)

- Article to provide for the operation of the authorised project. Previously the provision was combined in the article on development consent.

Article 43 (Crown Land)

- Amendment to the Crown Land article to restrict it such that it does not apply to compulsory purchase

Schedule 1 – Works No.4, 4D and 13

- Replacement of permanent gates with temporary gate to reflect powers granted for temporary possession under the Order.

Schedule 10, Part 3 (23)

- Environment Agency – Amendment to protective provisions to reflect agreement between the Agency and the applicant.

Other Drafting Changes

- 8.2 In addition to the above, the Secretary of State has made various changes to the recommended Order which do not materially alter its effect, including changes to conform with the current practice for statutory instruments (for example, modernisation of language); the removal of unnecessary material; changes in the interests of clarity and consistency; and changes to ensure that the Order and the marine licences have the intended effect.



9. Publicity for Decision

- 9.1 The Secretary of State's decision on this Application is being publicised as required by section 116 of the Act and regulation 23 of the EIA Regulations.

Yours sincerely,

Giles Scott

Giles Scott
Head of Energy Infrastructure Planning and Coal Liabilities



LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118(1) 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 is published. The River Humber Gas Pipeline Replacement Project Order as made is being published on the date of this letter on the Planning Inspectorate website at the following address:

<https://infrastructure.planninginspectorate.gov.uk/projects/yorkshire-and-the-humber/river-humber-gas-pipeline-replacement-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)