Department for
Business, Energy
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Dear Ms Wells

PLANNING ACT 2008

APPLICATION FOR DEVELOPMENT CONSENT FOR THE YORKSHIRE AND HUMBER CARBON CAPTURE AND STORAGE CROSS COUNTRY PIPELINE

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 the Report dated 19 August 2015 of the Examining Authority, Andrew Mead ("the ExA"), who conducted an examination into the application ("the Application") dated 18 June 2014 by National Grid Carbon Limited ("the Applicant") for a Development Consent Order ("the Order") under section 37 of the Planning Act 2008 ("the Act") for the Yorkshire and Humber Carbon Capture and Storage Cross Country Pipeline project ("the Development").

1.2 The Application was accepted for examination on 16 July 2014. The examination of the Application began on 19 November 2014 and was completed on 19 May 2015. A number of hearings to consider aspects of the Application were held during the examination before it was completed.

1.3 The Order as applied for would grant development consent for the construction and operation of an approximately 75km long onshore pipeline and associated infrastructure for the transportation of carbon dioxide ("CO2"). As applied for, the pipeline would have been routed from the location proposed for the White Rose Carbon Capture and Storage ("CCS") project (in Drax, North Yorkshire) ("the White Rose project") via a proposed multi-junction at Camblesforth (also, North Yorkshire) to a point on the coast near Barmston in the East Riding of Yorkshire.

1.4 The Development, as applied for, would comprise the following principal elements:

- the construction of a pipeline with an external diameter of up to 324mm and approximately 0.25km in length from the White Rose project to a pipeline inspection facility (the "Drax PIG Trap");

- Construction of the Drax PIG Trap on land adjacent to the White Rose project (which itself is adjacent to the existing Drax Power Station);

- Construction of a pipeline of up to 324mm diameter and approximately 5.6km length from the Drax PIG Trap to the multi-junction facility at Camblesforth ("the Multi-junction");

- Construction of the Multi-junction;

- Construction of a cross country pipeline with an external diameter of up to 610mm and approximately 67km length from the Multi-junction to an onshore pumping station at Barmston ("the Pumping Station");

- Construction of pipeline isolation facilities ("Block Valves") at Tollingham, Dalton and Skerne;

- Construction of the Pumping Station;

- Construction of a pipeline with an external diameter of up to 610mm of approximately 1km from the Pumping Station to mean lower water mark;

- Construction of agricultural land field drainage;

- Upgrade of temporary access road at Barmby on the Marsh;

- Construction of cathodic protection facilities at the Drax PIG Trap, Multi-junction, Block Valves and the Pumping Station including kiosk, metering facilities and cabling;

- Construction of permanent access roads at the Multi-junction, Block Valves and Pumping Station;

- Construction of two temporary pipeline store and office areas (at Tollingham and Driffield) including: office and welfare facilities; powers supplies; enclosures; pipe, equipment and fittings storage; paint storage; fabrication areas; waste storage areas; spoil storage areas; internal haul roads; parking; and water management areas; and

- Construction of additional temporary construction areas at the Drax PIG Trap, the Multi-junction and the Pumping Station including: office and welfare facilities; power supplies; enclosures; pipe, equipment

and fittings storage; paint storage; fabrication areas; waste storage areas; spoil storage areas; internal haul roads; parking and water management areas.

1.5 The Secretary of State notes that consents for other parts of the CCS chain may be sought by the Applicant outside the Planning Act regime (although the Secretary of State understands the applications are not being actively pursued at the current time).

1.6 Published alongside this letter on the Planning Inspectorate's web-site is a copy of the ExA's Report of Findings, Conclusions and Recommendation to the Secretary of State ("the ExA's Report"). The ExA's findings and conclusions are set out in chapters 4, 5, 6 and 9 of the ExA's Report and the Summary of Conclusions and Recommendations at chapter 9.

2. Summary of the ExA's Report and Recommendation

2.1 The main issues considered during the examination on which the ExA reached conclusions on the case for development consent were:

a) Air quality;

b) Biodiversity, biological environment and ecology;

c) Design, landscape and visual impact;

d) Flood risk, climate change and river change;

e) The historic environment; and

f) Land use and safety.

2.2 The ExA also considered the terms of the draft Order sought. For the reasons set out in the ExA's Report, the ExA recommends [ER 9.0.6] that the Secretary of State should make the Order set out in Appendix A to the Report. (All numbered references, unless otherwise stated, are to paragraphs of the ExA`s Report (specified in the form, ER X.XX.XX).)

3. Summary of the Secretary of State`s Decision

3.1 The Secretary of State has decided under section 114 of the Act to refuse development consent for the Development. This letter is a statement of reasons for the Secretary of State`s decision for the purposes of section 116 of the Act and the notice and statement required by regulations 23(2)(c) and (d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 ("the 2009 Regulations").

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

4.1 The Secretary of State has considered the ExA's Report and all other material considerations. The Secretary of State`s consideration of the ExA`s Report is set out in the following paragraphs.

4.2 In making the decision, the Secretary of State has had regard to the National Policy Statements ("NPSs") referred to in paragraph 4.3 below, the Local Impact Reports submitted by the East Riding of Yorkshire Council and, jointly, by Selby District Council and North Yorkshire County Council 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 Act. In making the decision, the Secretary of State has complied with all applicable legal duties and has not taken account of any matters which are not relevant to the decision.

Need for the Development

4.3 The Secretary of State notes that the need for energy from fossil-fuel generation and the facilities related to it is set out in the Overarching National Policy Statement for Energy (EN-1). The NPS sets out the matters that must be taken into consideration when determining applications for development consent for relevant infrastructure and how they should be weighed in the balance. Of particular relevance to the Application is paragraph 3.6.5 of EN-1 which provides support for CCS demonstration projects showing the full chain of CCS involving the capture, transport and storage of CO2. The Secretary of State considers that EN-1 provides support for CCS infrastructure where it is demonstrated that there is a reasonable likelihood of it being used by emitters as part of the full chain of CCS. The Secretary of State considers that EN-1 does not provide support for CCS transport infrastructure in isolation and it is necessary for the Applicant to show that there is a reasonable likelihood of the Development forming part of a full chain of CCS. For the reasons set out in paragraphs 5.3 - 5.10 below, the Secretary of State does not consider that the Applicant has demonstrated a reasonable likelihood of CO2 emitters connecting to the Development.

4.4 The Secretary of State notes that the ExA's Report treats CO2 as a "natural gas" for the purposes of the National Policy Statement for Gas Supply Infrastructure and Gas and Oil Pipelines (EN-4) and that EN-4 applies to the Application. The Secretary of State takes the view that the expression, "natural gas", does not mean any naturally occurring gas, but rather the sort of natural gas supplied to customers for energy purposes. However, the Secretary of State is aware that paragraph 1.8.2 of EN-4 sets out that that NPS "may be useful in identifying impacts" which arise from pipelines transporting substances other than natural gas or oil and has, therefore, considered EN-4 in assessing the impacts of the Development.

5. Consideration of the ExA's Conclusions and Recommendations

5.1 The development consent application was considered by the Planning Inspectorate which submitted its Report and Recommendation ("the ExA`s Report") to the Secretary of State for consideration on 19 August 2015.

5.2 Except as set out below, the Secretary of State considers that most of the matters assessed in the ExA`s Report require no further consideration as the conclusions reached are reasonable and justifiable on the basis of the matters considered by the Planning Inspectorate. However, since the closure of the examination, new events have occurred which are important and relevant considerations in the Secretary of State`s decision.

(i) Closure of the Government`s CCS Commercialisation Programme and Consideration of the Need Case

5.3 The withdrawal of the Government`s £1bn funding for the CCS competition has had significant impacts on the background against which the Application has been considered. The Secretary of State considers that, as development consent for the White Rose project was refused on 13 April 2016, the emitter around which the Application is framed has been lost and the need case for the Development has been significantly diminished.

5.4 The Applicant stated, in a letter dated 2 March 2016 (in response to a question from the Secretary of State about the Applicant`s intentions in light of the Chancellor's announcement on 25 November 2015, that the £1bn ring-fenced capital budget for the CCS Commercialisation Programme would no longer be available), that the Pipeline proposal does not rely on the White Rose project coming forward as other proposals for fossil-fuel fired generating stations could come forward to utilise the Development. The Applicant indicates in its application submission [in its "Need Case" – document AD-176] that, in addition to the White Rose project, the consented but unbuilt Don Valley Power Project and the North Killingholme power stations are potential users of the Development.

5.5 The Secretary of State is also aware that the consented but unbuilt Keadby 2 Combined Cycle Gas Turbine plant – the subject of a recent successful application to vary the consent for the project granted under section 36 of the Electricity Act 1989 – has considered using the Development.

5.6 However, the Secretary of State considers that, in order to establish a need for the Development, it is necessary for the Applicant to demonstrate that there is a reasonable likelihood of other CO2 emitters connecting to the Development.

5.7 In order to provide the Applicant with the opportunity to comment on the need case for the Development in light of the refusal of the White Rose project and to ensure that the consideration of the need case was

appropriately informed, the Secretary of State issued a consultation letter on 26 May 2016 which specifically asked [the Applicant]:

(i) *"On 13 April 2016, the Secretary of State refused development consent for the White Rose Carbon Capture and Storage project. The Secretary of State notes from the Applicant`s letter of 2 March 2016 that the Yorkshire and Humber Pipeline "had never been intended for the sole use of the White Rose project" and that this is set out in documentation submitted with the Application (in Document 7.4 of the consent application).*

The Secretary of State also notes that Document 7.4 records (in the Chapter headed "National Grid`s Involvement in Specific Schemes for Carbon Capture in Yorkshire and Humberside") that, in addition to the White Rose project, two other potential users of the Yorkshire and Humber CCS Pipeline are identified – the Don Valley Power Project ("DVPP") and the North Killingholme generating station.

The Secretary of State would be grateful for an update on the likelihood of DVPP and North Killingholme connecting to the Pipeline project (noting that Document 7.4 records for the latter project that "[a]t this stage National Grid does not have a formal commitment to develop transportation or storage solutions for C.GEN".) The Secretary of State would also be grateful for indications of the probability of other CO2-emitting plant connecting to the Yorkshire and Humber CCS Pipeline. (The Secretary of State is aware that the Keadby II CCGT Plant is considering using the Pipeline project.)

(ii) *The Secretary of State would welcome any comments from the Applicant on how the provisions in EN-1 relating to Carbon Capture and Storage should be interpreted or applied in the circumstances where funding for the Carbon Capture Demonstration Programme has been withdrawn and there are no foreseeable demonstration projects in view."*

5.8 In response, in a letter dated 9 June 2016, the Applicant stated that:

"National Policy Statement....EN-1 acknowledges that CCS is at an early stage of development and therefore very costly to build, it recognises therefore that the fitting of carbon capture technology will be unlikely without financial support for CCS demonstration. Given the recognised need for funding support National Grid is not in a position to comment on the financial viability of fitting carbon capture technology to new or existing power stations or their probability of connecting to the Pipeline: these are matters for individual emitters.

It is of course a matter for the SoS to determine the application of the relevant national policy framework and we would not seek to comment directly on this save to note the support in NPS EN-1 for CCS in terms of its recognition of the urgency of demonstrating CCS and the role CCS has in the move to a low carbon energy mix and assisting the UK meeting its climate change commitments. The project in respect of which the DCO was made was and remains in accordance with EN-1 as

it would provide the back-bone for a future CCS network into which emitters could connect, and without which new fossil fuel generators cannot come forward."

5.9 The Secretary of State considers that it is for the Applicant to demonstrate the need case for the Development. In general terms, the need case will be considered by the ExA during the examination of an application, taking into account the relevant NPS, and the ExA will then make its recommendation to the Secretary of State who will make a decision based on it. In the case of the Application, the ExA considered the need case had been made satisfactorily. However, the Secretary of State considers that there has been a material change of circumstances surrounding the need case (in the form of the removal of Government funding for the CCS Commercialisation Programme and the subsequent refusal to grant consent for the White Rose project – the decision letter of 13 April 2016 refers) since the Application was made and since the examination concluded. The need case for the Development has, therefore altered significantly and has been considered carefully in reaching a conclusion on the Application.

5.10 The Secretary of State notes that the Applicant`s letter of 9 June 2016 focused on a general need for the Development "as.....the back-bone for a future CCS network into which emitters could connect" and the Applicant noted that it is not in a position to comment on the probability of other emitters connecting to the Development. The Secretary of State has carefully considered the comments made by the Applicant in its letter of 9 June 2016. The Secretary of State takes the view that, in the absence of it being demonstrated that there is a reasonable likelihood of other CO2 emitters connecting to the Development, the need case is not satisfactorily established given the Secretary of State is of the view that EN-1 does not provide support for CCS transport infrastructure in isolation.

(ii) <u>*Compulsory Acquisition*</u>

5.11 The Secretary of State notes that the Applicant has sought extensive powers for the acquisition of freehold land, permanent rights (such as rights of access) and temporary rights for the construction of the Development (ER 7.0.1).

5.12 Compulsory acquisition powers over land can be granted only if the Secretary of State is satisfied that certain conditions set out in the Planning Act are met:

- the condition in section 122(2) is that the land is required for the development for which the development consent relates or is required to facilitate or is incidental to the development; and

- the condition in section 122(3) is that there is a compelling case in the public interest for the land to be acquired compulsorily.

5.13 The Department for Communities and Local Government's ("DCLG") "Planning Act: Guidance related to procedures for the compulsory acquisition of land" ("the DCLG Guidance") states that for the Secretary of State to be satisfied that there is a *compelling* case in the public interest for the land to be acquired compulsorily, the Secretary of State will need to be persuaded that there is compelling evidence that the public benefits that would be derived from compulsory acquisition will outweigh the private loss that would be suffered by those whose land is to be acquired.

5.14 The DCLG Guidance also sets out some of the factors to which the Secretary of State will have regard in deciding whether or not to include compulsory acquisition powers in a DCO. These include that:

- all reasonable alternatives must have been explored;
- the proposed interference with the rights of those with an interest in the land is for a legitimate purpose and is necessary and proportionate;
- the Applicant must have a clear idea how it intends to use the land; and,
- the Applicant must be able to demonstrate that there is a reasonable prospect of the requisite funds for acquisition becoming available.

5.15 The DCLG Guidance also states that the Secretary of State must ultimately be persuaded that the purposes for which the DCO authorises compulsory acquisition are legitimate and sufficient to justify interfering with the human rights of those with an interest in the land affected.

5.16 The ExA`s Report sets out that there were a number of objections to the grant of compulsory acquisition powers as requested by the Applicant (ER 7.4.44) – principally in relation to their duration (the Applicant requests eight years within which to exercise the powers) and to their physical extent (at certain points, the land to be compulsorily acquired would be 100 metres wide). Having considered all the relevant issues, the ExA concludes that both compulsory acquisition and temporary possession powers should be granted if the Secretary of State is minded to grant development consent for the proposed Development.

5.17 However, as set out in this letter, the Secretary of State considers that the need case for the Development to proceed has not been sufficiently demonstrated. The Secretary of State considers, therefore, that the compulsory acquisition powers applied for should not be granted as there is no compelling case in the public interest for the land to be acquired compulsorily in a situation where the need for the Development is not demonstrated. The Secretary of State does not consider that the proposed interference with the rights of those with an interest in the land is necessary and proportionate given the lack of a compelling need for the Development.

5.18 The Secretary of State does not, therefore, think that the statutory condition in section 122(3) of the Act can be met.

Human Rights Act 1998

5.19 It is unlawful for the Secretary of State to act in a way that is incompatible with a "Convention right" (i.e. a right under the European Convention on Human Rights ("ECHR") protected by the Human Rights Act 1998). The Secretary of State should not, therefore, make the Order if to do so would be incompatible with a Convention right.

5.20 The ExA sets out that the compulsory acquisition provisions in the recommended Order for the Development engage a number of Articles of the ECHR identified as:

- Article 6 (which entitles those affected by compulsory acquisition powers sought for the Development to a fair and public hearing of their objections);
- Article 8 (which protects private and family life, home and correspondence); and
- Article 1 of the First Protocol to the ECHR.

5.21 Article 1 of the First Protocol provides that "*every person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and the general principles of international law.*"

5.22 On the basis of the examination and its conclusion (ER 6.0.4) that *"[T]here is.....a clear justification in favour of granting development consent for the Y & H CCS Pipeline scheme"*, the ExA concludes (ER 9.0.2) that there is a *"compelling case in the public interest for the grant of the compulsory acquisition powers sought by the applicant"*. On this basis, the ExA concludes (ER 7.5.32) that the Development would not interfere with Convention rights.

5.23 However, in the light of events post-examination and the fact that the Secretary State considers that a need case for the Development has not been sufficiently demonstrated, the Secretary of State disagrees with the ExA`s conclusion in this matter and considers that the compulsory acquisition of the rights of landowners would be incompatible with Convention rights.

Park Farm Quarry

5.24 The Secretary of State notes that the proposed route of the Development passes through an area of active mineral workings. In particular, part of the route crosses an area which is the subject of a planning permission granted by East Riding of Yorkshire Council on 6 August 2015 – after the close of the ExA`s examination of the development consent application for the Development – that allows the expansion of an existing quarry for the extraction of sand and gravel.

5.25 The Secretary of State further notes that the ExA considered proposals from the quarry operator and the Mineral Products Association for alternative routes for the Development through the area subject to the sand and gravel extraction, including a previously worked area. However, the ExA concluded (ER 4.7.11) that an alternative route would not be preferable to the one that formed part of the Development proposal citing among other things that there had been no environmental assessment of any of the alternatives routes. The Secretary of State notes that the ExA considers (ER 4.7.12) that the national need for the proposed Development *"would be greater than the local need for sand and gravel"* and concludes that *"the proposed route meets the requirements of EN-1 and would not conflict with development plan policies, either emerging or adopted, or the NPPF* [the National Planning Policy Framework]*"*.

5.26 The Applicant and the mineral operator, W Clifford Watts Limited, have been seeking to agree a way forward that would allow the mineral workings to be exploited to the maximum extent while allowing the Development to be constructed within a reasonable timescale. However, no agreement was forthcoming during the examination process.

5.27 Following receipt of the ExA's Report, the Secretary of State sought further information from the Applicant and W Clifford Watts Limited on whether agreement had been reached. However, no positive information on progress has been offered by either party. W Clifford Watts Limited has suggested a change of the Development route as a way of overcoming the problems.

5.28 However, it is not within the Secretary of State's powers to change the Development outside the boundaries of that proposed in the Application and as was assessed as part of the examination. The Secretary of State has considered whether it is appropriate to accept the potential sterilisation of mineral resource and interference with the quarry owner`s property rights. However, given that the Secretary of State`s overall assessment of the need for the Development is that there is no compelling case in the public interest to authorise compulsory acquisition powers, the Secretary of State considers that the imposition of a decision which prevented the working of an active business and interfered with the quarry owner`s property rights would not be justifiable in these circumstances.

6. Other Matters

Transboundary Impacts

6.1 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 Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended).

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 in another European Economic Area state. The Secretary of State agrees with this assessment.

Natural Environment and Rural Communities Act 2006

6.2 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 making a decision on whether to grant development consent. The Secretary of State is of the view that the Report considers biodiversity sufficiently to allow the duty in section 40(1) to be discharged.

Equality Act 2010

6.3 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 partnerships[1]; pregnancy and maternity; religion and belief; and race. The Secretary of State does not consider that the decision to refuse consent would have significant differential impacts on any of the protected characteristics.

7. The Secretary of State's Conclusion and Decision

7.1 For the reasons set out in this letter, while accepting that the ExA's consideration of the issues raised during the examination of the Application is robust and well-reasoned, the Secretary of State is of the view that in, the light of events post-examination (as set out above), the need case for the Development is not demonstrated and, flowing from this, the test for compulsory acquisition is not met and there would, therefore, be disproportionate interference with property rights. The Secretary of State has, therefore, decided to refuse the grant of development consent.

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

8. Challenge to decision

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

Yours sincerely

[redacted]

GILES SCOTT
Head of Energy Infrastructure Planning and Coal Liabilities

ANNEX

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, the refusal of an application for 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 Secretary of State`s Statement of Reasons (the decision letter) is published on the Planning Inspectorate`s website at the following address:

http://infrastructure.planninginspectorate.gov.uk/projects/yorkshire-and-the-humber/yorkshire-and-humber-ccs-cross-country-pipeline/

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to refuse 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).