



Department
of Energy &
Climate Change

Our Ref: EN070003

Date: 29 December 2015

Dear Sir/Madam,

**Planning Act 2008 (as amended) and The Infrastructure Planning
(Examination Procedure) Rules 2010 (as amended)**

**Application by Thorpe Marsh Power Ltd (“The Applicant”) for an Order
granting Development Consent for the proposed Thorpe Marsh Gas Pipeline
– EN 070003**

**REQUEST FOR COMMENTS FROM THE APPLICANT, THE CROWN ESTATE,
NETWORK RAIL INFRASTRUCTURE LIMITED, ENVIRONMENT AGENCY,
HIGHWAYS ENGLAND, CANAL AND RIVER TRUST, EAST RIDING OF
YORKSHIRE COUNCIL, WILLIAM MARTIN FALKINGHAM AS EXECUTOR OF
THOMAS WILFRED FALKINGHAM, T.W FALKINGHAM, GEOFFREY HARRY
BAXTER, HIGHWAYS ENGLAND & COMPANIA LOGISTICA DE
HIDROCARBUROS (CLH-PS Limited)**

Following completion of the examination on 7 September 2015, the Examining Authority submitted on 7 December 2015 a Report and Recommendation in respect of its findings and conclusions on the above application to the Secretary of State for Energy and Climate. In addition, the Planning Inspectorate has also provided representations from four parties received after the close of the examination for the Secretary of State’s consideration. In accordance with section 107 of the Planning Act 2008, the Secretary of State has three months to determine the application.

Compulsory Acquisition, including statutory undertakers land under section 127 of the Planning Act 2008

The Secretary of State notes that the Applicant’s representatives provided an updated land position note to the Planning Inspectorate on 8 September 2015, which states that for the relevant plots and land ownership in Table 1 and listed below that “*The Applicant expects a legal agreement to be completed shortly*”.

1	Plots 30, 64, 263	Network Rail Infrastructure Limited
2	Plots 48,49	The Queen's Most Excellent Majesty in Right of Her Crown (see below)
3	Plots 50, 246	Environment Agency
4	Plots 85, 86, 87, 88	Highways England (but see below)
5	Plot 132	Canal and River Trust
6	Plot 133	East Riding of Yorkshire Council
7	Plot 160	William Martin Falkingham as executor of Thomas Wilfred Falkingham
8	Plot 161	T.W. Falkingham Limited

1. Please could the Applicant and the landowners provide an update in respect of completion of legal agreements for the above plots of land.

The Secretary of State notes from the updated land position note that in respect of Plots 168, 169 and 170 owned by Geoffrey Harry Baxter *"The option agreement is expected to be entered into immediately after the mortgagee consent has been obtained. This consent is expected to be obtained shortly."*

2. Please could the Applicant and landowner provide an update in respect completion of the option agreement for the above plots of land.

Crown Land

The Queen's Most Excellent Majesty in Right of Her Crown

The Secretary of State notes that consent under section 135 of the Planning Act 2008 is being sought in parallel with negotiations with The Crown Estate Commissioners in relation to Plots 48 and 49. The Applicant's representatives explain in item 1 of Table 2 that The Crown has considered a draft Section 135 letter, which it has not signed, but instead The Crown *"is issuing a letter to PINS [the Planning Inspectorate] confirming that consent will be forthcoming in the future"*. The updated land position note states on the anticipated timescale that *"The Crown's agent has confirmed that a letter to PINS confirming that consent will be given later by the Crown will be issued shortly but cannot issue this by close of the examination."*

3. Section 135 of the Planning Act 2008 does not permit the compulsory acquisition of Crown land where that land is held by or on behalf of the Crown, and protective provisions have not been sought in the draft Development Consent Order. The Secretary of State requests therefore that the Applicant and The Crown Estate Commissioners confirm the current state of play in respect of the above and invites their views on the need for protection against compulsory acquisition for Crown land in any Development Consent Order that might be granted.

Highways England

The Secretary of State notes that a Section 135 consent is no longer required in relation to Plots 85, 86, 87 and 88 by virtue of the transfer of these plots from the Secretary of State for Transport to Highways England (item 2, Table 2). However, although the Secretary of State for Transport has confirmed that rights in relation to Plots 1, 2, 3 and 4 have also been transferred to Highways England, this has not been changed in the Book of Reference as Highways England have not confirmed this is the case. The Applicant has worked on the basis that once Highways England confirm this, no Section 135 consent will be required. It is also noted that the updated land position note states that *“The Applicant, through FGP [Fisher German Priestner] have asked for Highways England to write to PINS to confirm that the rights in relation to Plots 1, 2, 3 and 4 have been passed to them. This therefore negates the need for a Section 135 consent.”* However, it is not clear to the Secretary of State if Highways England have done this.

- 4. Please could Highways England confirm the rights in relation to Plots 1, 2, 3 and 4 have been passed to them and that consent under Section 135 of the Planning Act is therefore not needed.**

Government Pipeline and Storage System- now Compania Logistica de Hidrocarburos (“CLH-PS Limited”)

The Secretary of State notes that following the sale by Government of the Pipeline and Storage System to CLH-PS Limited on 20 March 2015, they did not make any submission to the Examination. In its final update dated 4 September 2015 [AS-027], the Applicant’s solicitors had not received a response from CLH-PS Limited’s solicitors in relation to the acceptability of the asset protection agreement.

- 5. The Secretary of State requests final confirmation from CLH-PS Limited of the completion of the asset protection agreement.**

Flood Risk

Paragraph 5.7.9 of Overarching National Policy Statement for Energy (EN-1), specifies the matters on which the Secretary of State needs to be satisfied in determining an application for development consent. These include: an application supported by an appropriate Flood Risk Assessment; the Sequential Test has been applied as part of site selection; and a sequential approach has been applied at site level to minimise risk by directing the most vulnerable uses to areas of lowest flood risk. Application of the Sequential Test and the Exception Test are considered further in paragraphs 5.7.13 to 5.7.17 of EN-1.

Although the Secretary of State notes a Flood Risk Assessment was provided by the Applicant in support of its application and also subsequently supplemented by an Addendum covering the Above Ground Installation, it is not clear that the Sequential/Exception Tests were considered.

- 6. Please could the Applicant provide clarification on whether the**

Sequential/Exception Tests were applied for the Development and, if so, where this is documented. Further information to enable the Secretary of State to satisfy herself that the requirements on EN-1 can be met should be provided as necessary.

Responses must be received by Tuesday 12 January 2016.

Responses to the points outlined in this letter should be submitted by e-mail to:- thorpemarsh@pins.gsi.gov.uk . Please send any hard copy response to Thorpe Marsh Gas Pipeline Case Team, Secretary of State for Energy and Climate Change, c/o the Planning Inspectorate, Eagle Wing 3/18, Temple Quay House, Temple Quay, Bristol, BS1 6PN.

Your response will be published on the Thorpe Marsh Gas Pipeline project page on the Planning Portal project page website as soon as possible after 12 January 2016.

This letter is without prejudice to the Secretary of State's decision whether or not to grant development consent for the proposed Thorpe Marsh Gas Pipeline and nothing in this letter is to be taken to imply what that decision might be.

Yours faithfully

Giles Scott

Giles Scott

Head of National Infrastructure Consents and Coal Liabilities