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19 July 2016

Dear Sirs

PLANNING ACT 2008

APPLICATION FOR THE MEAFORD ENERGY (GAS FIRED POWER STATION) ORDER

I. 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 April 2016 of the Examining Authority (“the ExA”), David Richards, who conducted an examination into the application (“the Application”) submitted on 31 March 2015 by Meaford Energy Limited (“the Applicant”) for a Development Consent Order (“the Order”) under section 37 of the Planning Act 2008 (“the 2008 Act”) for the Meaford Energy Centre (“the Development”).

1.2 The Application was accepted for examination on 24 April 2015. It was completed on 21 January 2016.

1.3 The Order, as applied for, would grant development consent for the construction and operation of a Combined-Cycle Gas Turbine (“CCGT”) power station with a generating capacity of up to 299 MWe within the Meaford Business Park (“MPB”), between Barlaston and Stone in Staffordshire.

1.4 The Development would comprise the following principal elements:

- CCGT Power Station complex (Work No.1 in Schedule 1 of the DCO);
- integral electrical connection (Work No.2);
- integral gas connection and Above Ground Installation (Work No.3);
- Northern Access Road works (Work No.4);
- temporary and permanent Laydown Areas (Work No.5);
- replacement, maintenance or refurbishment of existing surface water drainage (Work No.6); and
- landscaping works (Work No.7).

1.5 Published alongside this letter on the Planning Inspectorate's website¹ is a copy of the ExA's Report of Findings and Conclusions and Recommendation to the Secretary of State ("the ExA Report"). The ExA's findings and conclusions are set out in chapters 4 to 8 of the ExA Report, and the ExA's summary of conclusions and recommendation is at chapter 9.

II. 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:

- Legal and Policy Context, including the relevant National Policy Statements, European, National and Local planning policy (Chapter 3);
- Finding and Conclusions in relation to policy and factual issues (Chapter 4);
- Environmental Effects (Chapter 5), which includes consideration of: good design; combined heat and power; air quality and emissions; ecology; civil and military aviation and defence interests; common law nuisance and statutory noise; flood risk and water resources; historic environment; landscape and visual impacts; noise and vibration; traffic and transport; pollution control and other environmental regulatory regimes; and objection by Residents Association;
- The Case for Development Consent/the Planning Balance (Chapter 6);
- Compulsory Acquisition and Related Matters (Chapter 7); and
- Draft Development Consent Order and Related Matters (Chapter 8).

2.2 For the reasons set out in the ExA Report, the ExA recommends that the Order be made, as set out in Appendix D to the ExA Report [ER 9.2.1].

III. 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. This letter is a statement of reasons for the Secretary of State's decision 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").

¹ <http://infrastructure.planninginspectorate.gov.uk/projects/west-midlands/meaford-energy-centre/>

IV. Secretary of State's Consideration of the Application

4.1 The Secretary of State has considered the ExA Report and all other material considerations, including late representations received after the close of the ExA's examination. The Secretary of State's consideration of the ExA Report and late representations is set out in the following paragraphs. All numbered references, unless otherwise stated, are to paragraphs of the ExA Report.

4.2 The Secretary of State has had regard to the Local Impact Report ("LIR") submitted jointly by Stafford Borough Council ("SBC") and Staffordshire County Council ("SCC") [ER 3.7.1], the Development Plan [ER 3.8 and 4.4], environmental information as defined in Regulation 2(1) of the 2009 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 2008 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.

4.3 Except as indicated otherwise in the paragraphs below, the Secretary of State agrees with the findings, conclusions and recommendations of the ExA as set out in the ExA Report, and the reasons for the Secretary of State's decision are those given by the ExA in support of its conclusions and recommendations.

Need for the Proposed Development

4.4 After having regard to the comments of the ExA set out in Chapter 3 of the ExA Report, and in particular the conclusions on the case for development consent in Chapter 4, the Secretary of State is satisfied that in the absence of any adverse effects which are unacceptable in planning terms, making the Order would be consistent with energy National Policy Statements ("NPS") EN-1 (the Overarching NPS for Energy), EN-2 (the NPS for Fossil Fuel Electricity Generating Infrastructure), EN-4 (the NPS for Gas Supply Infrastructure and Gas and Oil Pipelines) and EN-5 (the NPS for Electricity Networks Infrastructure) and that taken together, these NPSs set out a national need for development of new nationally significant electricity generating infrastructure of the type proposed by the Applicant.

V. Biodiversity and Habitats

5.1 Regulation 61 of the Conservation of Habitats and Species Regulations 2010 (as amended) ("the Habitats Regulations") require the Secretary of State 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 a European site or European offshore marine site as defined in the Habitats Regulations and the Offshore Habitats Regulations. If likely significant effects cannot be ruled out, then the Secretary of State must undertake an Appropriate Assessment ("AA") addressing the implications for the European Site in view of its conservation objectives. In light of any such assessment, the Secretary of State may grant development consent only if it has been ascertained that the project will not, either on its own or in-combination with other plans and projects, adversely affect the integrity of such a site, unless

there are no feasible alternative or imperative reasons of overriding public interest apply.

5.2 The Convention on Wetlands of International Importance 1972 (“the Ramsar Convention”) provides for the listing of wetlands of international importance. These sites are called Ramsar sites. UK Government policy is to afford Ramsar sites in the United Kingdom the same protection as European sites.

5.3 In the case of the Development, it is noted that the Applicant submitted a Habitat Regulations – No Significant Effects Report (NSER) with the Application and supporting Environmental Statement. The Screening Assessment considered the potential for Likely Significant Effects on the following designated international sites:

- Midland Meres and Mosses Phase 2 Ramsar Site (located approximately 10.5km to the south west);
- Pasturefields Salt Marsh Special Area of Conservation (SAC) (located approximately 14.84km the the south east);
- West Midlands Mosses SAC (located approximately 15km to the south east); and
- Midland Meres and Mosses Phase 1 Ramsar Site (located approximately 15km to the south east).

5.4 The Applicant considered that the only potential effects on the European Sites as a result of the construction and operation of the scheme would be on water and/or air pollution. In the Applicant’s view the sites are sufficiently far away from the scheme that they would be unaffected by any water pollution incidents or dust emissions. The Air Quality Assessment for the scheme identified negligible increments to ground level concentrations of oxides of nitrogen of 0.1% of the critical level for the protection of vegetation at all four designated sites. Furthermore, the associated contributions of emissions to the critical loads for nitrogen and acid deposition were shown to be negligible, at 0.1% or less at each of these sites. The conclusion is that the scheme would have no likely significant effect on any of the sites, and accordingly it was not necessary for an AA to be made. The Secretary of State notes that the Environment Agency (“EA”) agreed with the Applicant’s assessment of significance (alone and cumulatively) in respect of both air quality and the water environment. Similarly, it is noted that agreement was reached with statutory nature conservation advisor, Natural England (“NE”) in respect of the assessment of significance in relation to protected sites and species. The ExA has had regard to the views of the EA and NE and concludes that the Secretary of State can be confident that the Development will not result in any likely significant effects on any European site, either alone or in-combination with other plans and projects.

5.5 In conclusion, the Secretary of State is satisfied that the Development is not likely to have a significant effect on any European Site, or any other site to which the same protection is applied as a matter of policy, either alone or in combination with other plans or projects. The Secretary of State is also content that sufficient information has been provided for the Secretary of State to determine that an AA under the Habitats Regulations is not required.

VI. Other Matters

Environmental Permit

6.1 The Secretary of State notes that the scheme will require an Environmental Permit (“EP”) from the EA to cover operational emissions from the proposed development. It is also noted that the Statement of Common Ground between the Applicant and the EA states that “*having considered the environmental information in the ES [Environmental Statement], the EA is satisfied that the scheme is of a type of plant (gas-fired CCGT) that should be capable of being adequately regulated under the pollution control framework and that cumulative impacts should fall within statutory limits. At this point in time the EA is unaware of anything that would preclude the grant of an EP*” [ER 5.10.17]. In the circumstances, the Secretary of State considers there are no reasons to be believe the Environmental Permit will not be granted in due course.

VII. Consideration of Late Representations

7.1 The Secretary of State notes that the following 8 representations have been received by the Planning Inspectorate or Secretary of State since the close of the ExA’s examination:

- Western Power Distribution (received 25/1/16);
- Western Power Distribution (received 24/2/16);
- National Grid (received 31/3/16);
- Mrs L Stock (received 01/4/16);
- Meaford Energy Limited (received 19/4/16);
- Mrs M Shea (received 12/5/16);
- Meaford Energy Limited (received 8/7/16); and
- Western Power Distribution (received 11/7/16).

Compulsory Acquisition

7.2 With the exception of the representation from Mrs Stock and Mrs Shea, the late representations all relate to Compulsory Acquisition (“CA”). In that respect, the Secretary of State notes that CA powers are sought to create and impose restrictions over two plots of land (Plots GC3 and GC5) in order to provide the natural gas to fuel the Power Station Complex [ER 7.2.1]. Rights are sought to be acquired on and over the rail bridge known as ‘Rail Bridge 104’ and over the canal bridge known as ‘Canal Bridge 101 (Malkin’s Bridge)’ for all the laying, installation, use and maintenance of the Gas Connection pipeline (and associated telecommunications cables) [ER 7.2.2]. Third parties also benefit from various private rights that already exist over the Development site, including over land already within the Applicant’s control. To allow the Development to proceed unhindered the right to suspend these interests has been reserved [ER 7.2.3]. No Crown Land would be affected by the DCO [ER 7.2.4]. Article 26 and Schedule 7 of the DCO are intended to prevent the development interfering with the ability of statutory undertakers and other service providers to fulfil their statutory functions or to deliver their service in a manner no less efficient than previously interests [ER 7.2.5]. The Secretary of State notes that update received on 19 April 2016 was provided on behalf of the Applicant because

agreement had not been reached with all statutory undertakers at the close of the ExA's examination [ER 7.6, 7.7 & 8.4].

Western Power Distribution

7.3 Two representations from Western Power Distribution ("WPD") of January and February 2016 maintained a holding objection as protective provisions in respect of WPD's interests had not been agreed at the close of the ExA's examination. The representation on behalf of the Applicant dated 19 April 2016 provided an update and confirms that protective provisions and a side agreement have since been agreed with WPD subject only to the confirmation of one final point regarding fees. Agreed protective provision wording was subsequently sent to the Secretary of State on 8 July 2016 and WPD formally withdrew its objection on 11 July 2016. The modified protective provisions have been included in Part 8 of the DCO.

National Grid Gas

7.4 In respect of the protective provisions to protect National Grid Gas's ("NGG") apparatus and land interests, the Secretary of State notes that the extinguishment, suspension or removal of any relevant right would be subject to the protective provisions included in Part 1 of Schedule 7 within Revision 2 of the DCO [ER 7.6.7 – 7.6.11]. However, the late representation on behalf of the Applicant confirms that revised wording for protective provisions and terms of a confidential side agreement with NGG have been since been agreed. NGG has also written separately to confirm that it is content and that it wishes to withdraw its representations in respect of the application. The modified protective provisions, as also referred to below, have been included in Part 1 of Schedule 7 to the DCO.

British Telecommunications

7.5 Although it is noted from the ExA Report that British Telecommunications PLC ("BT") did not attend the CA hearing or confirm agreement during the examination [ER7.6.28], the Applicant's late representation confirms that BT has since confirmed it is content with the protective provisions for the protection of operators of electronic communications networks that have been included at Part 7 of Schedule 7 to the DCO.

KCOM Group PLC

7.6 The Secretary of State also notes that KCOM Group PLC ("KCOM") had previously indicated to the Applicant in January and February 2016 that it would verify whether any of its apparatus would be affected by the Development, but that no further response from them has been received. However, taking account of the ExA's consideration of this issue [ER 7.6.33- 7.6.35], the Secretary of State is satisfied that the general telecommunication provisions included in Schedule 7 will protect KCOM's interests.

Network Rail

7.7 The Applicant's late representation confirms that discussions with Network Rail regarding protective provisions and a side agreement commenced in October 2014 and have not yet been resolved. However, it is noted that earlier discussions in 2014 did result in Land Clearance and Basic Asset Protection Agreements being agreed on 25 September 2014 and 2 March 2015 respectively. It is also noted from the ExA Report that the ExA is satisfied that the creation of new rights can be

purchased without serious detriment to the carrying out of Network Rail's undertaking and that the extinguishment, suspension or removal of any relevant rights is necessary to the carrying out of the development, as the provision of a gas supply over Bridge 101 is essential to the success of the development [ER 7.6.18]. The Secretary of State agrees.

Canal and River Trust

7.8 The Secretary of State notes that the Applicant initially confirmed that the Canal and River Trust ("CRT") would not engage in discussions with them until agreement has been reached on the land negotiations for the easement over Canal Bridge 101. The Applicant also indicated that no substantive response was received to the financial offer the Applicant made following the commissioning of an independent valuation on 11 November 2015 and CRT also did not attend the ExA's CA Hearing or respond to his questions. However, the Applicant has since indicated that the current position is that they have met with CRT to progress discussions and negotiations on a crossing agreement. The Applicant, however, still awaits copies of a draft Heads of Terms, lease of easement and financial information from CRT, along with a response on the draft protective provisions. In any event, the Secretary of State agrees with the ExA's view that the creation of new rights can be purchased without serious detriment to the carrying out of CRT's undertaking and that the extinguishment, suspension or removal of any relevant rights is necessary to the carrying out of the development [ER 7.6.19–7.6.24].

Mrs L Stock

7.9 In respect of the late representation from Mrs L Stock, each planning application must be considered on its own merits and similarity or not to another refused application is not a relevant consideration. It is also noted that the other concerns set out in Mrs Stock's representation relate to compliance with local and national policy, the existing planning permission for Meaford Business Park, landscape and visual impact, historical environment and design and impact of noise from the Development, which have been considered during the ExA's examination. The Secretary of State considers the representation raises no issues not already satisfactorily addressed by the ExA.

Mrs M Shea

7.10 It is noted that the late representation from Mrs M Shea refers to current road works on and around the A34. Her representation also includes traffic safety concerns relating to a new roundabout that has been constructed on the A34 and concerns relating to increased noise from associated tree felling, which she considers is also having an impact on selling her house. It would appear therefore that the road works referred to and her concerns regarding tree felling and noise are not a result of the proposed Development (but may be a result of the Meaford Business Park Development that was previously granted by the relevant local planning authority). However, in relation to the proposed Development, the Secretary of State is satisfied Mrs Shea's representation raises no issues that have not already been satisfactorily addressed by the ExA and which cannot be controlled through the mitigation measures included in the DCO.

VIII. Modifications to the Order by the Secretary of State

8.1 As indicated in paragraph 7.4 above, revised protective provisions have been agreed between NGG and the Applicant and included in Part 1 of Schedule 7 to the DCO, and those in Part 8 of the same schedule for WP D.

Other Drafting Changes

8.2 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 (for example, modernisation of language), changes in the interests of clarity and consistency and changes to ensure that the Order has the intended effect.

IX. General Considerations

Equality Act 2010

9.1 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 partnerships²; pregnancy and maternity; religion and belief; and race. This matter has been considered by the Secretary of State who has concluded that there was no evidence of any harm, lack of respect for equalities, or disregard to equality issues.

Human Rights Act 1998

9.2 The Secretary of State has considered the potential infringement of human rights in relation to the European Convention on Human Rights by the Development and compulsory purchase powers. It is noted that infringement of human rights has not been raised in respect of any of issues considered by the ExA in relation to the Development, but it was a key consideration by the ExA in formulating a compelling case in respect of granting compulsory acquisition powers [ER 7.7.2]. It is noted that neither Article 1 nor Article 8 of the First Protocol is engaged by the CA provisions included in the DCO [ER 7.7.3]. 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 7.7.4]. The Secretary of State notes that Article 25 of the DCO allows for temporary possession of land specified in Schedule 9 for the construction of the Development, subject to clear time limits. Compensation provisions are also included for any loss or damage arising. There were no

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

objections, representations or evidence presented during the ExA's examination that there would be any disadvantage to the interests of any affected party and were such disadvantage identified subsequently, Article 25 provides an avenue for compensation. The Secretary of State agrees 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 DCO, the temporary possession powers do not engage any of the provisions of the Human Rights Act 1998 [ER7.7.5]. 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.

Section 40(1) of the Natural Environment and Rural Communities Act 2006

9.3 The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006, must 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 ExA Report considers biodiversity sufficiently to accord with this duty.

X. Secretary of State's conclusions and decision

10.1 For the reasons given in this letter, the Secretary of State considers that there is a compelling case for granting consent. Given the national need for the proposed Development, as set out in the relevant National Policy Statements referred to above, the Secretary of State does not believe that this is outweighed by the Development's potential adverse local impacts, as mitigated by the proposed terms of the Order.

10.2 The Secretary of State has therefore decided to accept the ExA's recommendation to make the Order granting development consent [ER 9.2.1]. In reaching this decision, the Secretary of State confirms regard has been given to the ExA Report, the joint LIR submitted by Stafford Borough Council and Staffordshire County Council 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 2008 Act. The Secretary of State confirms for the purposes of regulation 3(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 that the environmental information as defined in regulation 2(1) of those Regulations has been taken into consideration.

XI. Challenge to decision

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

XII. Publicity for decision

12.1 The Secretary of State's decision on this Application is being publicised as required by section 116 of the 2008 Act and regulation 23 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009.

Yours sincerely

Giles Scott
Head of Energy Infrastructure Planning and Coal Liabilities

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 former Infrastructure Planning Commission or 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 decision documents are being published on the date of this letter on the Planning Inspectorate website at the following address:

<http://infrastructure.planninginspectorate.gov.uk/projects/west-midlands/meaford-energy-centre/>

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)