

Department of Energy & Climate Change

3 Whitehall Place,

London SW1A 2AW

T: +44(0)300 068 5770

F:

M:

E: Giles.Scott@decc.gsi.gov.uk

www.decc.gov.uk

Mr K Dalton
Dalton Warner Davis
21 Garlick Hill
London
EC4V 2AU

Your ref:

Our ref: 12.04.09.04/24C

31 October 2011

Dear Sir

ELECTRICITY ACT 1989 (“the Act”)
TOWN AND COUNTRY PLANNING ACT 1990
APPLICATION FOR CONSENT TO CONSTRUCT AND OPERATE A MULTI-FUEL GENERATING STATION AT FERRYBRIDGE ‘C’ POWER STATION, STRANGLANDS LANE, KNOTTINGLEY, WEST YORKSHIRE

I. THE APPLICATION

1.1 I am directed by the Secretary of State for Energy and Climate Change (“the Secretary of State”) to refer to the application dated 27 October 2009 (“the application”) on behalf of SSE Generation Limited (“the Company”) for both the consent of the Secretary of State under section 36 of the Act (“section 36 consent”) to construct and operate a 108 MW multi-fuel (biomass and refuse derived fuel) generating station at Ferrybridge ‘C’ Power Station, Stranglands Lane, Knottingley, West Yorkshire (“the Development”), and a direction under section 90(2) of the Town and Country Planning Act 1990 (“section 90 direction”) that planning permission for the Development be deemed to be granted.

1.2 In accordance with the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000 (as amended) (“the EIA Regulations”) the Company also submitted on 4 November 2009 documents, entitled “Environmental Statement October 2009” (2 volumes) and “Non Technical Summary October 2009”. The Company also provided documents entitled “Design and Access Statement” dated 26 October 2009 and “Heat Plan” dated 20 October 2009 and a “Schedule of Drawings”, comprising 9 separate drawings. Following progression of the engineering design of the Development,

the section 36 application site boundary was amended on 26 January 2011 to incorporate changes to the site layout and the Company submitted further documents entitled “Environmental Statement – Addendum January 2011”, “Non Technical Summary January 2011”, “Design and Access Statement” dated 26 January 2011, and “Supplementary Planning Statement January 2011”. The documents comprising the Environmental Statement were advertised and placed in the public domain in accordance with the EIA Regulations and an opportunity given to those who wished to comment on them to do so.

1.3 Wakefield Metropolitan District Council (“the relevant planning authority”) entered into discussions with the Company over the terms on which they would be content for the Development to proceed. As a result of these discussions, 75 conditions to be attached to any section 90 direction (“the Planning Conditions”) were agreed in principle between the Company and the relevant planning authority (and also other relevant consultees).

1.4 In view of the successful conclusion of these discussions the relevant planning authority has not maintained any objection to the application providing that the Planning Conditions are imposed should the Secretary of State be minded to grant section 36 consent and issue a section 90 direction in respect of the Development.

1.5 The Secretary of State notes that the Company has also entered into an agreement with the relevant planning authority under section 106 of the Town and Country Planning Act 1990 dated 21 October 2011 (“section 106 Agreement”), which covers:

- a financial contribution of £150,000 towards the provision of transport improvements and off-site highway works for the purpose of improving access and safety to the Site within the administrative area of the relevant planning authority and/or adjoin Highway Authority affected by the proposed Development;
- a Sports Facility contributory sum of £837,000 for the provision and modernisation of sport, changing and recreational facilities at Ferrybridge Park and Ferrybridge Recreation Grounds only;
- granting by the Company of a 50-year Sport Facility Lease at no cost to the relevant planning authority for use of the Sports Facility at Ferrybridge; and
- the requirement for the Sport Facility works at Ferrybridge Park and Ferrybridge Recreation Grounds to be completed to the reasonable satisfaction of the Company and Sport England within 2 years of receipt of the Sport Facility Contribution.

II. SECRETARY OF STATE'S CONSIDERATION OF THE PLANNING CONDITIONS

2.1 The Secretary of State has considered the Planning Conditions carefully. He agrees that they are suitable for inclusion in any section 90 direction which he may give.

III. SECRETARY OF STATE'S DECISION ON THE HOLDING OF A PUBLIC INQUIRY

3.1 As indicated in paragraph 1.4 above, the relevant planning authority has not maintained an objection to the Application. The Secretary of State is therefore not obliged to cause a public inquiry to be held under paragraph 2(2) of Schedule 8 to the Act.

3.2 Paragraph 3(2) of Schedule 8 to the Act also requires the Secretary of State to consider all objections that he has received pursuant to the Electricity (Applications for Consent) Regulations 1990 (made under paragraph 3(1) of Schedule 8), ("the Applications Regulations"), together with all other material considerations, in order to determine whether it would nevertheless be appropriate to hold a public inquiry. A number of objections were received by both the Secretary of State and the relevant planning authority. The Secretary of State has therefore given consideration to all the objections received and sections 3.4 and 3.4 below set out the Secretary of State's conclusions as to whether any or all of them raise considerations which in his view make it appropriate to hold a public inquiry. The Secretary of State also received one letter of support for the application.

3.3 The objections and representations, in summary and in no particular order, related to concerns that:

- a) emissions to atmosphere from the operation of the Development will impact on the health of local residents;
- b) hazardous waste will be produced and not safely stored and removed from the site;
- c) road traffic during construction and operation of the Development will increase and impact on local residences, with alternative rail and water fuel delivery methods not materialising;
- d) more recycling and composting facilities in the locality would avoid the need to burn waste;
- e) the Company's predicted local labour opportunities during the construction and operation of the Development will not materialise;

- f) the odour from waste kept on site during the operation of the Development will be detectable at local residences;
- g) noise from the Development will impact on local residents;
- h) the Development will create additional light pollution;
- i) landscaping will be needed to mitigate the visual impact of the Development;
- j) the Development should be required to incorporate Combine Heat and Power (CHP);
- k) the Development should be Carbon Capture Ready (CCR);
- l) the public consultation carried out by the Company on the Development was inadequate;
- m) the Development will increase the risk of flooding in the area; and
- n) the Development will adversely impact on local house prices.

3.4 The Secretary of State has carefully considered the matters raised and comments on them as follows:

a) The Secretary of State notes that emissions from the Development would be regulated under applicable European Union legislation designed to control the impacts of combustion plants on the environment and human health, including the Integrated Pollution Prevention and Control (IPPC) Directive and, as it would use waste-derived fuel, the Waste Incineration Directive (WID). Compliance with this legislation is regulated by means of permits issued under the Environmental Permitting Regulations 2010 as amended (“EPR”) by the Environment Agency (“EA”). The Air Quality Standard Regulations 2010 is the principal air quality legislation and transposes the requirements of a number of European Union Directives into national legislation. It sets national objectives for Air Quality, covering many pollutants (set out in the regulations).

While an EPR application has still to be submitted the Secretary of State has been informed by the EA that its preliminary view, given on the basis of the information contained in the Environmental Statement and without prejudice to any decision it may take on the EPR application once it is made, is that there is no reason to suppose that a permit will not be issued in respect of the Development. Moreover, the EPR application will only be successful if it demonstrates that the development will incorporate BAT (best available techniques for reducing emissions as defined in and prescribed under the relevant EU Directives). In addition to the need to obtain an EPR permit, the applicant will have to demonstrate that atmospheric emissions will not lead to significant impacts with respect to air quality objectives and where such

objectives do not exist, will not lead to significant impacts with respect to Environmental Assessment Limits as set out in EA guidance note H1 'Environmental risk assessment of permits', in particular Annex (f), air emissions.¹

The EPR permitting process also requires consideration of any cumulative impacts arising from other developments in the vicinity. Similarly, the stack height required for the safe dispersal of emissions to atmosphere will also be determined by the EA during the EPR permitting process (although the Secretary of State notes the EA has not raised concerns based on the information in the ES, which states that a 100m high stack is considered by the Company to be a conservative selection based on the predicted ground level emission concentrations arising from the emissions to atmosphere and based on other comparable plants and the height was selected to mitigate any potential effects on air quality given the proximity of the existing cooling towers at Ferrybridge 'C' power station). Whilst the Secretary of State understands the EA is required to consult with a number of Statutory Consultees, including the Primary Care Trust (PCT), when considering an EPR permit application, he is also aware that the Health Protection Agency, whose role is to provide expert advice on public health matters to Government, stakeholders and the public, issued an updated position statement in April 2011 that concluded "*After reviewing the latest literature the Agency's general position remains unchanged: Modern, well managed incinerators make only a small contribution to local concentrations of air pollutants. It is possible that such small additions could have an impact on health but such effects, if they exist, are likely to be very small and not detectable.*"².

The Secretary of State considers that the EPR permitting process should provide an adequate means of dealing with any potential emissions from the Development. However, in view of local concerns he has also included conditions requiring a scheme for the monitoring of air pollution from the proposed Development in the area to be agreed with the relevant planning authority, in consultation with the EA, to ensure the relevant planning authority are kept informed on a regular and programmed basis about any changes in the level of air pollution at locations within the area (Conditions (68) & (69) refer) which may be attributable to the Development;

(b) The Secretary of State notes from Section 14.3.4 of the ES that approximately 25,000 tonnes per annum of flue gas treatment (FGT) residues will be produced as a by-product and will be stored in a sealed silo adjacent to the flue-gas treatment facility. He also notes from the example given in the ES of the treatment of waste from the Company's Slough facility that as the FGT residue is classified as hazardous waste, it will be required to be sent to a

¹ <http://www.environment-agency.gov.uk/business/topics/permitting/36414.aspx>

² http://www.hpa.org.uk/web/HPAweb&HPAwebStandard/HPAweb_C/1195733829068

licensed hazardous waste treatment facility where the alkaline residue is neutralised with acidic liquid waste and the residue then taken to a non-hazardous landfill site. On removal from the Development, the FGT residues will be transferred in sealed powder tankers for safe onward transport. As indicated in the ES, the site will need to be registered for Hazardous Waste generation and the material will be transported under the hazardous waste regulations³&⁴ and road tankers are specifically designed and built to meet the requirements of The Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009 (CDG 2009)⁵ and the European agreement (Accord européen relative au transport international des marchandises dangereuses par route” (known as ADR)⁶. These together regulate the carriage of dangerous goods by road, with the Health and Safety Executive being one of the enforcement authorities for many aspects of CDG 2009 and the Department for Transport “the competent authority” for most purposes. The Secretary of State is satisfied therefore that the arrangements and regulations in place should ensure the safe handling, transportation and disposal of hazardous waste derived from the Development;

Whilst the Secretary of State acknowledges that there will be some increase in traffic to the local road network as a result of the construction and operation of the Development, he notes that the Highways Agency have not raised concerns. He also note the relevant planning authority consider the Development “will have no detrimental impact upon traffic or highway safety” once the transport improvements and off-site highway works covered by the section 106 Agreement have been carried out and with the imposition of conditions (Conditions (4)&(5), (6)&(7), (19), (61), (63), (66) and (67) refer) to ensure that construction and operational traffic is properly managed and the impact on the local road network and residences minimised.

c) In respect of the specific concerns that the proposed rail and/or water modes of fuel delivery will not materialise, the Secretary of State notes from the 2009 ES that although there are no known fuel providers able to deliver fuel by barge and the infrastructure would need to be developed, the ES Addendum 2011 states that the Company’s discussions with fuel suppliers have identified several parties with an interest in utilising rail as a delivery method to the site. The 2011 design therefore includes provision for an upgrade to the existing rail siding and extension to the passing loop to allow two full trains to access the site at the same time. Whilst the Secretary of State accepts that there still remains uncertainty at this stage, and the position on use of rail and water for

³ <http://www.legislation.gov.uk/ukxi/2009/507/contents/made>

⁴ <http://www.legislation.gov.uk/ukxi/2005/894/contents/made>

⁵ <http://www.legislation.gov.uk/ukxi/2009/1348/contents/made>

⁶ <http://www.hse.gov.uk/cdg/manual/>

fuel deliveries will not be finalised until fuel supply contracts are in place, Condition (61) requires the Company to submit, prior to the commissioning of the Development, a Sustainable Fuel Transport Management Plan to the relevant planning authority for approval and operation throughout the lifetime of the Development to put in place measures to ensure the sustainable movement of fuel to the Development by rail, road and water;

(d) The Secretary of State considers the provision of additional recycling and composting facilities in the area is a local authority matter. However, he notes that a significant proportion of waste is not capable of being reused or recycled; that the Landfill Directive imposes limits on the amount of waste which should be sent to landfill; and that the recovery of energy from the combustion of waste ranks above landfill (though below reuse or recycling) in the “the waste hierarchy”.⁷ Condition (65) will ensure that the amount of recyclable and reusable waste received as a fuel feedstock during the operational life of the Development is minimised, in line with the waste hierarchy. It may also be noted that waste is not the only intended fuel source for the Development, which can also be fuelled by non-waste biomass that meets prescribed sustainability criteria;

(e) The Secretary of State notes that the power station construction phase is expected to be approximately 28 months, with plant commissioning taking place over 14 months. The Company has indicated in the ES that it estimates that of the 2,525 construction employment opportunities or ‘workspaces’ (of approximately 3 months), 2,273 are expected to be from residents living in the local area with around 350 construction personnel on site during the peak construction period. The net direct employment during the operational phase is 19 workers with an estimated 17 being local employees. In addition, of the estimated 90 indirect jobs required during the operation phase (i.e. including jobs such as fuel delivery firms, cleaners, delivery drivers and maintenance etc), the Company estimates 81 would be local workers. Furthermore, the Secretary of State also notes that the Company considers it would be appropriate for them to work with the relevant planning authority and local partners such as Job Centre Plus to identify opportunities for local recruitment and use. In the absence of any evidence provided to the contrary, he has no reason to believe therefore that the Company would not use best endeavours to make local job opportunities available for those workers with the necessary skills. Furthermore, the Secretary of State considers there is also likely to be other indirect economic benefit to the local community, particularly if account is also taken of the requirement for accommodation (i.e. for those workers that do

⁷ <http://www.defra.gov.uk/publications/2011/06/15/pb13530-waste-hierarchy-guidance/>

not reside in the local area) and other services associated with a major construction project;

(f) The Secretary of State notes from the ES that the intention is that waste would be stored undercover and, to minimise odour, under negative pressure. Mist air odour suppressant would also be used as necessary. However, in the interests of local amenity, Condition (62) will require the Company to agree a scheme with the relevant planning authority for the control of odour during the operation of the proposed Development;

(g) Conditions (16)–(20) will ensure reasonable and proper control is exercised over noise during construction activities. Conditions (54)–(56) will control noise during the operation of the Development. Whilst the Secretary of State considers that compliance with these conditions will adequately address the concerns of local residents, he has also included Condition (57) to ensure that any complaints about noise and/or dust during the construction and operation of the Development are properly dealt with;

(h) In the interests of amenity and highway safety, Conditions (8)–(9) require the Company to agree a scheme with the relevant planning authority for the artificial lighting of external areas;

(i) The Secretary of State considers no power station of this size can ever be completely hidden from view, but notes that it will be seen in the context and close proximity of the much larger existing Ferrybridge ‘C’ Power Station, and considers that any additional adverse visual impacts resulting specifically from the Development (alone or in combination with the existing power station) are outweighed by its benefits, in particular in terms of satisfying the national need for electricity generating infrastructure, and specifically non-fossil fuel powered combustion plants). Furthermore, Conditions (47)–(49), require a scheme for on-site landscaping and creative conservation to be submitted to the relevant planning authority for approval and Conditions (10) and (11) require the layout, design, colour, size of buildings and structures of the Development to be approved by the relevant planning authority, in order to mitigate the visual impact which Development may have;

(j) The Secretary of State’s consideration of the use of the waste heat from the plant is at Section VI of this decision letter;

(k) The Government's policy of requiring carbon capture readiness (CCR), so that sufficient space is kept available to allow for the retrofitting of carbon capture and storage (CCS), only applies to generating stations with a capacity of at or over 300Mwe (with the exception of new coal-fired plant of below that capacity, which are required to be fitted with CCS from the outset).^{8 & 9} The proposed development falls below that threshold, and the Secretary of State does not see any reason to depart from his general policy by requiring the Company to carry out a CCR assessment or impose CCR conditions.

(l) The Secretary of State is aware that the proposed Development was advertised widely in November 2009 both locally and nationally in accordance with the requirements of the relevant regulations and an opportunity given for the application documentation to be obtained, inspected and representations made to the Secretary of State. This process was repeated following submission of the modified 2011 design in February 2011. He notes that exhibitions were held between March and October 2009: at Knottingley Sports Centre (12-14 March), Airedale Library (24 September), Ferrybridge Community Centre (25 September) and Brotherton Parish Hall (25 September). He also understands that: letters were sent to visitors who attended the exhibitions and residents groups; posters placed in local shops, local community notice boards and other venues; 3000 bookmarks publicising the events were issued to local libraries and staff at the existing Ferrybridge 'C' power station; and press releases were issue to local press, TV and radio. The Secretary of State understand that exhibitions were also similarly publicised and held on the modified design in October 2010 at Ferrybridge Community Centre (22 October) and Fairburn Community Centre (23 October) and in February 2011 at Ferrybridge Community Centre (11 February) and Brotherton Parish Hall (12 February). There is no evidence to suggest that the consultation carried out on the proposed Development has been inadequate or local people have not had an opportunity to make their views known;

(m) The Secretary of State's consideration of flood risk is at Section VIII of this decision letter; and

⁸Carbon Capture Readiness A guidance note for Section 36 Applications URN09D/810
http://www.decc.gov.uk/en/content/cms/what_we_do/supply/consents_planning/guidance.aspx

⁹ For a summary, see section 4.7 of the Overarching National Policy Statement for Energy (EN-1), available at
http://www.decc.gov.uk/en/content/cms/meeting_energy/consents_planning/nps_en_infra/nps_en_infra.aspx

(n) The alleged impact of a proposed development on house prices is not a material consideration in the context of deciding applications for planning permission and the Secretary of State has seen no evidence that the Development will have an impact on house prices that would, exceptionally, justify taking a different approach in relation to the application for section 36 consent.

Conclusion

3.5 The Secretary of State has carefully considered the views of the relevant planning authorities, consultees and others, the matters set out above and all other material considerations. For the reasons given above, he does not consider that any of the objections responded to above raise any issues that need further probing in the form of a public inquiry and he does not consider that they raise concerns that justify refusing consent to the application. He is therefore satisfied that it would not be appropriate to cause a public inquiry to be held into the application.

IV. SECRETARY OF STATE'S CONSIDERATION OF THE ENVIRONMENTAL INFORMATION

4.1 The Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000 (as amended) ("the EIA Regulations") prohibit the Secretary of State from granting section 36 consent unless he has first taken into consideration the environmental information, as defined in those Regulations.

4.2 The Secretary of State is satisfied that the Environmental Statement is sufficient to allow him to make a determination on the Application and that the Company has followed the applicable procedures in the EIA Regulations.

4.3 The Secretary of State has considered the environmental information carefully; in addition to the Environmental Statement, he has considered the comments made by the relevant planning authorities, those designated as statutory consultees under regulation 2 of the EIA Regulations and comments by others.

4.4 Taking into account the extent to which any environmental effects will be modified and mitigated by measures the Company has agreed to take or will be required to take either under the conditions attached to the section 36 consent or the Planning Conditions or by regulatory authorities including the Environment Agency, the Secretary of State believes that any remaining adverse environmental effects will not be such that it would be appropriate to refuse section 36 consent for the Development or the deemed planning permission.

V. SECRETARY OF STATE'S CONSIDERATION OF POSSIBLE EFFECTS ON NATURE CONSERVATION INTERESTS

5.1 The Secretary of State notes that the nearest European sites are some distance from the Development (namely: River Derwent SAC > 20km, Thorne Moor SAC and Thorne and Hatfield Moors SPA > 24km, and Humber Estuary SAC / SPA/ Ramsar > 26km). Natural England has identified no likely significant effect on these sites as a result of the proposed Development and the Secretary of State has no reason to doubt this appraisal; consequently there is no reason for the Secretary of State to undertake an Appropriate Assessment (“AA”) under the Conservation of Habitats and Species Regulations 2010 (‘the Habitats Regulations’).

5.2 Although not a European designated site a wetland site the Fairburn Ings Site of Special Scientific Interest (“SSSI”) lies about 4km north-west of the proposed Development site. Natural England, in its consultation response, states that predicted emissions from the Development do not represent a significant threat to the conservation interest features of the Fairburn Ings SSSI. In the absence of any evidence to contradict this appraisal the Secretary of State is satisfied that the Development is not likely to have a significant effect on a European designated site and finds no reason for refusing section 36 consent on the grounds of adverse effect on the integrity of a European site or SSSI.

5.3 In addition, the Secretary of State is aware that the Environment Agency has undertaken an AA of the existing coal-fired Ferrybridge site together with the other Aire Valley power station sites (i.e. Eggborough and Drax) for impact on European Sites (Drax has European sites within 15km). This forms part of an ongoing assessment regime that considers impacts from air and water emissions on European sites and, as a condition of their respective permits under the EPRs covering operational emissions, the power station operators have now started an additional monitoring programme to report on acid deposition and effects over time. The Company would need to apply for an Environmental Permit for the proposed Development in due course and the Environment Agency would have to consider whether its operation, alone or in combination with other developments, would be likely to have a significant effect on any European Sites as part of the process of determining the Company’s application for an Environmental Permit.

5.4 Planning Condition 51 also requires an agreed scheme of measures to be put in place onsite for the protection of species protected under the Wildlife and Countryside Act 1981 (as amended) and the Conservation of Habitats and Species Regulations 2010. In addition, Planning Conditions 47-50 allow for habitat creation and management to encourage biodiversity both onsite and also offsite (but still on land within the Company’s ownership) at Fryston Beck

Pond and Brotherton Ings. The Secretary of State notes that these measures are supported by Natural England.

VI. SECRETARY OF STATE'S CONSIDERATION OF COMBINED HEAT AND POWER

6.1 The Application is covered by the Departmental published guidance¹⁰ for all combustion power station proposals, requiring developers to demonstrate that opportunities for CHP have been seriously explored before section 36 consent can be granted. The Secretary of State is satisfied that the Company has complied with those requirements.

6.2 The Secretary of State notes from the ES that the Company has considered the potential to export heat to local users and understands that while it has identified a number of potential current and future heat demands in the vicinity of the site, no agreement has so far been reached to supply any specific customers with surplus heat from the Development. In view of the Government's strong support for CHP and the use of heat, the Secretary of State does not wish to lose the opportunity to exploit potential heat demand which may arise in the future. Accordingly, he has decided to include a condition in the section 90 direction which requires the Company to carry out a further CHP Feasibility Review prior to commissioning of the development and to continue to monitor potential CHP opportunities. Where viable opportunities are identified, the Company is also required to agree a scheme with the relevant planning authority for the provision of the necessary plant and pipework to the boundary of the site and to install it in accordance with the agreed details. He has also decided to ensure that there are no barriers to exploitation of future CHP opportunities by including a condition which requires the Company to install, prior to commissioning of the Development, the necessary infrastructure to facilitate the future supply of waste heat should a demand for such heat arise.

VII SECRETARY OF STATE'S CONSIDERATION OF FLOOD RISK

7.1 There are three categories of Flood Risk Zone, i.e. Flood Zone 3 (subdivided in Zones 3a and 3b) where there is a high probability of flooding, Flood Risk Zone 2 where there is a medium probability of flooding and Flood Risk Zone 1 where there is a low probability of flooding and *Planning Policy Statement 25: Development and Flood Risk* (PPS25) states that only where there are no reasonably available sites in Flood Zones 1 or 2 should decision-makers consider the suitability of sites in Flood Zone 3.

¹⁰ Guidance on background information to accompany notifications under section 14(1) of the Energy Act 1976 and applications under section 36 of the Electricity Act 1989: December 2006 - <http://www.decc.gov.uk/assets/decc/what%20we%20do/uk%20energy%20supply/development%20consents%20and%20planning%20reform/guidance/file35728.pdf>

7.2 The Secretary of State notes the Flood Risk Assessment (FRA) carried out by the Company's consultants, URS, which states that *"A large part of the site [the whole of the power island is within the zone] lies in Flood Zone 3, the extent of 1 in 100 [or greater annual probability of] flooding from fluvial sources. The comparison of modelled flood levels for the River Aire shows that the Proposed Development Site is unlikely to flood from the River Aire at 1 in 100 levels. However, Fryston Beck is culverted underneath the site and in the event of its failure, the site is likely to flood from the resultant overland flow. The site is therefore considered to be in Flood Zone 3a."* As the site of the Development is partly within Flood Zone 3a, PP25 requires that if the Development passes a Sequential Test then an Exception Test is also required as an electricity generating power station is classified as "essential infrastructure" for the purposes of flood risk which 'has to be located in a flood risk area for operational reasons'. In such cases, essential infrastructure is permitted in this zone, but should be designed and constructed to remain operational and safe for users in times of flood. However, it should only be permitted if an Exception Test, which provides a method for managing flood risk while still allowing necessary development to proceed, is passed.

7.3 PPS25 states that a risk-based approach should be adopted at all levels of planning and development in areas of flood risk requires:

flood risk assessment to be carried out to the appropriate degree to assess the risks of all forms of flooding to and from the development taking climate change into account and to inform the application of the sequential [test] approach. The production of a Flood Risk Assessment is the responsibility of those proposing the development applied for. PPS 25 states that those proposing development are responsible for:

- “ • providing a FRA demonstrating:
 - whether any proposed development is likely to be affected by current or future flooding from any source;
 - satisfying the LPA that the development is safe and where possible reduces flood risk overall;
 - whether it will increase flood risk elsewhere; and
 - the measures proposed to deal with these effects and risks.
- any necessary flood risk management measures should be sufficiently funded to ensure that the site can be developed and occupied safely throughout its proposed lifetime;
- designs which reduce flood risk to the development and elsewhere, by incorporating sustainable drainage systems (see

Annex F) and where necessary, flood resilience measures (see Annex G); and

- identifying opportunities to reduce flood risk, enhance biodiversity and amenity, protect the historic environment and seek collective solutions to managing flood risk.”

7.4 In addition the decision taker must consult the Environment Agency, which has the statutory responsibility for flood management and defence in England. If the Environment Agency objects to an application for major development on flood risk grounds, all parties (the decision taker, the Environment Agency and the applicant), should discuss and agree the course of action which would need to be taken to enable the Environment Agency to withdraw its objection.

7.5 The Secretary of State notes that Flood Risk Assessments (FRAs) were undertaken on behalf of the Company and submitted as part of the 2009 Environment Statement and 2011 Addendum. The FRAs include the Company’s application of the Sequential and Exception Tests. He also notes the Tests were carried out through discussions with the relevant planning authority, who consider the Tests have been passed. The Environment Agency has also informed the Secretary of State that subject to the Sequential and Exception Tests being passed, the Development is considered to be acceptable in flood risk terms subject to the implementation of the mitigation measures covered by Planning Conditions (21) and (22).

Sequential Test

7.6 PPS25 indicates that the decision taker should apply the sequential approach as part of identification of land for development in areas of risk of flooding. As part of that assessment the Sequential Test should demonstrate that there are no reasonably available sites with a lower probability of flooding that would be appropriate to the development and that the development complies with the strategic development of the region in which it is proposed. The Secretary of State notes the Environmental Statement states that research and preliminary discussions with potential fuel suppliers indicate a need for a multi-fuel facility in the Yorkshire and Humber region, which led the Company to evaluate the assets it owns within the region (i.e. the existing Fiddlers Ferry, Keadby and Ferrybridge power station sites). However, for the reasons set out on site selection in Section 3.3.2 of the 2009 Environmental Statement, the existing Ferrybridge coal-fired power station site was considered by the Company to be its favoured site, having a number of significant advantages including; its location in the geographical centre of the region; good road and rail infrastructure links; existing infrastructure for solid fuel delivery, including rail infrastructure for the receipt and handling of trains; national, regional and local grid connections; and; a pool of existing labour for the operation and maintenance purposes.

7.7 In view of the above, the Secretary of State notes from Section 3.3.3 of the 2009 Environmental Statement that the Company considered alternative sites within the existing Ferrybridge 'C' Power Station Site. However, he understands that site selection was constrained by a number of factors, namely: the plot must be large enough to facilitate the proposed Development; overhead or buried power cables should not prejudice the plant design; the plot cannot be located on immovable infrastructure; and the plot must be located a suitable distance away from sensitive receptors. He also understands that although the alternative sites were at a lower risk of flooding (based on the EA Flood Zoning only), they were discounted for a combination of reasons including: location on land designated green belt; less accessible for fuel delivery by rail and road; lack of potential to re-use existing infrastructure; and proximity to residential properties.. The Secretary of State notes that the relevant planning authority's consultation response also indicates that it accepts the Company's view that there are no other reasonably available sites with a lower probability of flooding that would be appropriate to the type of development or land use proposed.

Exception Test

7.8 In applying the Exception Test, PPS25 Annex D paragraph D9 states the following considerations must be addressed:

- it must be demonstrated that the development provides wider sustainability benefits to the community that outweigh flood risk, informed by a Strategic Flood Risk Assessment where one has been prepared;
- the development should be on developable, previously-developed land or, if it is not, that there are no reasonable alternative sites on developable previously-developed land; and
- a Flood Risk Assessment must demonstrate that the development will be safe, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.

7.9 In the consideration of the above, the Secretary of State has taken account of:

- His policies on the need for energy infrastructure and the role of the recovery of energy from waste by combustion, where in accordance with the waste hierarchy, as referred to in paragraph 8.1 (xi) below. He also considers the proposed development is in line with the key principles in Planning Policy Statement 1, *Delivering Sustainable Development 2005*

(PPS1)¹¹ and notes the EIA process has identified no significant environmental effects to the natural environment whereas there are social and economic benefits both during construction and operation from increased employment and local economic activity. The Company has also highlighted that two of the four units at the existing coal-fired power station site are 'opted out' of the Large Combustion Plant Directive and therefore scheduled to close by the end of 2015, which will lead to a potential requirement to reduce staff numbers at the Ferrybridge site. The Company consider the proposed development would lead to new recruitment, which would in turn lead to a positive effect on the local economy and improvement in morale of the existing staff. The Secretary of State also notes from the RPA's Report to Planning and Highways Committee for its meeting on 28 April 2011, that paragraph 10.24 of the adopted Local Development Framework (LDF) Core Strategy states "*Ferrybridge Power Station is currently a major employer in the district and plays an important role in energy production. It is expected that this site will remain as a centre of power generation. The continued use of the site for coal fired power generation is supported, but it is also recognised that additional energy related development incorporating alternative technologies may be introduced, including the use of renewable energy sources*";

- The proposed site is located on previously developed land. Other alternative sites have been ruled out for the reasons referred to above. The relevant planning authority is satisfied there are no other reasonably available alternative sites and has confirmed that it considers the Sequential and Exception Tests are passed; and
- The Flood Risk Assessments prepared by the Company proposed measures to protect the Development, the local environment and personnel from flooding, namely: the placement of main plant and flood sensitive equipment to be set no lower than 12.3 metres above Ordnance Datum (AOD); finished floor levels to be set no lower than 300mm above adjacent ground levels; and installation of storm water flow attenuation limiting surface water run-off at a rate of 2.5 litres/second/hectare with an "on site" storm water storage facility designed to accommodate the

11

<http://www.communities.gov.uk/planningandbuilding/planningsystem/planningpolicy/planningpolicystatements/pps1/>

calculated flows for a 1 in 100 year return period plus an allowance for climate change as detailed in the FRA (Conditions 21) and 22) refer).

Conclusion

7.10 The Secretary of State has been informed that the Environment Agency has indicated that it considers the Development to be acceptable in terms of flood risk with the inclusion of the measures covered by Conditions (21) and (22), subject to him satisfying himself that the Sequential and Exception tests can be met. The Secretary of State is of the view that the measures described above will ensure that the Development will remain operational through a 1 in 100 year flood event without increasing flood risk elsewhere. He sees no reason to disagree with the view of the relevant planning authority that both the Sequential and Exception tests have been met and no reason to refuse to grant section 36 consent on the ground of unacceptable flood risk.

VIII SECRETARY OF STATE'S DECISION ON THE APPLICATION

8.1 The Secretary of State has carefully considered the views of the relevant planning authorities, consultees and others, the matters set out above and all other material considerations. In particular, the Secretary of State considers the following issues material to the merits of the section 36 consent application:

- i) adequate environmental information has been provided for him to judge its impact;
- ii) the Company has identified what can be done to mitigate any potentially adverse impacts of the proposed Development;
- iii) the matters specified in paragraph 1(2) of Schedule 9 to the Electricity Act 1989 have been adequately addressed by means of the Environmental Statement and he has judged that the likely environmental impacts are acceptable;
- iv) the fact that legal procedures for considering a generating station application have been properly followed;
- v) the views of the relevant planning authority, the views of others under the Applications Regulations, the views of statutory consultees under the EIA Regulations and Habitats Regulations, the environmental information and all other relevant matters have been considered;
- vi) that, to the extent that it is necessary or desirable to address any of the objections received to the application in his decision, none of them is such as to justify refusal of consent or a section 90 direction, given the imposition of Planning Conditions and the matters referred to in section 3.4 above;

vii) the requirements of Planning Policy Statement 25 *Development and Flood Risk* (PPS25) have been applied and there is no reason to refuse the application on the grounds of the proposed Development presenting an unacceptable flood risk at the site;

viii) the Development will contribute to the meeting of landfill diversion targets under the European Landfill Directive by diverting material that is otherwise likely to end up in landfill in a manner which is consistent with the waste hierarchy; and

ix) his policies on the need for and development of new electricity generating infrastructure, and specifically energy from waste, where in accordance with the waste hierarchy, and biomass fuelled generating stations, as set out in the *Overarching National Policy Statement for Energy (EN-1)* (in particular, sections 3.3 and 3.4) and the *National Policy Statement for Renewable Energy Infrastructure (EN-3)* (in particular section 2.5), designated by him on 19th July 2011 under the Planning Act 2008 following their approval by Parliament, and the reasons given for those policies in those national policy statements¹².

8.2 The Secretary of State, having regard to the matters specified in paragraph 8.1 above, has decided to grant consent for the Development pursuant to section 36 subject to: (i) a condition that the Development shall be in accordance with the particulars submitted with the application, and (ii) a condition as to time within which the Development must commence.

8.3 The Secretary of State believes the Planning Conditions will ensure that the Development proceeds in a form and manner that is acceptable in planning policy terms, and therefore he has decided to issue a section 90(2) direction that planning permission be deemed to be granted subject to the Planning Conditions.

8.4 I accordingly enclose the Secretary of State's consent under section 36 of the Electricity Act 1989 and a direction under section 90(2) of the Town and Country Planning Act 1990.

IX. GENERAL GUIDANCE

9.1 The validity of the Secretary of State's decision may be challenged by making an application to the High Court for permission to seek a judicial review.

¹² See

http://www.decc.gov.uk/en/content/cms/meeting_energy/consents_planning/nps_en_infra/nps_en_infra.aspx

Such application must be made as soon as possible and in any event not later than three months after the date of the decision. Parties seeking further information as to how to proceed should seek independent legal advice from a solicitor or legal adviser, or alternatively may contact the Administrative Court at the Royal Courts of Justice, Strand, London WC2 2LL (General Enquiries 020 7947 6025/6655).

9.2 This decision does not convey any approval or consent or waiver that may be required under any enactment, by-law, order or regulation other than section 36 and Schedule 8 of the Electricity Act 1989 and section 90 of the Town and Country Planning Act 1990.

Yours faithfully

Giles Scott
Head of Development Consent & Planning Reform