



**Department  
of Energy &  
Climate Change**

Mike Benson  
Carlton Power  
Carlton House  
4 Ellerbeck Way  
Stokesley Business Park  
Stokesley  
North Yorkshire  
TS9 5JZ

**Department of Energy & Climate  
Change**

2<sup>nd</sup> Floor King's Building  
c/o3 Whitehall Place,  
London SW1A 2AW  
T: +44(0)300 068 5770  
E: giles.scott@decc.gsi.gov.uk  
[www.decc.gov.uk](http://www.decc.gov.uk)

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Dear Mr Benson

**ELECTRICITY ACT 1989**

**ELECTRICITY GENERATING STATIONS (VARIATION OF CONSENTS)  
(ENGLAND & WALES) REGULATIONS 2013**

**GAS TURBINE GENERATING STATION AT CARRINGTON, GREATER  
MANCHESTER**

**THE APPLICATION**

1. I am directed by the Secretary of State for Energy and Climate Change ("the Secretary of State") to refer to the application dated 12 May 2014 ("the variation application") on behalf of Wainstones Energy Limited ("the Applicant") to vary both the consent of the Secretary of State granted under section 36 of the Electricity Act 1989 on 1<sup>st</sup> April 2010 ("the section 36 consent"), to construct and operate a 1520MW gas-fired generating station at Carrington, Greater Manchester ("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. The variation being requested ("section 36C variation") is for an increase in the capacity of the Development permitted by the consent and planning permission from 1520MW to 2060MW and to extend the time period for the commencement of the development by two years, so that commencement must not be carried out later than April 2017.
2. The variation application was published in accordance with the Electricity Generating Stations (Variation of Consents) (England and Wales) Regulations 2013 ("the Variation Regulations") and served on Trafford Metropolitan Borough Council ("the relevant planning authority").

3. In accordance with the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000 (“the EIA Regulations”), which apply to the variation of a consent by virtue of regulation 7 of the Variation Regulations, the document titled “Environmental Statement Addendum” dated April 2014 was submitted with the variation application. This document describes the Development and updates the Environmental Statement dated April 2009 and submitted with the original application.
4. In accordance with the EIA Regulations, the “Environmental Statement Addendum” dated April 2014 was advertised and placed in the public domain, along with the previously submitted Environmental Statement submitted with the original application, to give people an opportunity to comment on it. Following the comments received, additional documents were provided to supplement the Environmental Statement Addendum as follows; Church of St George – Note 270814 v2 dated 27<sup>th</sup> August 2014; Trafford Power Critical Load Briefing Note Rev2 dated 19<sup>th</sup> August 2014. This information was also advertised and placed in the public domain for people to comment on. The original Environmental Statement, the Environmental Statement Addendum, Church of St George – Note 270814 v2 dated 27<sup>th</sup> August 2014, Trafford Power Critical Load Briefing Note Rev2 dated 19<sup>th</sup> August 2014 are herein after referred to as the “Environmental Statement”.
5. The relevant planning authority entered into discussions with the Applicant over the terms on which they would be content for the Development with the proposed variations to proceed. As a result of these discussions, varied conditions to be attached to any section 90 direction (“the Planning Conditions”) were agreed in principle between the Applicant and the relevant planning authority (and also other relevant consultees). More detail on this is provided below at paragraphs 28-29.
6. In view of the successful conclusion of these discussions the relevant planning authority has not maintained any objection to the variation application.
7. The Secretary of State notes that the Applicant also gave to the relevant planning authority a Unilateral Undertaking under section 106 of the Town and Country Planning Act 1990 dated 22<sup>nd</sup> March 2010 (“section 106 Undertaking”) and a Deed of Modification to the section 106 undertaking dated 1<sup>st</sup> September 2014. The section 106 undertaking, as modified, includes an additional financial contribution towards additional air quality monitoring.

## **SECRETARY OF STATE’S CONSIDERATION OF THE REVISED PLANNING CONDITIONS**

8. The Secretary of State has considered the revised Planning Conditions carefully. He agrees that they are suitable for inclusion in any section 90 direction which he may give, subject to the modifications noted below and

minor drafting variations as set out in the Explanatory Memorandum which accompanies the revised consent and planning conditions.

## **SECRETARY OF STATE'S DECISION ON THE HOLDING OF A PUBLIC INQUIRY**

9. Regulation 8 of the Variation Regulations gives the Secretary of State discretion to hold a public inquiry into a variation application. In considering whether to hold a public inquiry, the Secretary of State must consider any representations which have been made to him by a relevant planning authority or any other person where those representations are not withdrawn.
10. No outstanding objections remain to the proposed variation from the relevant planning authority or any other person. However, the Secretary of State has given consideration to the representations received from his consultees, including the relevant planning authority, Natural England, the Environment Agency, English Heritage, the Civil Aviation Authority, the Ministry of Defence and Manchester City Airport and taken account of their comments in the revised Planning Conditions.

### Conclusion

11. The Secretary of State has carefully considered the views of the relevant planning authority and consultees and all other material considerations. He takes the view there is nothing further that needs probing and that it would not be appropriate to cause a public inquiry to be held into the section 36C variation application.

## **SECRETARY OF STATE'S CONSIDERATION OF THE ENVIRONMENTAL INFORMATION**

12. Regulation 3 of the EIA Regulations as applied by regulation 7 of the Variation Regulations prohibits the Secretary of State from granting a variation of section 36 consent unless he has first taken into consideration the environmental information, as defined in the EIA Regulations.
13. The Secretary of State is satisfied that the Environmental Statement is sufficient to allow him to make a determination on the variation application and that the Applicant has followed the applicable procedures in the EIA Regulations.
14. 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 authority, those designated as statutory consultees under regulation 2 of the EIA Regulations and other consultees and the additional information provided by the Applicant in response to these comments.

15. Taking into account the extent to which any environmental effects will be modified and mitigated by measures the Applicant has agreed to take or will be required to take either under the conditions attached to the variation to section 36 consent or the Planning Conditions or by regulatory authorities including Natural England and the Environment Agency ("EA"), the Secretary of State believes that any remaining adverse environmental effects will not be such that it would be appropriate to refuse the variation to the section 36 consent for the Development or the deemed planning permission.
16. The Secretary of State also has regard in accordance with section 40 of the Natural and Rural Communities Act 2006 to the purpose of conserving biodiversity, and considers that 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.

### **SECRETARY OF STATE'S CONSIDERATION OF POSSIBLE EFFECTS ON A EUROPEAN SITE**

17. The Conservation of Habitats and Species Regulations 2010 ("the Habitats Regulations") require the Secretary of State to consider whether the proposed Development would be likely to have a significant effect on a European Site, as defined in the Habitats Regulations and if so, to undertake an Appropriate Assessment of the implications for the European Site in view of its conservation objectives. In the absence of imperative reasons of overriding public interest, consent may only be granted if it can be shown that the development will not have an adverse effect on the integrity of the European Site (regulations 61(5) and 62). Regulation 61(6) provides that when considering whether the proposed development will adversely affect the integrity of a European Site, the competent authority can take into account measures proposed to mitigate such impacts.
18. Given the planning conditions already imposed, the Secretary of State does not believe that the Development is likely to have a significant effect on any European Site. He therefore considers that no Appropriate Assessment pursuant to regulation 61 of the 2010 Regulations is necessary and finds no reason for refusing the variation application on the grounds of adverse effects on the integrity of a European Site.

### **SECRETARY OF STATE'S CONSIDERATION OF ISSUES RAISED DURING CONSULTATION**

#### English Heritage

19. English Heritage advised that the site of the varied Development is in close proximity to the Church of St George in Carrington, a Grade II listed building of national architectural and historic importance. English Heritage noted that the significance of a heritage asset is partly derived from the surrounds in which it is experienced and asked for a photographic assessment to be

undertaken to understand the impact of the variation application on the Church of St George.

20. The Secretary of State notes that this additional information was provided and consulted on. The Secretary of State also notes that English Heritage confirmed that this information allowed for an informed assessment of the impact upon the setting of the Church of St George and that the harmful impact upon the church's setting was considered minimal when compared with the originally consented scheme.
21. The Secretary of State notes that no further comments were received with regards the additional information provided in relation to the Church of St George and is satisfied that the impact of the variation application on the Church of St George is not so significant that it should weigh against the granting of consent for this variation application.

#### Natural England

22. The Secretary of State notes that Natural England advised that the site of the varied Development is in close proximity to European designated sites and asked that more information was provided to assess the impact of the variation application on their interest features, in particular potential air quality impact on the Manchester Mosses Special Area of Conservation. This information was consulted on and Natural England confirmed that in their view, the project would not have a likely significant effect on the Manchester Mosses Special Area of Conservation either individually or in combination with other plans or projects. It was also Natural England's view that the proposed operations are not likely to damage any of the interest features of those Sites of Special Scientific Interest that are in close proximity to the project. The Secretary of State agrees with this view and is satisfied that there are no likely significant effects on any European site either alone or in combination with other projects that should prevent this development from proceeding.
23. The Secretary of State notes Natural England raised concern regarding the potential impact on lowland wet grassland priority habitat (as identified in the section 41 list of priority habitat required by the Natural Environment and Rural Communities Act 2006). The Secretary of State notes Natural England's advice that the developer must provide details of how this impact could be avoided, minimised and mitigated and is satisfied that this can be addressed through the conditions under the "Landscaping and Ecology" section of the consent.

#### Ministry of Defence ("MoD")

24. The Secretary of State notes that the MoD highlighted that the height of the development will necessitate the aeronautical charts and mapping records to be amended. The MoD therefore requested that a requirement be added to the consent for the developer to notify UK DVOF & Power Lines at the Defence Geographic Centre with the following details of the development prior

to it commencing; the location, date of commencement of construction, date of completion of construction, the height above ground level of the tallest structure, the maximum extension height of any construction equipment and details of aviation warning lighting fitted.

25. The Secretary of State agrees to the inclusion of this condition and has updated the deemed planning permission accordingly with the insertion of new condition (48).

#### Aviation Issues

26. The Secretary of State notes that the Civil Aviation Authority (“CAA”), Manchester City Airport and the MoD all noted that that the development should be equipped with some form of aviation warning lighting.
27. To address this concern, the Secretary of State has set out an additional requirement in the deemed planning permission to ensure that aviation warning lighting is put in place before the development is commissioned. This requirement will need to be approved by the relevant planning authority, in consultation with Manchester City Airport and the Secretary of State for Defence. All parties including the CAA have confirmed that they are content with this condition, inserted as new condition (47).

#### Relevant Planning Authority

28. The Secretary of State notes that the relevant planning authority requested a new condition to be inserted in to the planning permission requiring the developer to agree a scheme for artificial lighting on site during the operational phase of the development to minimise impacts of the development on local residents. The Secretary of State agrees to the inclusion of this condition and has updated the deemed planning permission accordingly with the insertion of a new condition (9A).
29. The relevant planning authority also requested an amendment to the condition relating to the protection and management of the Site of Biological Importance to include the creation of new habitat to replace the loss of some parts of the protected site. The Secretary of State agrees to the amendment and has updated condition (29) accordingly.

#### The Environmental Agency

30. The Secretary of State notes that the Environment Agency requested that a condition be removed that required the Applicant to submit a “flood defence scheme” as they stated that it was unclear what the flood defence scheme referred to and that it was unclear why this condition was necessary. The Secretary of State has therefore removed condition (46) from the original consent.

## **SECRETARY OF STATE'S CONSIDERATION ON CARBON CAPTURE READINESS ("CCR")**

31. The Secretary of State considered in relation to his determination of the original application for section 36 consent for the Development that "the Company has adequately demonstrated that the Development is CCR". The Secretary of State included in the section 36 consent conditions relating to CCR which were modelled on those contained in Annex G of the CCR Guidance.
32. The Secretary of State has considered whether the proposed variation to the section 36 consent would have any impact on his previous conclusions in relation to CCR for the Development. He notes that the Applicant submitted a "Carbon Capture Readiness Report Addendum, Revision I" with the variation application. He has consulted the Environment Agency and officials in the Office of Carbon Capture and Storage about the requirements for CCR in relation to the proposed variation and the information submitted by the Applicant.
33. As part of their application for section 36 consent, which the Secretary of State considers equally relevant to a variation application, applicants are required to demonstrate:
- that sufficient space is available on or near to the site to accommodate carbon capture equipment in the future;
  - the technical feasibility of retrofitting their chosen carbon capture technology;
  - that a suitable area of deep geological storage offshore exists for the storage of captured CO<sub>2</sub> from the proposed generating station;
  - the technical feasibility of transporting the captured CO<sub>2</sub> to the proposed storage area; and
  - the likelihood that it will be economically feasible within the generating station's lifetime, to link it to a full Carbon Capture and Storage ("CCS") chain, covering retrofitting of capture equipment, transport and storage.
34. The Secretary of State notes that the Environment Agency has stated that sufficient space is available to house the necessary carbon capture and storage infrastructure. The Environment Agency has also indicated that it accepts the technical feasibility of retro-fitting the infrastructure should the need arise to do so.
35. The Applicant has indicated that it still proposes to utilise spare capacity at two sites in the Irish sea, Morecambe North and Morecambe South, for the CO<sub>2</sub> produced and captured during the operation of the Development.
36. In determining the original application for section 36 consent, the Secretary of State considered that these approaches were acceptable and no information has subsequently been made available to him to cause him to consider the matter differently in relation to the current variation application.

37. The decision on the original section 36 Application considered that the economic assessment produced by the Applicant was in accordance with the requirements of the CCR Guidance insofar as it demonstrated that the fitting of carbon capture plant would be potentially viable over the lifetime of the proposed Development. In relation to the variation application, the Secretary of State notes the Applicant's assessment has presented reasonable scenarios under which the fitting of CCS equipment would be economically feasible.

#### Conclusion on CCR

38. The Secretary of State has considered the information provided by the Applicant and the comments of consultees both within and outside the Department of Energy and Climate Change. He notes that the consultees accept the proposals put forward by the Applicant and concludes, therefore, that the variation application conforms to the methodology in the CCR report and that there are no technical or economic obstacles to the grant of the requested variation on this matter.

#### **SECRETARY OF STATE'S CONSIDERATION OF COMBINED HEAT AND POWER**

39. The Secretary of State notes that the deemed planning permission already includes requirements for combined heat and power ("CHP"). He considers that the CHP conditions (Conditions (45) and (46)) remain appropriate and should be retained in the revised conditions.

#### **EQUALITY ACT 2010**

40. The Equality Act 2010 requires public authorities to have due regard in the exercise of their functions to:

- (a) the elimination of unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Act;
- (b) the advancement of equality of opportunity between people who share a protected characteristic and those who do not; and
- (c) the fostering of good relations between people who share a protected characteristic and those who do not.

41. The Secretary of State has considered the potential impacts of granting or refusing the variation application in the context of the general equality duty and has concluded that it is not likely to result in any significant differential impacts on people sharing any of the protected characteristics.

42. The Secretary of State does not, therefore, consider that either the grant or refusal of the variation application is likely to result in a substantial impact on equality of opportunity or relations between those who share a protected characteristic and others or unlawfully discriminate against any particular protected characteristics.

## **OTHER MATTERS**

43. The Secretary of State considers the following additional issues material to the merits of the variation of the section 36 consent:

- i) the fact that legal procedures for a variation of a generating station consent have been properly followed;
- ii) his policies on the need for and development of new electricity generating infrastructure, as set out in the *Overarching National Policy Statement for Energy (EN-1)* and the *National Policy Statement for Fossil Fuel Electricity Generating Infrastructure (EN-2)*.

## **SECRETARY OF STATE'S DECISION ON THE VARIATION APPLICATION**

44. The Secretary of State, having regard to the matters specified above, has decided to make a variation to the section 36 consent for the Development pursuant to section 36C. The section 36 consent as varied is annexed to the variation decision and subject to the conditions set out in the varied consent.

45. The Secretary of State also believes the Planning Conditions as revised form a sufficient basis on which the Development might proceed and therefore he has decided to issue a section 90(2ZA) direction to vary the planning permission on the basis of the conditions specified in the annex to that direction.

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

## **GENERAL GUIDANCE**

47. The validity of the Secretary of State's decision may be challenged by making an application to the High Court for leave to seek a judicial review. Such application must be made as soon as possible. Parties seeking further information as to how to proceed, including time limits, 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).

48. 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 36C of, and Schedule 8 to, the Electricity Act 1989 and section 90 of the Town and Country Planning Act 1990.

Yours sincerely

Giles Scott  
Head of National Infrastructure Consents