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Patrick Nolan
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Your Tilbury Green Power
ref: S36C application

3 August 2022

Dear Mr Nolan,

ELECTRICITY ACT 1989

THE ELECTRICITY GENERATING STATIONS (VARIATION OF CONSENTS) (ENGLAND AND WALES) REGULATIONS 2013

TILBURY GREEN POWER, TILBURY DOCKS, PORT OF TILBURY, ESSEX, RM18 7PU

1 THE APPLICATION

- 1.1 I am directed by the Secretary of State for Business, Energy and Industrial Strategy (“the Secretary of State”) to refer to the application dated 30 March 2022 (“the Application”) on behalf of Tilbury Green Power Limited (“the Applicant”) to vary the consent granted by the Secretary of State under section 36 of the Electricity Act 1989 on 27 August 2009 (“the Section 36 Consent”) to construct and operate a 60 MW biomass and energy from waste fuelled electricity generating station in Tilbury, Essex, RM18 7PU (“the Development”). The Section 36 consent was varied on 19 July 2011 to extend the latest date for commencement of development to 27 August 2015. The Section 36 Consent was also varied on 26 March 2020 to amend the design and layout of the energy from waste facility and to increase the overall generating capacity permitted by the S36 consent from 60MW to 80MW, while retaining the previously consented maximum waste throughput. The most recent variation to the Section 36 Consent was issued on 4 February 2021 to amend the Section 36 Boundary to exclude land associated with the Port of Tilbury, and to amend the limit on waste which could be transported to the site by road (“the Consented Development”).
- 1.2 The Application is to amend paragraph 2 of the Section 36 Consent and Condition (1) in the Section 90 (2ZA) deemed planning permission to increase the electrical export capacity of the Development from 80 MW to 88 MW (“the Varied Development”).

- 1.3 The Application notes that since the Development was first permitted in 2009, significant developments in technology have led to substantial improvements in the conversion of waste to electrical energy. This has resulted in the electrical capacity of the operating waste wood biomass facility (Phase 1) increasing up to 43 MW. The electrical capacity of the energy from waste facility (Phase 2) is expected to be up to 45 MW. Therefore, the total electricity export capacity for the Development is now predicted to be up to 88 MW.
- 1.4 The increase in electrical capacity will be achieved mainly due to technology improvements leading to higher energy conversion efficiency. No increase in annual waste throughput, traffic, air emissions, noise or any other matter assessed in the Environmental Impact Assessment will arise as a result. Therefore, the significance of the environmental effects will not differ from that predicted for the original Section 36 Consent. Moreover, the increase in efficient use of energy is beneficial to the environment in that more electricity is produced for the same waste throughput thus avoiding the need for electricity generation from other sources including fossil fuels.
- 1.5 The Secretary of State notes that no consultees offered any comments on the Application that indicated any contrary views on these matters to those set out by the Applicant.

2 SUITABILITY OF THE SECTION 36 VARIATION PROCEDURE FOR PERMITTING THE PROPOSED VARIATION

- 2.1 The guidance issued in 2013, 'Varying consents granted under section 36 of the Electricity Act 1989 for generating stations in England and Wales' ("the guidance note"), states:

"Changes in the design of generating stations which have been consented but not constructed which would allow them to generate an amount of power that would be inconsistent with the original consent are likely to be appropriate subject matter for a variation application, provided there are no major changes in the environmental impact of the plant. Similar changes to an existing plant could be appropriate subject matter for a variation application only if they did not involve physical extension of the generating station, relocation of generating plant, or the installation of new equipment that would amount to the construction of a new generating station".

- 2.2 The section 36 variation procedure does not allow a change in an existing consent that would result in a development that would be fundamentally different in character or scale from what has been originally granted. Any such changes would be the subject of a fresh application for consent.
- 2.3 The Secretary of State notes that the Applicant concluded there would be no significant additional impacts arising from the Varied Development when compared to those arising from the currently operational Development.
- 2.4 The Secretary of State considers that the Varied Development would not be fundamentally different in character or scale from the Consented Development, is in keeping with the guidance note for the section 36 variation procedure and that it is appropriate for this Variation Application to be considered under the section 36 variation procedure.
- 2.5 The Application was published in accordance with the Electricity Generating Stations (Variation of Consent) (England and Wales) Regulations 2013 ("the Variation Regulations") and served on Thurrock Council ("the relevant planning authority").

2.6 The Variation Application was subject to public consultation between 2 March 2022 and 11 May 2022.

3 SECRETARY OF STATE'S CONSIDERATION OF THE ENVIRONMENTAL INFORMATION

3.1 The Applicant provided a Supporting Statement (January 2022) as part of the information submitted with the Application. The Supporting Statement sets out overviews of: the legislative and local and national planning policy issues related to the Application; the existing Development and the surrounding area; details of the environmental assessment; the status of existing planning permissions and discharge submissions; and the consultation undertaken in developing the Application.

3.2 The Secretary of State considers that the information submitted by the Applicant is sufficient for him to determine whether any potential impacts of the Development are acceptable.

3.3 The Secretary of State has considered the information submitted by the Applicant along with submissions made by consultees and takes the view that there are no matters that would require him to refuse the Application.

4 SECRETARY OF STATE'S CONSIDERATION OF POSSIBLE EFFECTS ON DESIGNATED SITES

4.1 The Secretary of State is prohibited from granting a variation to a section 36 consent unless it can be demonstrated that any proposed change will not adversely affect the integrity of any Special Areas of Conservation ("SACs") and Special Protection Areas ("SPAs") that form part of the National Site Network designated under the Conservation of Habitats and Species Regulations 2017, or in the case that any proposed change were to adversely effect the integrity of these sites, that there are no feasible alternatives which would be less damaging to the sites, there are imperative reasons of overriding public interest, and sufficient compensation is provided to offset damage which could be caused to the sites.

4.2 On the basis of the information provided and in the absence of any views to the contrary from consultees, the Secretary of State considers that the Varied Development will not have any likely significant effects on any sites designated as part of the National Site Network or other protected sites either alone or in-combination with other plans or projects.

5 ISSUES RAISED DURING CONSULTATION

5.1 There were no objections to the Application. The submissions made to the Secretary of State in response to consultation on the Application were made by Thurrock Council, Natural England and the Environment Agency.

5.2 The Secretary of State notes that Natural England had no comments to make on the Application.

5.3 The Environment Agency and Thurrock Council confirmed that they had no objection to the Variation Application.

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

6.1 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 should consider any representations which have been made to him by a

relevant planning authority or any other person, where those representations are not withdrawn, and all other material considerations.

- 6.2 Representations made in respect of the Application were received by the Secretary of State from Thurrock Council, Natural England and the Environment Agency. The Secretary of State notes that none of the representations raised any objection to the Application being granted and did not raise any other matters which are material to his decision on whether to hold a public inquiry into the Application. There were no representations received by the Secretary of State save for those submitted by the organisations named above.

Conclusion

- 6.3 The Secretary of State has carefully considered the views of the relevant planning authority and statutory advisers and all other material considerations. He notes that there were no requests for a public inquiry to be held and that no substantive comments were submitted to him in respect of any matters arising from the Application. The Secretary of State is, therefore, of the view that there is no further information required to enable him to take a decision on the Application and that it would not, therefore, be appropriate to cause a discretionary public inquiry to be held into the Application.

7 OTHER MATTERS

- 7.1 The Secretary of State has considered the ongoing need for the Development. The Secretary of State notes the Overarching National Policy Statement for Energy (EN-1) sets out that for the UK to meet its energy and climate change objectives there is a continuing need for new electricity generating plants of the type proposed by the Applicant given the contribution it will make to securing energy supply.
- 7.2 On 27 June 2019, following advice from the Committee on Climate Change, the UK Government announced a new carbon reduction 'net zero' target for 2050 which resulted in an amendment to the Climate Change Act 2008 (the target for the net UK carbon account for 2050 changed from 80% to 100% below the 1990 baseline). The Secretary of State notes that the energy National Policy Statements continue to form the basis for decision-making under the Planning Act 2008 and are important and material matters in considering applications to vary section 36 consents.
- 7.3 The Secretary of State notes that consultation on the review of the energy National Policy Statements commenced on 6 September 2021 and closed on 29 November 2021. Although the consultation responses are still being considered, and the National Policy Statements are in draft form and have not been designated, the Secretary of State considers them to be relevant and important matters in considering applications for variations of section 36 consents. As such, he has had regard to the draft energy National Policy Statements in deciding the Application but does not consider that there is anything contained within the drafts of the relevant National Policy Statement documents that would lead him to reach a different decision on the Application.
- 7.4 The Secretary of State notes that the draft National Policy Statement for Renewable Energy Infrastructure (EN-3) states *"In accordance with the waste hierarchy, the recovery of energy from the combustion of waste, plays an important role in meeting the UK's energy needs. Furthermore, the recovery of energy from the combustion of waste forms an important element of waste management strategies in both England and Wales."*
- 7.5 In conclusion, the Secretary of State considers that the ongoing need for the Varied Development is established and that granting the requested variation would not be

incompatible with the amended Climate Change Act 2008 nor the draft revisions to the National Policy Statements and the published Net Zero Strategy 2021.

8 SECRETARY OF STATE'S CONSIDERATION OF THE REVISED PLANNING CONDITIONS

8.1 The Secretary of State has considered the revised planning conditions. The Secretary of State agrees they are suitable for inclusion in any varied Section 90 Direction which the Secretary of State may give. As indicated at paragraph 6.8 above, the Secretary of State has also included a new condition regarding the future feasibility of Combined Heat and Power that was subject to consultation with the Applicant and the local planning authority.

9 EQUALITY ACT 2010

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

- the elimination of unlawful discrimination, harassment and victimisation and any other conduct prohibited by or under the Act;
- the advancement of equality of opportunity between people who share a relevant protected characteristic (e.g. age; sex and sexual orientation; gender reassignment; disability; marriage and civil partnerships; pregnancy and maternity; religion or belief; and race.) and persons who do not share it; and
- the fostering of good relations between persons who share a relevant protected characteristic and those who do not share it.

9.2 The Secretary of State has considered the potential impacts of granting or refusing the 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 persons sharing any of the protected characteristics and sees no evidence which suggests that such differential impacts are likely in the present case.

9.3 The Secretary of State does not, therefore, consider that either the grant or refusal of the 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.

10 HUMAN RIGHTS ACT 1998

10.1 The Secretary of State has also considered the potential infringement of human rights in relation to the European Convention on Human Rights, by the Varied Development. He considers that the grant of a consent in respect of the Varied Development would not violate any human rights as enacted into UK law by the Human Rights Act 1998.

11 NATURAL ENVIRONMENT AND RURAL COMMUNITIES ACT 2006

11.1 The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006, has to have regard to the purpose of conserving biodiversity, and in particular to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when granting a variation to a section 36 Consent.

11.2 The Secretary of State is satisfied there has been due regard to 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 the information that the Applicant submitted to him with the Application.

12 SECRETARY OF STATE'S DECISION ON THE VARIATION APPLICATION

- 12.1 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 of the Electricity Act 1989. The Section 36 Consent as varied is annexed to the variation decision and subject to the conditions set out in the varied consent.
- 12.2 The Secretary of State also considers the planning conditions, as revised, form a sufficient basis on which the Varied Development might proceed. The Secretary of State has therefore decided to make a direction under section 90 (2ZA) of the Town and Country Planning Act 1990 to vary the deemed planning permission on the basis of the conditions specified in the annex to that direction.
- 12.3 The Secretary of State notes that no physical construction is required as part of these Variation proposals and that there will be no change to the main fuel source. He also notes that there have been no significant changes in the environmental and other impacts identified in relation to the Varied Development. The Secretary of State is therefore of the view that the Varied Development does not result in a development that is fundamentally different in character or scale to that originally consented. The Secretary of State is of the view that the Varied Development is appropriate and necessary and is satisfied that the changes are of a kind that is reasonable to authorise by means of the variation procedure in section 36C of the Electricity Act 1989.
- 12.4 I accordingly enclose the Secretary of State's variation of consent under section 36C of the Electricity Act 1989 and a varied direction under section 90(2ZA) of the Town and Country Planning Act 1990.

13 GENERAL GUIDANCE

- 13.1 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 an application must be made as soon as possible. Parties seeking further information as to how to proceed, including the relevant time limits for making an application, 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).
- 13.2 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 sections 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



Head of Energy Infrastructure Planning Delivery