



Department for
Business, Energy
& Industrial Strategy

1 Victoria Street
London SW1H 0ET

T +44 (0) 20 7215 5000

E beiseip@beis.gov.uk

www.beis.gov.uk

[Redacted]

6 New Bridge Street
London
EC4V 6AB

Your 15774
ref:

09 November 2022

Dear Mr Bullock,

ELECTRICITY ACT 1989

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

RYE HOUSE POWER STATION, HODDESDON, HERTFORDSHIRE, EN11 0RF

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 29 July 2022 (“the Application”) on behalf of VPI Power Limited (“the Applicant”) to vary the consent granted by the Secretary of State under section 36 of the Electricity Act 1989 on 19 December 1990 (“the Section 36 Consent”) to construct and operate a combined cycle gas turbine (“CCGT”) generating station of up to 680MW in Hoddesdon, Hertfordshire, EN11 0RF (“the Development”). The Section 36 consent was varied on 30 April 1991 to make amendments to the consent to reflect the as built parameters and to make other minor changes to definitions used within the consent.
- 1.2 The Application proposes to vary the Section 36 Consent and the Section 90 Direction in order to allow for the installation of a Synchronous Condenser at Gas Turbine No. 13 (“the Proposed Development”). Synchronous Condensers consists of the installation of a clutch mechanism and several flywheels installed between the gas turbine and its associated generator. This enables the Development to provide improved voltage regulation, inertia and stability on the electricity grid network, helping to manage fluctuations in power.
- 1.3 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 Proposed Development when compared to those arising from the currently operational Development.

2.4 The Secretary of State considers that the Proposed 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 Broxbourne Borough Council ("the Relevant Local Planning Authority").

2.6 The Application was subject to public consultation between 24 August 2022 and 3 October 2022. As the Relevant Local Planning Authority, Broxbourne Borough Council had until 24 October 2022 to provide their consultation response.

3 SECRETARY OF STATE'S CONSIDERATION OF THE ENVIRONMENTAL INFORMATION

3.1 The Secretary of State notes that a screening opinion was issued to the Applicant on 5 May 2022 under regulation 10 of The Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations ("the 2017 Regulations"). The screening opinion concluded that there was no need for the Applicant to provide information to support the Application in a form which reflected the requirements of the 2017 Regulations.

3.2 The Applicant provided a Supporting Statement as part of the information submitted with the Application. The Supporting Statement sets out overviews of: the site and its planning history; the legislation and guidance relating to variation applications; the consultation that had been undertaken in developing the Application; a description of the Proposed Development and the proposed changes to the consent; the planning policy framework; and, a planning assessment.

- 3.3 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.
- 3.4 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 The Screening Request that was submitted to the Secretary of State by the Applicant on 17 March 2022 with a request for a screening opinion to be issued by the Secretary of State, which was issued on 5 May 2022, notes that:
- there are no statutorily designated nature conservation sites within the limits of the Proposed Development;
 - the Proposed Development is located within the Impact Risk Zone ("IRZ") of the Rye Meads Site of Special Scientific Interest ("SSSI"). Natural England guidance states that, if a planning application is located within an IRZ and falls within certain categories of development as defined by Natural England (for example, development requiring its own water supply), then Natural England should be consulted as there are likely effects on the SSSI. In this case, the Proposed Development does not match the description of any categories for development for the Rye Meads SSSI and, therefore, the Proposed Development is unlikely to affect the SSSI.
- 4.3 The likely effects of the Proposed Development are not predicted to materially differ from those of the existing Rye House Power Station. The Screening Report concludes that the proposed installation of a synchronous condenser is not predicted to have any significant effects on the environment.
- 4.4 The Secretary of State determined in the Screening Opinion that the Proposed Development is not EIA development, and subsequently, there is no need for an Environmental Impact Assessment or Environmental Statement to be submitted.
- 4.5 Natural England ("NE") had no objection to the Application. NE advised that the decision that a likely significant effect can be ruled out should be recorded, and noted that the following points may provide a suitable justification for that decision: no changes to surface water or foul water drainage systems, as the work area will drain to the existing systems; and, no significant effects from air or noise emissions are anticipated during the construction period of 3-4 months.
- 4.6 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 Proposed 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 Broxbourne Borough Council (the Relevant Local Planning Authority), NE, East Herts District Council (“EHDC”) the Environment Agency (“EA”), the Canal and River Trust (“CRT”), Hertfordshire County Council (“HCC”), the Health and Safety Executive (“HSE”), Historic England, the Lee Valley Regional Park Authority (“LVRPA”), the Ministry of Defence (Defence Infrastructure Organisation) (“MOD DIO”), and Nazeing Parish Council.
- 5.2 As set out in paragraph 4.5 above, NE had no objection to the Application. NE advised that the decision that a likely significant effect can be ruled out should be recorded.
- 5.3 Broxbourne Borough Council replied confirming that it has no objection to the Application.
- 5.4 The EA confirmed that it had no objection to the Application. The EA’s response noted that the Applicant should seek to amend its permit(s) as appropriate should the planned monitoring detect any deviation into the agreed parameters, including an increase in noise.
- 5.5 EHDC responded noting that the Rye House Power Station is not within its catchment area.
- 5.6 The CRT’s consultation response noted that the proposed extension to the turbine hall would be modest and that, considering the set back and existing landscaping, there would appear to be limited visibility of it from both the River Lee Navigation and the River Stort and their respective towpaths. The response also noted that conditions 4, 5, 6 and 8 would address matters related to potential impacts on boaters including noise impacts. The response highlighted the need for the Trust to retain access to the lockside and that it should be ensured that access is not affected during construction. The response noted that condition 8 requires a Construction and Environmental Management Plan and Construction Traffic Management Plan which would address this matter of access.
- 5.7 HCC are the relevant Lead Local Flood Authority for this Application. HCC responded to the consultation confirming it had no comment to make.
- 5.8 HSE confirmed it had no comment to make on the Application.
- 5.9 Historic England responded to the consultation and confirmed that it had no objection to the Application.
- 5.10 The MOD DIO responded to the consultation confirming it had no safeguarding objections to the Application.
- 5.11 Nazeing Parish Council responded to the consultation confirming it had no objection to the Application.
- 5.12 The LVRPA responded to the consultation confirming that the LVRPA was consulted early in the process by the Applicant and noted that this enabled officers at the LVRPA to raise a number of points. The consultation response noted that the points raised by offices were addressed in table 4.1 of document 8 ‘Application Supporting Statement’ of the 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 The Secretary of State notes that none of the representations, as summarised in paragraphs 5.1 to 5.12 above, 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.

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) and the National Policy Statement for Fossil Fuel Electricity Generating Infrastructure (EN-2) both set 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. Indeed, paragraph 3.3.35 of the draft Overarching National Policy Statement for Energy (EN-1) states that *“electricity generated from unabated natural gas will continue to be needed during the transition to net zero while we develop and deploy the low carbon alternatives that can replicate its role in the electricity system. This will ensure that the system remains reliable and affordable”*.
- 7.4 In addition, paragraph 3.3.36 in the draft EN-1 sets out that *“Although the expectation is that low carbon alternatives will be able to replicate the role of natural gas in the electricity system over time, some natural gas-fired generation without CCS, running very infrequently, may still be needed for affordable reliability even in 2050 but this can still be net zero consistent if the emissions from their use are balanced by negative emissions from GHG Removal technologies.”*

- 7.5 Further, paragraph 1.1.1 of the draft National Policy Statement for Natural Gas Energy Generating Infrastructure (EN-2) sets out that *“Electricity generated from unabated natural gas will continue to be needed during the transition to a net zero economy in 2050, and potentially beyond, while we develop and deploy the low carbon alternatives that can replicate its role in the electricity system, ensuring that the system is reliable and affordable”*.
- 7.6 Finally, paragraph 21 of Chapter 2 of the Net Zero Strategy which was published on 19 October 2021, sets out that *“[B]y 2035, all our electricity will need to come from low carbon sources, subject to security of supply, moving to a fully decarbonised power system whilst meeting a 40-60% increase in demand. Expected residual emissions will be limited to CCUS plants, unabated gas, and energy from waste. This means increased investment in the grid network, electricity storage solutions and flexible grid management, to ensure decarbonisation without risking security of supply.”*
- 7.7 In his consideration of the planning balance, the Secretary of State has weighed the benefits of the Application against the harms associated with it. The Secretary of State notes that the addition of the condenser will serve the benefit of making the Development more responsive and resilient to fluctuations in energy supply and will facilitate renewable energy supply nationally, through the provision of grid stability services that allow greater deployment of renewable electricity. Synchronous condensers and the services they provide are becoming increasingly important as the UK becomes more reliant on renewable technologies that generate power intermittently. The Secretary of State has weighed these benefits against the harms associated with the non-significant effects arising from the Proposed Development. The Secretary of State notes that conditions attached to the variation consent will secure appropriate mitigations for these non-significant effects, including condition 8 which secures the submission of a Construction Transport Management Plan which will demonstrate construction worker parking can be accommodated within the existing power station, and condition 9 which secures the submission of a Construction Environmental Management Plan to Broxbourne Borough Council for approval. Noise mitigations are secured by conditions 5 and 6. On balance, the Secretary of State concludes that the benefits of the Proposed Development outweigh the harms.
- 7.8 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. The Secretary of State notes that the 2022 British Energy Security Strategy recognises that gas continues to be important for our energy system, it will be an important transition fuel, and that the flexibility of gas generating stations assists in the ongoing deployment of renewable generation capacity.

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.

9 PUBLIC SECTOR EQUALITY DUTY

- 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; gender; gender reassignment; disability; marriage and civil partnerships; pregnancy and maternity; religion and 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 has decided to insert the word "about" defined as "a tolerance of up to 5% is permitted" in paragraph 2 of the variation. The paragraph now reads "with a gross output of about 680 megawatts" (emphasis added). This amendment was not requested by the Applicant as part of its Application for the Proposed Development. The Secretary of State notes that the existing consent allows for up to 680MW. Noting the technological and efficiency improvements that have been implemented at the Development since the original Section 36 Consent was granted in 1990, the use of the word "about" in this paragraph

provides the flexibility required for the Development to continue producing at maximum efficiency. Earlier consents made around the time of the Section 36 Consent for this Development often included a 5% tolerance to account for the uncertainty that sometimes existed in relation to the upper capacity limits of gas turbines.

- 12.3 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) TCPA to vary the Section 90 Direction on the basis of the conditions specified in the annex to that direction.
- 12.4 The Secretary of State 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.
- 12.5 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

09/11/2022

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Deputy Director, Energy Infrastructure Planning