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Your ref GDBC/001/00230/C

12 January 2018

Dear Mr Chandler

ELECTRICITY ACT 1989

TOWN AND COUNTRY PLANNING ACT 1990 (as amended)

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

DRAKELOW CCGT GENERATING STATION

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 31 July 2017 ("the Variation Application") submitted by Burgess Salmon LLP on behalf of Powersite DL Limited ("the Applicant") to vary the consent granted by the Secretary of State on 16 October 2007 ("the original consent") to E.ON UK plc ("E.ON") to construct and operate a 1220MW Combined Cycle Gas Turbine ("CCGT") generating station ("the Development") within the administrative area of South Derbyshire District Council. The consent also gave a direction under section 90(2) of the Town and Country Planning Act 1990 ("planning condition") that planning permission for the Development be deemed to be granted. The commencement period of the original consent was extended to 16 October 2012 in 2010, then in 2011 to 16 October 2015 and further extended to 16 October 2018 on 6 July 2016.

1.2 The variation being requested ("section 36C variation") is to allow for up to three double and one single combined cycle units comprising 14 gas turbines, one or more once through steam generators and associated steam turbine, ancillary plant and equipment and the necessary buildings and civil engineering works ("the Development"), alongside

minor amendments to the related deemed planning permission. The varied Development will use the same fuel source and same technology (combined cycle gas turbines) as the consented Development, and the variation has been sought to allow for a more efficient generating system. In view of this and the terms of the variation requested the Secretary of State is satisfied that the variation being requested is of a kind that is reasonable to authorise by means of the variation procedure in section 36C of the Electricity Act 1989.

1.3 The varied Development would comprise:

- (a) A CCGT generating station with a capacity of up to 1,220MW consisting of:
 - i. 14 gas turbines;
 - ii. one or more once through steam generators; and
 - iii. one or more steam turbines;
- (b) ancillary plant and equipment; including water storage tanks and gas receiving facility; and
- (c) the necessary buildings (including administration offices) and civil engineering works.

1.4 The application for the section 36C variation was published in accordance with the Electricity Generating Stations (Variation of Consents) (England and Wales) Regulations 2013 (“the Variation Regulations”) and served on the relevant planning authority.

1.5 In accordance with the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017 (“the EIA Regulations”) which apply to the variation of a section 36 consent, a Supplementary Environmental Impact Report (“SEIR”) dated July 2017 was submitted with the Application. The document describes the Development and updates the analysis of the environmental effects set out in the Environmental Statement dated September 2005 submitted with the original application and the updated Environmental Statement dated July 2015 submitted with the application for the 2016 varied consent.

1.6 In accordance with the EIA Regulations and the Variation Regulations, the SEIR was advertised and placed in the public domain, along with the previously submitted environmental information, to give people an opportunity to comment on it.

2. SECRETARY OF STATE’S CONSIDERATION OF THE REVISED PLANNING CONDITIONS

2.1 The Secretary of State has considered the revised Planning Conditions sought with the application carefully. He agrees that they are suitable for inclusion in any direction under section 90(2ZA) of the Town and Country Planning Act 1990 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.

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

- 3.1 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 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.
- 3.2 No objections were received by the Secretary of State 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 ("NE") and the Environment Agency.

Conclusion

- 3.3. 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 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 public inquiry to be held into the Application.

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

- 4.1 Regulation 7 of the EIA Regulations prohibits the Secretary of State from granting a variation under section 36C of the Electricity Act 1989 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 SEIR submitted by the Applicant is sufficient to allow him to make a determination on the Application and that the Applicant has followed the applicable procedures in the EIA Regulations.
- 4.3 The Secretary of State has, in accordance with regulation 7 of the EIA Regulations, taken the environmental information into consideration: in addition to the Environmental Impact Report, he has considered the comments made by the relevant planning authority, those designated as statutory consultees under regulation 4 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 Applicant has agreed to take or will be required to take under the conditions attached to the section 36 consent as varied and the Planning Conditions, also as varied, 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.
- 4.5 The Secretary of State also considers, in view of the proposed variation, that the environmental impacts will not increase in significance beyond that which was assessed for the generating station as originally consented.
- 4.6 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.

5. SECRETARY OF STATE'S CONSIDERATION OF POSSIBLE EFFECTS ON A EUROPEAN SITE

- 5.1 The Conservation of Habitats and Species Regulations 2017 ("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 ("AA") 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 be granted only if it can be shown that the Development will not adversely affect the integrity of the European Site (regulations 63(5) and 64). Regulation 63(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.
- 5.2 The site of the proposed Development is in close proximity to the River Mease which has been designated a Special Area of Conservation ("SAC") and a Site of Special Scientific Interest ("SSSI") because of its water crow-foot habitat and the species it supports which includes the native white-clawed crayfish, otters and the spined loach and bullhead fish species.
- 5.3 Natural England ("NE") advised that the proposed Development would be unlikely to have a significant effect on any European Site, and nor would it damage or destroy the interest features for which the SSSI's had been designated.
- 5.4 BEIS officials concur with the position advised by NE and concluded that the Development would be unlikely to have a significant effect upon the River Mease SAC and SSSI. The Secretary of State agrees with the advice provided by Natural England and has therefore concluded that an AA is not required in this case.

Conclusion

- 5.5 In conclusion, therefore, the Secretary of State considers that his duties in relation to potential impacts on European Sites and Species have been properly discharged.

6. SECRETARY OF STATE'S DECISION ON CARBON CAPTURE READINESS ("CCR")

- 6.1 The Secretary of State notes that the original consent was issued in 2007 before the adoption of the Carbon Capture Readiness Guidance ("the CCR guidance") and the Carbon Capture Readiness (Electricity Generating Stations) Regulations 2013 ("the CCR Regulations"). There is therefore no provision made for CCR in compliance with CCR guidance or CCR Regulations in the original consent. He further notes that neither the CCR Guidance nor the CCR Regulations require compliance in the case of a variation to an existing section 36 consent where there is no increase in capacity.

Conclusion on CCR

- 6.2 The Secretary of State has considered whether the proposed variation would be subject to the CCR Guidance and the CCR Regulations, and has determined that as the Applicant is not seeking an increase in the generating capacity of the Development through the Variation Application, there is no requirement to apply either the CCR Guidance or the CCR Regulations.

7. SECRETARY OF STATE'S CONSIDERATION OF COMBINED HEAT AND POWER ("CHP")

- 7.1 The Application is covered by the Departmental published guidance for all conventional power station proposals, requiring developers to demonstrate opportunities for CHP have been seriously explored before section 36 consent and a section 36 variation can be granted. The Secretary of State is satisfied that the Applicant has complied with those requirements.
- 7.2 The Secretary of State notes that as part of the original consent, consideration was given to the opportunity for CHP but that it was concluded that as no suitable customer was located within a reasonable proximity to the site, CHP was therefore not technically or economically feasible. The Applicant's updated Environmental Report states that this position has not changed.

Conclusion on CHP

- 7.3 The Secretary of State is content that the Applicant's conclusion that, at the present time, there are no viable options for CHP. The Secretary of State has retained condition 42 to ensure that opportunities for CHP are explored wherever possible and to ensure that the matter will be kept under review in consultation with relevant bodies in a way that will allow for the provision of heat and power to a third party if an opportunity arises in the future.

8. SECRETARY OF STATE'S CONSIDERATION OF ISSUES RAISED DURING CONSULTATION

- 8.1 Representations were received from SDCC (the relevant planning authority), Highways England, the Met Office, the National Air Traffic Service the Health and Safety Executive and the Coal Authority that raised no objection to the variation being sought by the Applicant. NE also responded to the consultation to confirm that they had no objection to the application, and to also confirm that in their view the Development would not have any adverse impact on the River Mease SAC and SSSI. No responses were received from members of the public.

Environment Agency

- 8.2 The Environment Agency ("EA") raised no objection to the Development but recommended that the Applicant contact Derbyshire County Council ("DCC"), which is now the statutory consultee on surface water drainage design, to discuss the conditions relating to surface water conditions in the planning conditions, and to amend these conditions from the EA to DCC as the Lead Local Flood Authority ("LLFA") once any new surface water conditions had been agreed. The Secretary of State notes that in its response to the EA, the Applicant confirmed that the SEIR had been sent to DCC as part of the Variation Application, and that a further copy was sent to DCC specifically in its role as the LLFA to inform further discussions. DCC confirmed that it agreed the reference to the EA in condition 17 should be changed to DCC, and EA confirmed that it was content with this change.
- 8.3 The EA also stated that a variation to the existing environmental permit to take into account the proposed variation to the Development would be required. In response, the Applicant confirmed that it intends to apply for a variation to the existing environmental

permit at a later date, and the EA did not raise any objections to the Applicant's approach. The Secretary of State notes that no party has made any representations as to why a variation to the existing environmental permit could not ultimately be granted and so also has no objections to the Applicant's approach.

Historic England

- 8.4 Historic England ("HE") said that it had no comments to make on the application other than to refer the Applicant to the advice of the DCC Archaeologist. In its response to the consultation on the proposed variation, DCC confirmed that with regard to underground archeology, the impacts of the varied Development are likely to be the same as previously assessed, and therefore the conditions 22 and 24 for archaeological investigation and recording at the pre-development stage contained within the existing consent remain appropriate. Furthermore, the Applicant responded to Historic England to confirm that liaison with the DCC archeologist will commence and continue throughout the detailed design stage of the project to ensure accurate and appropriate material is presented, and that this will include discussion of planning conditions and any potential mitigation required on the site to be agreed in advance. The Secretary of State is therefore satisfied that the Applicant will ensure that any archeological interests identified will be adequately protected.

Derbyshire County Council

- 8.5 In its response, DCC raised concerns relating to the adequacy of assessment of impacts on River Mease SAC and the lack of assessment of cumulative impacts other than in Ecology chapter of SEIR. DCC suggested that the Secretary of State may wish to consider further with the Applicant to determine whether SEIR needs to be updated to include further cumulative impact assessment. The Applicant responded to confirm that impacts on the River Mease SAC are included in the Air Quality Assessment contained within the SEIR for the Variation Application, and also summarised the response from NE to the consultation which confirmed that in NE's view the Air Quality Assessment in the SEIR has provided suitable evidence to determine that the Development will not have likely significant effects on the conservation features of the River Mease SAC.
- 8.6 On cumulative impacts, the Applicant responded that the approach it took in the SEIR was to assess any difference in impacts between the consented Development and any impacts arising from changes in design introduced through the varied Development. The Applicant confirmed that due to the proposed reduction in the scale of the Development, it considers that the impacts of the proposal are less than those associated with the consented scheme. The Applicant stated that if there were predictions of greater impacts from the consented scheme, this may have called into question the acceptability of the cumulative assessments for the proposed variation. The Secretary of State agrees with the approach taken by the Applicant in its SEIR, and that in the absence of any increased impacts from the varied Development there is no need for further assessment of cumulative impacts.

Severn Trent Water

- 8.7 Severn Trent Water responded after the close of the consultation to say that it could not tell from the Application documentation whether the varied consent would have any impact on its ability to supply water or remove wastewater. Following confirmation from the Applicant that the varied consent will not require abstraction or discharge from the River

Trent, Severn Trent Water confirmed that it did not have any objections to the variations being sought by the Applicant.

Consideration of Other Material Issues

- 8.7 The Secretary of State has also considered 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)* in determining this Section 36C Variation Application. The Secretary of State considers that the Variation Application is consistent with the policies set out in the National Policy Statements (EN-1 and EN-2). The Secretary of State also notes that in its response to the consultation on the application for a variation, South Derbyshire District Council confirmed that the principle of new power generation on the Development site is consistent with the policies included in the South Derbyshire Local Plan.
- 8.8 The Secretary of State considers the following issues material to the merits of the Application:
- (a) the Applicant has provided adequate environmental information for the Secretary of State to judge the impacts of the proposed Varied Development;
 - (b) the matters specified in paragraph 1(2) of Schedule 9 to the Electricity Act 1989 have been adequately addressed by means of the EIR and the Secretary of State has judged that the likely key environmental impacts are acceptable;
 - (c) the views of the relevant planning authority, statutory consultees under the Habitats Regulations, and all other relevant matters have been carefully considered;
 - (d) the Secretary of State is aware that the varied Development would require a variation to the current Environmental Permit from the Environment Agency before it could operate the Development. He notes that the Applicant intends to apply for the variation at a later date, and that the Environment Agency did not raise any objections to the Applicant's approach; and
 - (e) the legal procedures for considering an application for a variation of the generating station consent and planning conditions have been properly followed.

9. EQUALITY ACT 2010

- 9.1 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.

- 9.2 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.
- 9.3 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.

10. SECRETARY OF STATE'S DECISION ON THE VARIATION APPLICATION

- 10.1 The Secretary of State has had regard to the matters specified above and has decided to grant a variation of 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 is subject to the conditions set out in the varied consent. The Secretary of State also believes the planning conditions as varied form a sufficient basis on which the Development might proceed, and has, therefore decided to issue a section 90(2ZA) direction that the conditions to the deemed planning permission be varied as specified in the annex to that direction. The reasons for the variation to particular conditions are as explained in the annex to this letter.
- 10.2 I accordingly enclose the Secretary of State's variation of the consent under section 36C of the Electricity Act 1989 and of the deemed planning permission under section 90(2ZA) of the Town and Country Planning Act 1990.

11. GENERAL GUIDANCE

- 11.1 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 WC2A 2LL.
- 11.2 This decision does not convey any approval or consent that may be required under any enactment, bye-law, order or regulation other than sections 36 and 36C of and Schedule 8 to the Electricity Act 1989 and section 90(2ZA) of the Town and Country Planning Act 1990.

Yours sincerely

Gareth Leigh

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Head of Energy Infrastructure Planning