



[redacted]  
Savills  
By email only: [redacted]@savills.com

16 April 2024

Dear [redacted],

## **FERRYBRIDGE 1&2 ENERGY FROM WASTE CARBON CAPTURE AND STORAGE**

### **REQUEST TO VARY THE DIRECTION BY THE SECRETARY OF STATE UNDER SECTION 35 AND SECTION 233(2) OF THE PLANNING ACT 2008 (AS AMENDED) DATED 20 FEBRUARY 2024**

1. Thank you for your email and letter received 19 March 2024, in which you set out the rationale for your request to vary the section 35 Direction given by the Secretary of State dated 20 February 2024.
2. Your letter noted that you consider the definition of the term “Proposed Project” contained within the 20 February 2024 Direction to be too broad. You have noted that:

*“[paragraph 2, 7 and 8 of the 20 February 2024 Direction] should be seen in the context that, Appendix A of the Applicant’s request for a direction distinguished between, on the one hand, the “Proposed Project of National Significance” (being the ‘Carbon Capture Equipment’ as defined above) and, on the other hand, the “Associated Development” and “Ancillary Matters” connected therewith.*

*The request sought a direction in respect of only the former i.e. development consent would be required for the “Proposed Project of National Significance”, but not the other two elements. This approach reflected the approach made on a number of recent section 35 requests, and crucially, the form of section 35 Directions then made, including the Cory Decarbonisation Project and Net Zero Teesside.*

*The Applicant’s concern is that, taking paragraphs 2 and 7 together, the Direction does not limit its effect to the “Proposed Project of National Significance” because the definition of the “Proposed Project” in paragraph 2 of the existing direction incorporates, in addition to that, the “Associated Development” and “Ancillary Matters” without any spatial or temporal limit.*

*As a consequence, the Direction as currently drafted necessitates that all aspects of the Proposed Project will be subject to the PA08 regime both at the construction stage, but also in respect of the on-going operation of the CCS Project.”*

3. You have therefore provided a new revised version of the Direction which inserts the definition of the Project of National Significance (“the PNS development”) in relation to the first bullet point in paragraph 2 of the Direction. Paragraph 7 and 8 of the Direction

subsequently direct that the PNS development is to be treated as development for which development consent is required.<sup>1</sup>

4. The Secretary of State considers that this narrower definition is appropriate in this case and notes that it is consistent with the original request for a section 35 Direction (as set out above).
5. In considering the request to vary the original section 35 Direction, the Secretary of State has also considered whether the requirements in sections 35 and 35ZA of the Planning Act 2008 have been met. The Secretary of State is satisfied that the request to vary is a 'qualifying request' in accordance with section 35ZA(11). The Secretary of State is further satisfied that the Proposed Project (which, for clarity, is primarily made up of the PNS development) is within one of the qualifying infrastructure fields listed in section 35(2)(a)(i) (energy); will be wholly in England; and does not fall within the existing definition of a "nationally significant infrastructure project". This position and the reasoning set out in the annex to the Direction have not changed since the original request was made and have therefore not been changed in the varied Direction.
6. The Secretary of State has therefore agreed to vary the Direction in accordance with section 35 and 233(2) of the Planning Act 2008. The varied Direction is included alongside this letter and will be published on gov.uk in due course, alongside your request to vary the Direction.

Yours sincerely

John Wheadon

Head of Energy Infrastructure Planning Delivery

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<sup>1</sup> The revised version of the Direction that you provided also included a new paragraph 9 stating that the Direction varies the Secretary of State's previous Direction dated 20 February 2024. This line has not been included in the varied Direction but has been reflected in the title of the Direction.