



Department for
Business, Energy
& Industrial Strategy

Mr Geoff Bullock
Partner
Dalton Warner Davis LLP
21 Garlick Hill
London
EC4V 2AU

**Department for Business, Energy &
Industrial Strategy**

1 Victoria Street,
London SW1H 0ET
T: +44(0)300 068 5677
E: gareth.leigh@beis.gov.uk
www.gov.uk/beis

1 March 2019

ELECTRICITY ACT 1989

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

KEADBY II POWER STATION PROJECT, KEADBY POWER STATION SITE, TRENTSIDE, KEADBY, NEAR SCUNTHORPE, NORTH LINCOLNSHIRE,

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 10 July 2018 ("the Application") on behalf of Keadby Developments Limited ("the Applicant") to vary the consent of the Secretary of State under section 36 of the Electricity Act 1989 ("the Act") dated 10 September 1993, as varied on 3 November 2016 ("the 2016 variation") and 21 December 2017 ("the 2017 variation") under section 36C of the Act ("section 36 consent") to construct and operate the Keadby II combined cycle gas turbine ("CCGT") generating station at Trentside, Keadby, North Lincolnshire ("the Development"). It also seeks to vary a direction under section 90(2ZA) of the Town and Country Planning Act 1990 ("section 90 direction") that deemed planning permission for the Development be varied.
- 1.2. The Variation being requested ("section 36C variation") seeks minor changes to the section 36 consent. The changes being sought follow a decision by the Applicant to proceed with the multi-shaft plant configuration granted by the Secretary of State in the 2016 and 2017 variations. In taking this decision, further detailed design work has been undertaken by the Applicant that has resulted in some minor changes to the plant layout and dimensions of the main buildings and structures. These are illustrated by the multi-shaft plans that form part of the Application.



- 1.3. It is proposed by the Applicant to simplify the consent by changing Condition 13 so that instead of referencing the Consolidated Parameter Layout Plan, it references the latest multi-shaft plans. It is also proposed that Condition 13 refers to the updated building/structure dimensions within the Environmental Impact Assessment (“EIA”) Report where these supersede the dimensions of Tables 2.1 and 2.2 of the EIA Report dated July 2017. The changes to Condition 13 are intended to provide greater certainty and clarity to the local planning authority as to the details it will be asked to approve under the Condition and the plant that will be built at the site.
- 1.4. On 27 July 2018, the Secretary of State confirmed to the Applicant that the Application was “suitable for publication” under Regulation 4(6) of the Electricity Generating Stations (Variation of Consents)(England and Wales) Regulations 2013 (“the 2013 Regulations”), and the Applicant published notice of the Application in accordance with Regulation 5, and Regulation 22 of the 2017 EIA Regulations. The Application was advertised in the London Gazette and for two successive weeks in two newspapers circulating in the locality of the proposed development. The advertised notice specified where the Application documents could be viewed and/or purchased and that any person wishing to make representations should do so by no later than 8 September 2018. The Application and notice was served on the relevant planning authority, North Lincolnshire Council (“the relevant planning authority”) in accordance with Regulation 5(2)(b) of the 2013 Regulations. The relevant planning authority had until 1 October 2018 to make its views known to the Secretary of State in accordance with Regulation 8(1)(a)(i) of the 2013 Regulations.
- 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 consent by virtue of regulation 7 of the 2013 Regulations, the EIA Update report that forms part of the Application was advertised and placed in the public domain to give people an opportunity to comment.

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

- 2.1 The Secretary of State has considered the revised planning conditions. He agrees they are suitable for inclusion in a Direction under section 90(2ZA) of the Town and Country Planning Act 1990 which the Secretary of State may give, subject to the amendments 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 2013 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
- 3.2. have been made to the Secretary of State by a relevant planning authority or any other person where those representations are not withdrawn and all other material considerations.

- 3.2. No objections were received by the Secretary of State to the proposed variation from the relevant planning authority or Schedule 2 consultees – Historic England, National Air Traffic Services (“NATS”), Highways England, the Environment Agency, National Grid Gas plc and National Grid Electricity Transmission plc (together “National Grid”). A member of the public raised concerns regarding the site and ownership plan, closure of highways taking place unlawfully, and issues around access to public rights of way where they were of the view that these were being stopped up without legal authority.

Conclusion

- 3.3. The Secretary of State has considered the views of the relevant planning authority, consultees, concerns raised by the member of the public and all other material considerations (see Sections 5 and 6 below). The Secretary of State considers there is nothing further that needs examining and that it would not be appropriate to cause a public inquiry to be held into the section 36C Variation Application.

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

- 4.1. Regulation 6 of the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017 prohibits the Secretary of State from granting a variation of a section 36 consent unless the Secretary of State has first taken into consideration the environmental information, as defined in the EIA Regulations.

- 4.2. The Secretary of State is satisfied that the updated EIA Report (June 2018) is sufficient to allow him to make a determination on the Application. He has considered there are no additional likely significant environmental effects between those assessed for the 2017 variation and Keadby II as proposed to be built under the Application. The Secretary of State agrees with the Applicant therefore that the conclusions of the 2017 EIA Report are still valid. The proposed variation will not introduce any new likely significant effects to those assessed for the EIA of the 2017 variation. As such it would not be appropriate



to refuse the Variation to the section 36 consent for Development or the deemed planning permission on these grounds.

5. REPRESENTATIONS MADE TO THE SECRETARY OF STATE DURING CONSULTATION

- 5.1. The Secretary of State notes that representations in response to the consultation on the Application were received from: North Lincolnshire Council, Historic England; National Air Traffic Service (“NATS”); Highways England; Environment Agency (“EA”); National Grid Gas plc and National Grid Electricity Transmission plc (together “National Grid”). A representation was received by one member of the public.

Relevant Planning Authority

- 5.2. North Lincolnshire Council, the relevant planning authority for the Variation Application, has confirmed that it has no objection or comments to make in respect to the Application and confirmed its opinion that the amendments to the scheme will not result in materially different environmental effects.

National Grid

- 5.3. National Grid has highlighted its gas and electricity apparatus in the locality, but does not object to the application. The Secretary of State notes National Grid is working with the Applicant to facilitate the proposed development’s gas and electricity connections and to ensure its apparatus is protected.

Highways England

- 5.4. Highways England had no objection but indicated a full Construction Phase Traffic Management Plan (“CPTMP”) was needed before construction commenced. The CPTMP should be secured by planning condition to enable Highways England approval before the development commenced.

EA

- 5.5. The EA raised no objection. They noted that none of the changes relate to the carbon capture plant, nor to any increase in proposed generating capacity. Consequently, they confirmed that there is no change in the carbon capture readiness status of this site to that previously indicated in their response to the application for the 2017 variation. The EA also confirmed that they had no objection to the amendments proposed to the previous Condition 70, now proposed as Condition 59, regarding flood risk mitigation measures.



Other representations

- 5.6. Representations were received from Historic England and NATS that raised no objections or substantive comments on the Variation Application.
- 5.7. One representation was received from a member of the public as detailed in paragraph 3.2 above.

6. SECRETARY OF STATE'S CONSIDERATION OF THE REQUEST TO VARY THE CONSENT

- 6.1. The Secretary of State notes that following a decision by the Applicant to proceed with the multi-shaft plant configuration granted in the 2016 and 2017 variations, that they have undertaken further design work that has resulted in some minor changes to the plant layout and dimensions of the main buildings and structures. The Applicant has also requested the amendment of a Requirement to notify the relevant local planning authority about flood risk and site-raising works so that they can be completed prior to the commissioning of Keadby II rather than prior to the commencement of the "Main Development" as defined in the 2017 variation.
- 6.2. The Secretary of State is satisfied that the changes requested to the layout plans will not materially alter the scale of the proposed generating station or its environmental effects and will therefore simplify the consent by changing Condition 13 so that instead of referencing the Consolidated Parameter Layout Plan, it references the latest multi-shaft plans. Also, that the proposed Condition 13 refers to the updated building/structure dimensions of Tables 2.1 and 2.2 of the EIA Report dated July 2017. In order to ensure that the overall impact of the proposed development remains within the environmental impacts assessed by the Secretary of State, a condition to this effect has been included in condition 13 such that an approval is possible provided that the environmental impacts remain within the limits assessed in the documents mentioned in that condition.
- 6.3. In respect to the proposed amendment of Condition 70 'Flood Risk' so that the requirement to notify the relevant local planning authority that the site-raising works have to be completed is prior to the commissioning rather than the commencement of the main construction of Keadby II, the Secretary of State accepts that the site raising works are interconnected with the main construction and therefore it is more appropriate for the relevant planning authority to be notified before commissioning that the site raising works have been completed.
- 6.4. The Secretary of State also considered the issues raised by the member of the public regarding the site and ownership plans, and their concerns that the closure of highways and the stopping up of public rights of way was taking place without legal authority. The Secretary of State is satisfied that since the previous variation was granted in 2016, there have been no changes in the application



site boundary for the proposed development or in respect of the Applicant's land ownership. Furthermore, no such changes are proposed as part of the latest Application. The Secretary of State has carefully considered these concerns and is of the view that the issues the member of public has raised do not materially affect on planning grounds, any decision made on this Application as applied for.

- 6.5 The Secretary of State has rejected and not included variations sought that did not comply with drafting principles and policy or that sought to alter the name of existing documents.

7. SECRETARY OF STATE'S CONSIDERATION OF CARBON CAPTURE READINESS ("CCR")

- 7.1. The Secretary of State notes that the previous Variation Application (resulting in the 2017 variation) included a Carbon Capture Readiness ("CCR") report demonstrating that Keadby II would be carbon capture ready and that sufficient land has been set aside for any future carbon capture plant.

Conclusion on CCR

- 7.2. The Secretary of State is satisfied that the Application has no implications in terms of the ability for Keadby II to be CCR ready and therefore the CCR Report remains valid.

8. EQUALITY ACT 2010

- 8.1. 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.

- 8.2. 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 people sharing any of the protected characteristics.

- 8.3. 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.

9. NATURAL ENVIRONMENT AND RURAL COMMUNITIES ACT 2006

9.1 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 amended development consent. The Secretary of State is of the view that biodiversity has been considered sufficiently in this application for an amendment to accord with this duty.

10. OTHER MATTERS

10.1. 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 the Application. The Secretary of State considers that the Application is consistent with the policies set out in the National Policy Statements (EN-1 and EN-2).

Environmental Permit

10.2. The Secretary of State is aware that the varied Development would require an Environmental Permit from the EA before it could operate. The Secretary of State notes that the EA has indicated that, on the basis of the information available to it, it does not foresee any barriers to a permit being issued for the operation of the varied Development.

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

11.1. The Secretary of State, having regard to the matters specified above, has decided to make a further 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.

11.2. The Secretary of State also believes the planning conditions as revised form a sufficient basis on which the varied Development might proceed and therefore 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.



Department for
Business, Energy
& Industrial Strategy

11.3. 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.

12. GENERAL GUIDANCE

12.1. 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 application must be made as soon as possible. Parties seeking further information as to how to proceed 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).

12.2. 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 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

Gareth Leigh

Gareth Leigh
Head of Energy Infrastructure Planning