

REPORT OF HEAD OF DEVELOPMENT MANAGEMENT

SUBJECT: DELEGATION OF MATTERS RELATING TO NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECTS

Purpose of the Report

The purpose of this report is to recommend:

1. changes to the Authority's Scheme of Delegation in respect of applications for nationally significant infrastructure projects submitted to the Planning Inspectorate (PINs) and;
2. Members note the responses sent in relation to the Combined Heat and Power Plant, South Hook, Herbrandston.

Background

The Authority has an adopted Scheme of Delegation in relation to planning matters which sets out those planning matters that are delegated to the Chief Executive, Director of Park Direction and Planning and the Head of Development Management. This was last updated in December 2012.

The Planning Act 2008 (amended by the Localism Act 2011) introduced new procedures for dealing with nationally significant infrastructure projects in the interests of making the process fairer and faster for communities and developers alike. The Planning Inspectorate now deals with applications for development consent orders (a type of planning permission) for such projects rather than the Local Planning Authority.

The process for dealing with nationally significant infrastructure projects is set out in the above Acts, but essentially follows several stages; pre-application, acceptance, pre-examination, examination, recommendation and decision, and post decision.

At various stages of the process, the LPA within which the site is situated will be required to comment as the "relevant Authority". Consultation will also be carried out with authorities that are bordering or affected by proposals. The LPA will be required to provide comments through the pre-application process on both the content of the proposals and with regard to the proposed community consultation that the developer will undertake, and will also be required to provide a Local Impact Report following acceptance and prior to the examination stage. It may also be called to give evidence at the examination stage and will be responsible for the discharge of any conditions following any approval.

The various stages of the process are carried out under stringent time requirements, although the pre-application stage can be extended to enable longer discussions. Under normal circumstances however, a period of 42 days is given for comments to be made. Once an application is lodged with PINs, a period of 28 days is given for PINs to accept (or not) the application, within which the LPA will be required to respond to the adequacy of the consultation that the developer has undertaken. On acceptance of the application all those wishing to make representations have a 28 day period to lodge their intent to comment and PINs will provide a deadline (within an approximate 2-3 month period) for the relevant authority to submit its local impact report. PINs has 6 months to hold an examination into the project and various pre-examination meetings will be held with interested parties including the LPA.

Current Situation

As the process is a relatively new one, the Authority currently has no formal arrangements for dealing with applications for nationally significant infrastructure projects without the approval of the Authority members at each stage of the process. As members are aware, there are currently two projects being developed within or close to the National Park; (a) the proposal for a Combined Heat and Power Plant at South Hook and (b) a proposal for an offshore wind farm in the Atlantic, known as the Atlantic Array project. The former is now formally submitted to PINs and the second is due to be submitted to PINs on the 14th June 2013.

It has become evident that due to the timescales involved, it is not always possible to provide a full report to members for consideration on these projects. However, it is also accepted that due to the nature of the projects concerned that member involvement is extremely important in both discussing and responding to the proposals. In both cases, pre-application responses have been reported to members, although in the case of the South Hook project a follow up pre-application response was not able to be reported to members due to the time scale. Furthermore, a response to the adequacy of consultation was also required within a very short time frame and both responses were sent following endorsement by the Chairman of the Authority. Copies of these responses are attached to this report at Appendix A.

It is considered that in light of the submission of the Power Plant to PINs and the imminent submission of the Atlantic Array project that a more formal arrangement for PNCPA responses needs to be put in place.

Proposals

Although it will be preferable to bring matters relating to nationally significant infrastructure projects to the Authority meeting, this is not always possible due to the time constraints set out above. There are also elements of the process that are more procedural and it is not considered that these should necessarily be subject to the full Authority approval (ie the extent of consultation required to be carried out by the developer and the response to PINs on the adequacy of consultation undertaken). As such it is recommended that procedural matters be delegated to the Chief Executive/ Director of Park Direction and Planning and Head of Development Management.

Furthermore, the pre-application process is one that is delegated to officers on all other planning matters and it is considered that the Scheme of Delegation should allow for officers to respond to pre-application enquiries on nationally significant infrastructure projects in the same manner. It is however considered that members should be kept up to date on such projects and the responses given through information reports.

With regard to the Authority's formal response to projects through the submission of a Local Impact Report it is considered that these should be the subject of member approval. However, in view of the short timescales attributed to these, it may on occasion not be possible to report to the full Authority meeting but that these be considered at Development Management committee meetings. Members are therefore requested to delegate these matters to the Development Management committee if the timescale dictates.

Any representation at examination, would normally be carried out by officers and it is considered that this should be continued in the same way that any inquiry representation would be given. It will of course be open for members to attend the examination where they wish to do so on behalf of the Authority.

Where a development consent order is given by PINs, the discharge of conditions will fall to the LPA. In all other cases, the discharge of conditions on planning permissions is carried out by officers and it is therefore recommended that the Scheme of Delegation be amended to enable officers to consider and determine the discharge of conditions nationally significant infrastructure projects too.

Legal and Financial Implications

As these measures are intended to alter the existing Scheme of Delegation rather than introduce any new requirements it is not considered that there will be any legal or financial implications arising from these proposals.

Risk considerations

The measures proposed are intended to introduce a transparent system responding to legislative time requirements. As such, the risk of not having delegation arrangements in place is significant with regard to possible Judicial Review challenges.

Conclusions

It is considered that the alterations to the Authority's Scheme of Delegation to enable the Chief Executive, Director of Park Direction and Planning and Head of Development Management to respond to procedural matters and pre-application enquiries in respect of nationally significant infrastructure projects will enable the Authority to respond in a more timely manner and in line with legislative requirements. It is recommended that the new procedures be brought in with immediate effect.

Recommendation

That the committee endorses the following:

1. Approval of the amendments to the Scheme of Delegation as set out in Appendix B.
2. That the changes take immediate effect.
3. That the responses to the Combined Heat and Power Plant project at South Hook in Appendix A be noted.

Background Documents

Pembrokeshire Coast National Park Authority Planning Delegations to Officers
Planning Act 2008
Localism Act 2011
PINs advisory notes on Nationally Significant Infrastructure Projects

For further information contact Vicki Hirst, Head of Development Management

Ref: DC/Consultations/CHPLNG/VH
Your Ref: EN010054

11th June 2013

Tracey Williams
The Planning Inspectorate
3/18 Eagle Wing
Temple Quay House
2 The Square
Bristol
BS1 6PN

Dear Ms Williams

Re: Section 55 of the Planning Act 2008 (as amended by the Localism Act 2011)

Application by QPI Global Venture Ltd for a Development Consent Order for the Proposed South Hook Combined Heat and Power Station

Planning Inspectorate Reference: EN010054

I refer to your letter dated 31st May 2013 regarding the above application and your request for a view on the adequacy of consultation undertaken by the applicant at the pre-application stage.

I confirm that it is the view of the Pembrokeshire Coast National Park Authority (PCNPA) as local planning authority for the major part of the application site that the pre-application consultation undertaken by the applicant and as detailed in the submitted Consultation Report does accord with the following as far as the requirement to consult is concerned:

- Duty to consult (Section 42 of the PA 2008)
- Duty to consult the local community (Section 47 of the PA 2008)
- Duty to publicise (Section 48 of the PA 2008)

However, the PCNPA does have concerns at the adequacy of the *content* of the consultation with statutory consultees as outlined in the Authority's response to the Section 42 consultation dated 15th April 2013. The consultation dated 15th March 2013 was incomplete (comprising a draft ES and no accompanying appendices, no Habitats Regulation Assessment and no draft Development Consent Order for reading in conjunction with this consultation). It is accepted that these documents were provided at a later stage but no formal consultation period was given to enable a response to be

given and in view of the submission date it was not possible to respond prior to the DCO application being formally submitted.

Attention is drawn in this respect to Paragraph 17 of the Guidance on the Pre-Application process issued by the Inspectorate where it is stated:

“Consultation should be thorough, effective and proportionate. Applicants will have their own approaches to consultation and already have a wealth of good practice on which to draw. For example, larger, more complex applications will usually need to go beyond the statutory minimum timescales laid down in the Planning Act to provide enough time for consultees to understand project proposals and formulate a response. Many proposals will require detailed technical input, especially regarding impacts, so sufficient time will need to be allowed for this. Consultation should also be sufficiently flexible to respond to the needs and requirements of consultees, for example where a consultee has indicated that they would prefer to be consulted via email only, this should be accommodated as far as possible”.

In this case, technical advice was required, particularly in respect of the Landscape and Visual Impact Appraisal and incomplete information or time was given for technical advice to be commissioned and received. The Authority does not therefore consider that it has been able to respond fully prior to the submission of the DCO application, nor been able to hold further discussions on those areas of concern. This issue was raised in the Authority’s letter dated 15th April 2013, and there is concern that the Consultation Report now submitted states in Paragraph 5.2.2, “The Developers have no reason to believe that there was any dissatisfaction with the nature and scope of the consultation with Section 42 consultees”. This is clearly not the case.

The PCNPA therefore confirms that whilst the duty to consult has been carried out that the consultation (with Section 42 consultees) was lacking in content and sufficient time to respond.

Yours sincerely

Councillor Tony Brinsden
Chairman of the National Park Authority

Ref: DC/Consultations/CHPLNG/VH
Your Ref: LP/drp/JCD1038

15th April 2013

Mr L Powell
Senior Director
RPS Planning and Development
Park House
Greyfriars Road
Cardiff CF10 3AF

Dear Sir

Re: Proposed Combined Heat and Power (CHP) Plant, South Hook LNG Terminal Site, Herbrandston

Consultation in accordance with Section 42 of the Planning Act 2008

1.0 Introduction

- 1.1 I refer to your formal pre-application consultation under Section 42 of the 2008 Act dated 15th March 2013 in relation to the proposed combined Heat and Power Plant at the South Hook LNG Terminal Site. This letter comprises the Pembrokeshire Coast National Park Authority's (PCNPA) response to this second pre-application consultation.
- 1.2 It is noted, with much regret, that the consultation relates to a draft Environmental Statement (ES) without appendices, it does not include the Habitats Regulations Assessment, and provides minimal information regarding design issues (despite numerous meeting between this Authority and the architectural team).
- 1.3 The response deadline for the consultation was given as 16th April 2013, and yet a full version of the ES and the Habitats Regulation Assessment was received late on the 12th April 2013. It is understood that no opportunity is to be given for formal consultation on this information, despite it comprising fuller information than that within the formal consultation. I have been advised that any comments received after the 16th April 2013 *will be considered and incorporated if time permits*. With the greatest respect, it is considered that an opportunity with a reasonable time period should have been given to stakeholders in which to properly consider and respond. The Pembrokeshire Coast

National Park Authority is after all the relevant authority for this development.

- 1.4 This response is therefore (as required) primarily concerned with the draft version of the ES, and any additional comments on the final ES will be forwarded following this submission. It is respectfully requested that any further comments be taken into account prior to the submission of the application for a development consent order.
- 1.5 This response should be read in conjunction with the previous pre-application response in relation to the National Park's status, importance and policy protection.

2.0 The Draft Environmental Statement - Overview

- 2.1 It is evident that the site for the CHP Plant has now been finalised as being wholly within the National Park area (with the exception of some of the construction phase associated development). As set out in the Authority's response dated 19th September 2012 a siting within a National Park triggers the major development test and the need to demonstrate the national or overriding public interest that justifies the siting within the National Park.
- 2.2 Chapter 3 of the ES sets out the background to the project but does not fundamentally address this issue. The Chapter fails to specify what national interest is being met, and why this site is essential to meeting that need (as opposed to any other site). Whilst the ES discusses at length the relationship with the existing LNG plant, and this relationship is accepted, the operation of the power plant is capable of a stand alone operation as well. In both cases, irrespective of the relationship with an existing industrial operation, the major development test needs to be met.
- 2.3 In addition to the above, the ES sets out various options for consideration. However, it is considered that one option that has been left out is the option of not carrying out the project and it is considered that this should be referred to with an assessment of the implications that would arise from this project not going ahead in this location.
- 2.4 As previously stated, it is noted that the associated development, namely the means of connection to the substation at Pembroke Power Station is not included in this proposal, and is likely to form a separate application for a development consent order. This remains a real concern to this Authority, as its inclusion would have enabled the proposal to be considered in a holistic manner. This also raises concerns as to how the existing ES has been prepared as there could be cumulative and/or in combination effects e.g. on landscape/visual aspects; nature conservation/biodiversity between the grid connection

and the CHP project as a result of the approach being taken (two separate projects). There has been no confirmation about the proposals for the grid connection and this project has not been finalised - hence it is not possible to assess cumulative or in combination effects of the two projects.

- 2.5 It is also considered that a Habitats Regulations Assessment should be carried out with respect to the greater horseshoe bat feature of the Pembrokeshire Bat Sites & Bosherton Lakes SAC. Due to the late submission of the HRA, the Authority has not been able to ascertain whether this has been completed.
- 2.6 The ES also refers to the Environment Agency, the Countryside Council for Wales and Natural Resources Wales throughout – as these are now officially one body all references to the Environment Agency and Countryside Council for Wales should be removed except where historical discussions are referred to.
- 2.7 The terms “county”, “local” and “district” are used without qualification. This creates difficulties in terms of clarity in describing relative importance. It is also not clear how these terms are defined and this needs clarifying.

3.0 The Draft Environmental Statement – Detailed Considerations

- 3.1 The Chapters of the ES refer to various subject matters, a number of which will be subject to scrutiny by the various specialist consultees on such matters. In these areas, the PCNPA will defer to these bodies for detailed comment. As a result, and also due to the time made available for this consultation, this response has focussed mainly on Chapters 1-5, 8, 9 and 15.
- 3.2 As the primary purpose of the National Park designation is to conserve and enhance the natural beauty, wildlife and cultural heritage of the Park, the primary concern of this Authority relates to the visual impact of the proposal in the landscape, its associated impact on the enjoyment of the Park and the impact of the proposal on the ecology of the National Park. In the absence of the appendices setting out the methodology and informing the conclusions of the relevant chapters to these considerations, (see paragraph 8.3.2) it is not possible to provide a response. In addition, despite numerous meetings with the architectural team, the design approach in plan form does not form part of this pre-application consultation and therefore no opportunity to comment on this is provided. It is difficult to understand how the landscape impact has been assessed without the full design approach being subject to scrutiny and as such this Authority will reserve comment on this area of the ES at this time with the exception that Chapter 8 – Seascape, Landscape and Visual Impact makes no reference to the Authority’s adopted Supplementary Planning

Guidance on Landscape Character Assessment. (The link to this document):

<http://www.pembrokeshirecoast.org.uk/default.asp?PID=249>

The Authority is, in conjunction with the NRW, commissioning a Landscape Consultant to provide comments on the full ES and the landscape impacts of this proposal. Any comments arising will be forwarded in due course and I would request that any matters arising be incorporated into the subsequent application for a development consent order.

- 3.3 Furthermore, the carbon capture storage area, which is required to be preserved for the future, will require consideration in terms of its possible future impacts, and sufficient information to take this into account is requested. It is suggested that this should also follow the Rochdale approach with details of the possible/probable scale of any buildings for the carbon capture being identified.
- 3.4 Chapter 15 in relation to the socio-economic impacts includes limited analysis of the possible impact of the construction phase on local housing availability. Experience of other construction projects in the area has found that due to the higher rents able to be gained from such short term lettings that the availability of property to meet affordable housing demands reduces. This has serious consequences on affordable housing supply for the duration of the project. The ES should include an analysis of the effect of the demand for construction worker housing in the area, and a description of how any such impacts will be mitigated for. This could, for example, include a financial contribution towards affordable housing delivery in the National Park.
- 3.5 Notwithstanding the above, the following comments are made on individual paragraphs:

3.3.3 – I would suggest that the National Park designation is not necessarily a constraint – it is a landscape designation

3.3.12 – The statement that this is the lowest degree of visual impact from the key views should be qualified with “*of those offered*”.

8.2.12 – LDP not LPD

8.3.11 – Not a County Borough

Page 11 – PCC not PDC

9.2.28 - in addition to protection under UK legislation, it should be noted here that all bats and their resting places are protected at all

times under the Habitats Directive and Conservation of Habitats & Species Regulations 2010 (i.e. they are European Protected Species – this is irrespective of whether or not they are also features of a SAC);

9.3.6 - it should be noted that the main purposes of the biological recording that has been carried out on the NCA by the PCNPA Ecologist and local expert naturalists have been/are to enhance and improve baseline data for the site and to undertake regular surveillance of key habitats and species **in order to inform the conservation management of the NCA**, rather than for the purpose of EIA (in this context, it should also be noted that there are significant gaps in the baseline data for this site especially in key invertebrate groups e.g. night-flying moths which can be affected by light spillage: no night time surveys have been possible to date

9.3.7 - Jack and Jean Donovan (spelling correction)

9.3.13 - the reference to the bat survey report in Appendix 9.2 is noted. A **draft** bat survey report has been made available which does not include data from the outstanding survey work planned for this March and April (to cover the post-hibernation period). Thus it would appear that the draft ES (and possibly the final ES?) has been/will be submitted **before** all the survey work has been completed. This needs to be updated prior to submission

9.3.31 - it should be noted that the winter bird surveys carried out by PCNPA that are referred to here are in fact the monthly BTO Wetland Bird Survey (WeBS) counts that are carried out between September and March and **not** winter bird surveys *per se*. The correct title of the European designation referred to here (i.e. the Pembrokeshire Bat Sites & Bosherton Lakes SAC) should be used

9.6.10: - it would be more accurate and informative to note that the individual species listed, together with the sea bird assemblage are all features of the Skomer and Skokholm SPA. Use of the term “migratory” in relation to species such as lesser black-backed gull; puffin and Manx shearwater is misleading: the islands support nationally and internationally important breeding populations of these species

9.6.46 - there have been reliable reports backed up by CCTV footage of otters (a European Protected Species) on/in the LNG site over the past 2-3 years suggesting that otters continue to make use of the LNG site.

9.6.106 - which SAC is being referred to here?

9.6.96 & 9.6.98 - examples of several instances where it is stated that any effects (on bats; wildlife) will be mitigated or minimised by (in these instances) lighting design. At this stage, there is no way of knowing whether or not this will actually be the case because the lighting design has not been worked out

9.6.131; 9.6.234 - these and other paragraphs concerning greater horseshoe bats are significantly weakened by an apparent lack of understanding and failure to acknowledge the links between the greater horseshoe bats that roost, forage and commute over/across the LNG site and adjacent NCA and the Pembrokeshire Bat Sites & Bosherton Lakes SAC. Greater horseshoe bats are highly mobile (there is a considerable evidence base for this statement including data obtained through radio-telemetry) and the Pembrokeshire population (including the SAC population) is considered to be a meta-population. There is **no doubt at all** that the greater horseshoe bats that roost in the fortifications and that utilise South Hook in general **are part of the SAC population i.e. the greater horseshoe bat feature of the Pembrokeshire Bat Sites SAC**. The SAC units referred to in the ES are (with the exception of Carew Castle which provides intermediate and mating roosts) primarily maternity roosts: the SAC population is dependent on (and moves to/from) other sites such as South Hook at other times of the year. The relationship between the greater horseshoe bats that use South Hook and the SAC should be acknowledged and clearly set out in the ES, and the importance of the site in terms of meeting the conservation objectives for the greater horseshoe bat feature of the SAC should not be underestimated

9.6.279 - appears to contradict 9.6.278?

4.0 **Conclusions**

- 4.1 In summary the major issues which the PCNPA would have concerns would be:
- a. The process and lack of complete information provided in a timely manner to enable a full response to be provided.
 - b. The ES does not address the fundamental issue of identifying the national or overriding public interest for this major development to be in a National Park
 - c. The ES does not provide the option of not going ahead with the proposal in this location
 - d. The fundamental and essential means of connection to Pembroke Power Station is not included in the proposal which means that cumulative and in combination effects cannot be assessed
 - e. A Habitats Regulations Assessment should be carried out with respect to the Greater Horseshoe Bat features if not already included.
 - f. Limited design information and in text format only – therefore the visual impact cannot be assessed or quantified

- g. No information on the carbon capture storage area
- h. Inconsistencies in terminology etc

4.3 The above sets out the Authority's views in relation to the Section 42 consultation but I would stress that the views expressed are without prejudice to any comments that may subsequently be made on any subsequent application for a Development Consent Order. Should any clarification be required please contact the Head of Development Management, Vicki Hirst who will be happy to discuss further.

Yours sincerely



Councillor Tony Brinsden
Chairman of the National Park Authority

Appendix B – Recommended Amendments to the Planning Delegation to Officers Scheme.

The following text to be added:

5. The following matters under the Nationally Significant Infrastructure Projects regime:

- All procedural matters including responses to the Statement of Community Consultation and adequacy of consultation request
- Response to Pre-application enquiries
- Preparation and Presentation of Evidence at Examinations
- The consideration and determination of information required by conditions of development consent orders