



Department for
Energy Security
& Net Zero

3-8 Whitehall Place
London
SW1A 2AW
+44 020 7215 5000
energyinfrastructureplanning@energysecurity.gov.uk
www.gov.uk/desnz

Ref: EN010061

Pinsent Masons LLP
30 Crown Place
London
EC2A 4ES

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By email: [REDACTED] @pinsentmasons.com

Dear Mr Paul,

PLANNING ACT 2008

PROPOSED NON-MATERIAL CHANGE TO THE FERRYBRIDGE MULTIFUEL 2 POWER STATION DEVELOPMENT CONSENT ORDER 2015 (SI 2015/1832) AS CORRECTED BY THE FERRYBRIDGE MULTIFUEL 2 POWER STATION (CORRECTION) ORDER 2016 (SI 2016/737) AND AS AMENDED BY THE FERRYBRIDGE MULTIFUEL 2 POWER STATION (AMENDMENT) ORDER 2018 (SI 2018/1016)

1. I am directed by the Secretary of State for Energy Security and Net Zero ("the Secretary of State") to advise you that consideration has been given to the application ("the Application") which was made by Enfinium Limited ("the Applicant") on 19 December 2024 for changes which are not material to be made to the Ferrybridge Multifuel 2 Power Station Development Consent Order 2015 as corrected and amended ("the Order") under section 153 of, and Schedule 6 to, the Planning Act 2008 ("the PA2008"). This letter is the notification of the Secretary of State's decision in accordance with Regulation 8 of the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011 (as amended) ("the 2011 Regulations").
2. The original application for development consent under the PA2008 was granted on 28 October 2015 and gave development consent for the construction and operation of a multifuel power station with a generating capacity of up to 90 megawatts, fuelled by waste derived fuels from various specified sources, on land at the existing Ferrybridge Power Station site, north-west of Knottingley, West Yorkshire ("the Development"). Requirement 3(2) states that "except for purposes of the start-up or support firing of a boiler, only waste derived fuel may be combusted in the boilers of the authorised development". Article 2(1) of the Order currently defines "waste derived fuel" as "fuel derived from (i) **processed** municipal solid waste, (ii) commercial and industrial waste or (iii) waste wood" [emphasis added].

3. The Applicant is seeking consent for a change to article 2(1) of the Order to allow it to combust **mixed** municipal solid waste from local authorities, contained within bin bags taken directly from households/commercial premises. This category of waste is European Waste Code ("EWC") 20 03 01 and is referred to hereafter in this letter as "black bag waste". The Order does not currently include black bag waste within the definition of "waste derived fuel" in article 2(1). The Applicant proposes that this change should be made by inserting a new definition for the term "processed municipal solid waste", referred to above, to include, for the purposes of the Order, black bag waste, and thereby provide that black bag waste constitutes a permitted waste derived fuel for the purposes of Requirement 3(2) of the Order.
4. The Application follows the Environment Agency's ("EA") approval of the inclusion of EWC 20 03 01 as a permissible fuel source for the purposes of combustion at the Development through the grant of a Minor Variation to the Applicant's related Environmental Permit ("EP") on 9 March 2023 (and confirmed via a decision letter dated 16 March 2023). The requested change will therefore reflect the fact that EWC 20 03 01 has been authorised by the EA under the EP.

Summary of the Secretary of State's decision

5. The Secretary of State has decided under paragraph 2(1) of Schedule 6 to the PA2008 to make a non-material change ("NMC") to the Order to authorise the change as detailed in the Application.
6. The Secretary of State has given consideration to whether the Application is for a material or non-material change. In doing so, the Secretary of State has had regard to paragraph 2(2) of Schedule 6 to the PA2008 which requires the Secretary of State to consider the effect of the change on the Order as originally made.
7. There is no statutory definition of what constitutes a 'material' or 'non-material' amendment for the purposes of Schedule 6 to the PA2008 and Part 1 of the 2011 Regulations.
8. To assist in determining whether a proposed change is material or non-material, guidance has been produced by the Department for Communities and Local Government (now the Ministry of Housing, Communities and Local Government), entitled the "Planning Act 2008: Guidance on Changes to Development Consent Orders" (December 2015) ("the Guidance")¹. The Guidance makes the following points:
 - (a) given the range of infrastructure projects that are consented through the PA 2008, and the variety of changes that could possibly be proposed for a single project, the Guidance cannot, and does not attempt to, prescribe whether any particular types of change would be material or non-material;

¹ <https://www.gov.uk/government/publications/changes-to-development-consent-orders>

- (b) however, there may be certain characteristics that indicate that a change to a consent is more likely to be treated as a material change. Four examples are given in the Guidance as a starting point for assessing the materiality of a proposed change, namely:
- i. whether an update would be required to the Environmental Statement (“ES”) (from that at the time the Order was made) to take account of new, or materially different, likely significant effects on the environment;
 - ii. whether there would be a need for a Habitats Regulations Assessment (“HRA”), or a need for a new or additional licence in respect of European Protected Species (“EPS”);
 - iii. whether the proposed change would entail compulsory acquisition of any land that was not authorised through the Order; and
 - iv. whether the proposed change would have a potential impact on local people and business (for example, in relation to visual amenity from changes to the size and height of buildings; impacts on the natural and historic environment; and impacts arising from additional traffic).
- (c) although the above characteristics indicate that a change to a consent is more likely to be treated as a material change, these only form a starting point for assessing the materiality of a change. Each case must depend on thorough consideration of its own circumstances.
9. The Secretary of State has considered the change proposed by the Applicant against the four matters set out in (1), (2), (3) and (4) above:
- (a) The Secretary of State finds that the information supplied supports the Applicant’s conclusions “the NMC is not anticipated to give rise to any materially new or materially different environmental effects” from those assessed in the ES. As is discussed further at paragraphs 18-20 below, considering the analysis supplied by the Applicant and responses to the consultation, the Secretary of State has concluded that no update is required to the ES as a result of the proposed amendments to the Order.
 - (b) In respect of the HRA, the Secretary of State has considered the nature and impact of the change proposed and is satisfied that there is no change to the conclusions of the HRA as a result of the proposed amendments and therefore a new HRA is not required. The Secretary of State is also satisfied that the proposed change does not bring about the need for a new or additional licence in respect of EPS as the amendments sought are not anticipated to give rise to any new or different effects from an ecological perspective than those assessed for the original application.
 - (c) In respect of compulsory acquisition, the Secretary of State notes that the proposed changes do not require any additional compulsory purchase of land.
 - (d) In respect of impacts on local people and businesses, the Secretary of State notes that no changes are anticipated by the Applicant to the impacts already assessed in the ES.
10. The Secretary of State therefore concludes that none of the specific indicators referred to in the Guidance, or other relevant considerations, suggests that the change considered in this letter is a material change.

11. Taking the information contained in the Application and responses received from consultees into account, the Secretary of State is therefore satisfied that the changes considered in this letter are not material and should be dealt with under the procedures for NMCs.

Consultation and responses

12. In accordance with Regulation 7 of the 2011 Regulations, the Secretary of State agreed to a reduced consultee list. The parties consulted were the EA, Wakefield Metropolitan District Council (“WMDC”), Natural England (“NE”), North Yorkshire Council (as successor to North Yorkshire County Council and Selby District Council), the Canal and River Trust, West Yorkshire Fire and Rescue Service, Yorkshire Wildlife Trust, West Yorkshire Ecology Service, UK Health Security Agency (as successor to Public Health England), and the Health and Safety Executive. These specified parties were notified by email on 19 December 2024.
13. The Applicant published a notice of the Application in accordance with Regulation 6 of the 2011 Regulations (the “Regulation 6 notice”) for two consecutive weeks in the local press (Selby Times and Pontefract & Castleford Express) on 16 January 2025 and 23 January 2025 and the Application was also made publicly available on the Planning Inspectorate’s (PINS) website, such that there was an opportunity for anyone not notified to also submit representations to PINS. The deadline for receipt of representations on the Application was 21 February 2025.
14. The Applicant submitted its Consultation and Publicity Report as required by Regulation 7A of the 2011 Regulations on 10 April 2025, which states that the Applicant has complied with all necessary steps set out in Regulations 6 and 7 of the 2011 Regulations in respect of stakeholder consultation and its public engagement approach. This was published on the PINS website on 11 April 2025.
15. A total of two responses were received, from WMDC and NE. The responses confirmed that neither party objects to the Application.
16. Following the close of consultation, the Applicant confirmed to the Secretary of State on 5 March 2025 that the EA had granted the variation to the EP on 9 March 2023. The EP is labelled EPR/XP3833DK/V006, and this varied and consolidated version will be published on the PINS website alongside this decision letter.
17. The Secretary of State has considered the representations received in response to the consultation and does not consider that any further information needs to be provided by the Applicant or that further consultation is necessary.

Environmental Impact Assessment

18. The Secretary of State has considered whether the Application would give rise to any new significant or materially different effects when compared to the effects set out in the ES for the Development as authorised by the Order.

19. The Secretary of State is satisfied that the information provided by the Applicant is sufficient to allow him to make a determination on the Application. The Secretary of State notes the EA's approval of EPR/XP3833DK/V006 and conclusion that the carrying out of the Development's activities in accordance with the variation will occur "without harm to the environment or human health". The Secretary of State notes the intention of the Applicant is to align the Order with the EP and that "the combustion of black bag waste has already been approved by the EA".
20. Having reviewed the Application and consultation responses, the Secretary of State is also satisfied that no environmental effects outside of the scope of the ES will be caused by the incineration of waste falling within code EWC 20 03 01. The Secretary of State notes that there will not be any traffic impacts that could impact pollution assessments in Chapter 8: Air Quality of the ES, including Appendix 8A – Air quality assessment. Further, the Secretary of State is satisfied that the total quantity and nature of waste handled by the Development will not change as a result of the proposed amendment. In this regard, the Secretary of State notes that the Application confirms that waste falling within code EWC 20 03 01 is of the same nature as waste already incinerated within the Development within EWC 20 – "municipal wastes (household waste and similar commercial, industrial and institutional wastes) including separately collected fractions" whilst Schedule 2 to the EP lists a wider list of non-municipal wastes already permitted to be incinerated. The Secretary of State notes that the black bag waste will be unprocessed and collected together (hence its categorisation as 'mixed' municipal solid waste) rather than being collected as separately as fractions. Nevertheless, the Secretary of State is satisfied that, because the nature of the waste itself will not change, no environmental effects outside of the conclusions of Chapter 8 of the ES will occur. The Secretary of State is confident that in the event that the emissions profile was to change, and the emissions limits assessed in the ES were to be exceeded, that there are sufficient checks and protocols secured in the Order and the EP to bring limits back down to those which were assessed in the ES. With regard to any potential environmental impacts from odour, the Secretary of State welcomes the accompanying updated Odour Management Plan included by the Applicant in its application for a new EP which he agrees demonstrates that "any additional odour impacts from the black bag waste will be managed appropriately". The Secretary of State considers this updated Plan aligns with the framework odour management plan at Appendix 8B of the ES, itself subsequently assessed and used to inform the original EP by the EA.
21. As such, the Secretary of State agrees with the Applicant's conclusion that "the NMC is not anticipated to give rise to any materially new or materially different environmental effects" when compared to the effects set out in the ES for the development authorised by the Order and as such considers that there is no requirement to update the ES.
22. As there are no new significant environmental impacts as a result of the proposed change, the Secretary of State does not consider that there is any need for consultation on likely significant transboundary effects in accordance with Regulation 32 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (see paragraphs 27 onwards below).

The Habitats Regulations

23. The Secretary of State has considered the relevant requirements as set out in the Conservation of Habitats and Species Regulations 2017 (“the Habitats Regulations”). The Habitats Regulations require the Secretary of State to consider whether the Development would be likely, either alone or in combination with other plans and projects, to have a significant effect on any site within the national site network, known as “protected sites”. If likely significant effects cannot be ruled out, then an Appropriate Assessment must be undertaken by the Secretary of State, pursuant to Regulation 63(1) of the Habitats Regulations, to address potential adverse effects on site integrity. The Secretary of State may only agree to the Application (subject to Regulation 64) if he has ascertained that it will not adversely affect the integrity of a protected site.
24. The Secretary of State has considered the information submitted in the Application and the comments of consultees and is satisfied that the proposed changes do not alter the conclusions set out in the Applicant’s ES and the Secretary of State’s conclusions on the HRA, and therefore a new HRA is not required.

General Considerations

Transboundary Impacts

25. Under Regulation 32 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (as amended), the Secretary of State has considered whether the proposed development is likely to have a significant effect on the environment in a European Economic Area (“EEA”) State. The Secretary of State has considered whether the change sought through this Application will have any potential impacts on an EEA State and has concluded that there is no change in the environmental impacts considered within the existing environmental statement for the project. Consequently, the Secretary of State has concluded that there would not be likely significant effects on the environment of any EEA state whether the Application is considered of itself or cumulatively with the environmental effects already considered for the Order.
26. The Secretary of State has also considered whether there may be potential impacts on protected sites in EU Member States, known as transboundary sites, from this Application. Noting that the Secretary of State has reached a conclusion that there will be no likely significant effects on protected sites, the Secretary of State has also concluded that there are no realistic impact pathways whereby transboundary sites may be impacted by this Application.
27. The Secretary of State therefore concludes there is no need for transboundary consultation with EEA States.

Equality Act 2010

28. The Equality Act 2010 includes a public sector equality duty. This requires a public authority, in the exercise of its functions, to have due regard to the need to (a) eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act; (b) advance equality of opportunity between persons who share a relevant

protected characteristic (e.g. age; sex, sexual orientation, gender reassignment; disability; marriage and civil partnerships;² pregnancy and maternity; religion or belief; and race) and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

29. The Secretary of State has had due regard to the need to achieve the statutory objectives referred to in s149 of the Equality Act 2010 and is satisfied that there is no evidence that granting this Application will affect adversely the achievement of those objectives.

Human Rights Act 1998

30. The Secretary of State has considered the potential infringement of human rights in relation to the European Convention on Human Rights, by the amended development. The Secretary of State considers that the grant of development consent would not violate any human rights as enacted into UK law by the Human Rights Act 1998.

Natural Environment and Rural Communities Act 2006

31. The Secretary of State notes the “general biodiversity objective” to conserve and enhance biodiversity in England, section 40(A1) of the Natural Environment and Rural Communities Act 2006, and considers the application consistent with furthering that objective whilst having also had regard to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when granting 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.

Secretary of State’s conclusions and decision

32. The Secretary of State considers that the Development continues to conform with the policy objectives outlined in the Overarching National Policy Statement (NPS) for Energy (EN-1) and the National Policy Statement for Renewable Energy (EN-3). The Secretary of State considers this conformity applies to both 2011 and 2024 iterations, the latter of which is now in force. The need for the Development remains as set out in the Secretary of State’s letter of 28 October 2015³.

33. As such, for the reasons set out in the paragraphs above, the Secretary of State is satisfied that the Applicant’s request is acceptable in order to allow black bag waste to be combusted in the boilers of the Development and to align with the EA’s approval of the variation to the EP. Furthermore, the Secretary of State considers that the Applicant has demonstrated that the proposed changes will not result in changes to the conclusions of the ES that accompanied the original application.

34. For the reasons given in this letter, the Secretary of State considers that there is a compelling case for authorising the proposed changes to **article 2(1)** of the Order. The

² In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

³ <https://nsip-documents.planninginspectorate.gov.uk/published-documents/EN010061-000715-Decision%20letter%20and%20statement%20of%20reasons.pdf>

Secretary of State is satisfied that the changes requested by the Applicant are not material changes to the Order and has decided under paragraph 2(1) of Schedule 6 to the Planning Act 2008 to make a NMC to the Order to authorise the changes detailed in the Application. The Secretary of State has made a minor amendment to the Applicant's proposed wording, for clarity, inserting "for the purposes of this Order" into the definition for "processed municipal solid waste".

Challenge to decision

35. The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached at the Annex to this letter.

Publicity for decision

36. The Secretary of State's decision on this Application is being notified as required by Regulation 8 of the 2011 Regulations.

Yours sincerely,



John Wheaton

Head of Energy Infrastructure Planning Delivery & Innovation

ANNEX

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 (5) of the Planning Act 2008, a decision under paragraph 2(1) of Schedule 6 to the Planning Act 2008 to make a change to an Order granting development consent can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the Planning Court during the period of 6 weeks beginning with the day after the day on which the Order is published. The Amendment Order as made is being published on the date of this letter on the Planning Inspectorate website at the following address:

<https://national-infrastructure-consenting.planninginspectorate.gov.uk/projects/EN010061>

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655)