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4 February 2021

Dear Mr Nolan,

**ELECTRICITY ACT 1989**

**TOWN AND COUNTRY PLANNING ACT 1990 (as amended)**

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

**TILBURY GREEN BIOMASS AND ENERGY FROM WASTE FUELLED 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 2 July 2020 (“the Variation Application”) on behalf of Tilbury Green Power Limited (“the Applicant”) to vary the consent granted by the Secretary of State on 27 August 2009 (“the Original Consent”) to construct and operate a generating station comprising two generation units (Phase 1 and 2) with a combined electrical capacity of 60MW and processing up to 650,000 tonnes of waste material per annum. The consent also contains a direction under section 90(2) of the Town and Country Planning Act 1990 that planning permission for the development be deemed to be granted (“the Consented Development”). The Original Consent was varied by the Secretary of State on 19 July 2011, 20 August 2014, and on 26 March 2020, the latter to increase the generating capacity of the combined generating station (Phase 1 and 2) to 80MW and to optimise the consented site by amending the design and layout of the second phase. Phase 1 of the development commenced in 2018 with the first generating unit fired on waste wood biomass with an electrical generating capacity of 40MW approximately. The variations sought by the Applicant in this application relate therefore to the second phase of the Consented Development.

- 1.2. In order to the secure commercial viability of the second generating unit, the Applicant is seeking to amend its section 36 consent and deemed planning permission. It is proposed to amend the red-line boundary shown in Figure 1.2 in the section 36 consent to exclude part of the Port of Tilbury land and a jetty and associated infrastructure from the consented site as this area is no longer under a lease to the Applicant and will be incorporated into ongoing port operations. The Applicant is also seeking a direction from the Secretary of State that the deemed planning permission be varied to amend planning condition 56. Planning condition 56 currently limits waste transported to the site by road to no more than 450,000 tonnes per annum. The Applicant's proposal is to transport 350,000 tonnes of waste per annum to the Phase 2 generating unit, but under the Original Consent only 150,000 tonnes per annum of this can be transported by road, the balance of 200,000 tonnes per annum being transported by other means such as rail or barge via the River Thames. The variation requested is to remove the restriction in the deemed planning permission on the tonnage of feedstock material to be delivered by road and replace it with a requirement to regularly assess every five years the commercial viability of alternative modes of transport to minimise impact on the road network ("the Varied Development").
- 1.3. The original application was supported by an Environmental Statement prepared in 2008. The Variation Application submitted in 2019 (the "2019 Variation Application") included an update to this in the form of a Supplementary Environmental Information Report in accordance with the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017 ("the 2017 EIA Regulations") and described the assessment of likely significant effects of the development on the environment and analyses how these differ from those described in the Environmental Statement in 2008. The present Variation Application relies upon the 2019 Supplementary Environmental Information, supplemented by a report by Mott MacDonald (dated 21 May 2020).

## **2. SUITABILITY OF THE SECTION 36 VARIATION PROCEDURE FOR PERMITTING THE PROPOSED VARIATION**

- 2.1. The 'Varying consents granted under section 36 of the Electricity Act 1989 for generating stations in England and Wales' guidance issued in 2013 ("the guidance note") states:

*"Changes in the design of generating stations which have been consented but not constructed which would allow them to generate an amount of power that would be inconsistent with the original consent are likely to be appropriate subject matter for a variation application, provided there are no major changes in the environmental impact of the plant. Similar changes to an existing plant could be appropriate subject matter for a variation application only if they did not involve physical extension of the generating station, relocation of generating plant, or the installation of new equipment that would amount to the construction of a new generating station".*

- 2.2. The section 36 variation procedure does not allow a change in an existing consent that would result in a development that would be fundamentally different in character or scale from what has been originally granted. Any such changes would be the subject of a fresh application for consent.

- 2.3. The Secretary of State notes that the Varied Development will not result in any additional environmental impacts from those assessed for the Consented Development and these have been assessed in the Supplementary Environmental Information Report for the 2019 Variation Application, resubmitted as part of the 2020 Variation Application, concluding there are no significant additional environmental impacts arising from the proposed changes.
- 2.4. Having considered the application the Secretary of State considers that the Varied Development would not be fundamentally different in character or scale from the Consented Development, is in keeping with the guidance note for the section 36 variation procedure, and that it is appropriate for this Variation Application to be considered under the section 36 variation procedure.
- 2.5. The Variation Application 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, Thurrock Council. The Variation Application was also subject to public consultation. The Secretary of State conducted a formal consultation with Thurrock Council, the Port of London Authority and Highways England.
- 2.6. A Supporting Statement dated June 2020 was submitted with the Variation Application. The Supporting Statement was advertised and placed in the public domain to give the general public an opportunity to comment on it, along with the Supplementary Environmental Information supplied for the 2019 Variation Application.

### **3. THE SECRETARY OF STATE’S CONSIDERATION OF THE ENVIRONMENTAL INFORMATION**

- 3.1. Regulation 3 of the 2017 EIA Regulations as applied by regulation 7 of the Variation Regulations prohibits the Secretary of State from granting a variation of a section 36 consent unless he has first taken into consideration the environmental information as defined in the 2017 EIA Regulations.
- 3.2. Taking into account the extent to which any environmental effects will be modified and mitigated by measures the Applicant will be required to take under the conditions attached to the section 36 consent and the deemed planning conditions, the Secretary of State considers that the significance of the environmental effects will not differ from that predicted for the Original Consent such that it would be appropriate to refuse the variation to the Consented Development.

### **4. THE SECRETARY OF STATE’S CONSIDERATION OF POSSIBLE EFFECTS ON A EUROPEAN SITE**

- 4.1. The Conservation of Habitats and Species Regulations 2017 (“the Habitats Regulations”) require the Secretary of State to consider whether the Varied Development would be likely to have a significant effect on a Natura 2000 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 Varied Development will not have an adverse effect on the integrity of the Natura 2000 Site (regulations 63(5) and 64). Regulation 63(6) provides that when considering whether the Varied Development will adversely affect

the integrity of a Natura 2000 Site, the competent authority can take into account measures proposed to mitigate such impacts as part of the AA. This process is commonly referred to as a Habitats Regulations Assessment (“HRA”).

- 4.2. The Applicant has provided an Environmental Assessment as part of their Supporting Statement, supplemented by the Ecological Impact Assessment submitted as part of the 2019 Variation Application. The present Variation Application relies upon the 2019 Supplementary Environmental Information, supplemented by a report by Mott MacDonald dated 21 May 2020.
- 4.3. The nearest Natura 2000 designated sites are the Thames Water Estuary and Marshes Special Protection Area (“SPA”) and Ramsar site located 6km south-east of the Development site. In view of the nature of the proposed variations sought, the environmental information provided by the Applicant, and considering that no consultation responses raised concerns about impacts on designated sites, the Secretary of State is satisfied that the varied development will not have a likely significant effect on any Natura 2000 site either alone or in-combination with other plans and projects. He therefore considers that an AA is not necessary and finds no reason for refusing the variation application on the grounds of adverse effects on the integrity of a Natura 2000 Site.
- 4.4. The Wildlife and Countryside Act 1981 (as amended) is the primary legislation relating to the designation and protection of Sites of Specific Scientific Interest (“SSSIs”). In the 2019 Supplementary Environmental Information Report, the Applicant identified two statutorily designated SSSIs within 2km of the development site: Globe Pit SSSI and Grays Thurrock Chalk Pit SSSI. A third SSSI (Hangman’s Wood and Deneholes) is just over 2km away from the Development site. There is also one non-statutory designated site, Little Thurrock Reedbeds Local Wildlife Site (“LWS”) approximately 0.9km from the Development site. The Applicant concluded that the varied development would not have significant impacts on any of these nearby SSSIs or the LWS.
- 4.5. The Secretary of State is satisfied that the Applicant has provided sufficient information to show that the varied development would be unlikely to have a significant impact on the SSSI network.
- 4.6. On the basis of the information provided, the Secretary of State considers that the increase in road traffic as a result of the removal of the restriction in Condition 56 of the deemed planning permission and the altered red line boundary of the Varied Development will not have any environmental impacts above those assessed in the original application and the 2019 Variation Application, including no likely significant effects on any Natura 2000 Site either alone or in-combination with other plans or projects.

## **5. ISSUES RAISED DURING CONSULTATION**

- 5.1. The Secretary of State consulted with Thurrock Council, Highways England and the Port of London Authority on the proposed variations. The application was published in the London Gazette and in the Thurrock Gazette so that any person wishing to make representations on the application to the Secretary of State could do so. Representations were received by the Secretary of State from Thurrock Council, Highways England and the Port of London Authority, but no other representations were received by the Secretary of State. The points raised in the representations are

summarised below along with the Secretary of State's consideration of the issues raised. Responses to the consultation are available on the Applicant's project website at: [www.TilburyERF.com](http://www.TilburyERF.com)

#### Views of the Relevant Planning Authority – Thurrock Council

- 5.2. Thurrock Council expressed concern about the implications of the amendment of the red-line boundary on the site plan and noted that the proposal would in effect, remove any potential for access to the river for delivery or export of materials to or from the facility, and requested the Secretary of State considers whether there are sound reasons to remove the potential for direct river access from the site.
- 5.3. The Council did not dispute the economic information provided on waste transport costs by the Applicant and that in removing the proposed cap restricting road deliveries to no more than 450,000 tonnes per annum would potentially allow for deliveries of feedstock (up to 650,000 tonnes per annum) by road. The Council's Highways Officer noted that the highway impacts of the proposed amendment will predominantly affect the trunk road network in respect of actual traffic impact, and deferred to Highways England in relation to the potential impacts of additional vehicle movements on the Strategic Road Network as a result of the change in the condition. The Council stated that it was for the Secretary of State to balance the environmental benefits of modes of transport and the financial viability of the scheme in the absence of an objection to the proposed change from Highways England.
- 5.4. The Council expressed concerns about the Applicant's proposed wording of the new planning condition 56 and indicated that if the Secretary of State concluded that if replacing the wording was considered appropriate, then the condition should require the submission of a regular report, which investigated the opportunities for sustainable transport methods, to the relevant planning authority, with a commitment to utilise sustainable transport methods if the investigation concluded that it was viable and economic to use methods other than road. The Council also suggested including a requirement for the Council to consult with the Port of London Authority.
- 5.5. The Applicant was given the opportunity by the Secretary of State, to comment on all representations received. It sought to clarify to the Secretary of State issues relating to the amendment of the red-line boundary site plan and in particular to address the matters raised by the Port of London Authority in regard to the jetty. The Applicant confirmed that although the jetty was included within the original Section 36 boundary in 2009, this did not confer any rights over the use of the jetty to the Applicant. They confirmed also, that the jetty is currently in full-time use for the sole purpose of the shipment of food grade grain from silos located within Tilbury Dock. The use of the jetty and its associated conveyor system to import waste material for the Consented Development site would not be acceptable or technically feasible for the Applicant's use. It also confirmed they do not expect this situation to change and the proposed removal of the section 36 red-line boundary reflects this position.
- 5.6. The Applicant also confirmed to the Secretary of State that if waste material were to be shipped to the Consented Development via the River Thames sometime in the future, it considers this would most likely be shipped in containers using the main Tilbury Port handling facilities and transported to the site via the internal port road network. The

removal of the jetty from the section 36 boundary therefore in no way restricts the future potential option to transport waste by river.

#### Highways England

- 5.7. Highways England offered no comment with regards to the proposed amendment to the Section 36 red line boundary. In relation to the proposed variation of planning condition 56, it noted that the transport impacts were assessed previously in relation to the consented scheme. It observed issues with the clarity of the data in relation to the Transport Report, and stated that until it is formally consulted on the updated Travel Plan and Vehicle Monitoring Plan conditioned in the Original Consent, it cannot issue a formal recommendation on the current application to vary planning condition 56.

#### Port of London Authority

- 5.8. The Port of London Authority objected to both proposed amendments. It considered that a facility with river frontage and a jetty should be able to maximise use of the river and accord with the sustainable development policies which seek to reduce the transport of materials by road and increase the amount of materials transported by water. The Port of London Authority noted that the Applicant appeared to be attempting to address the comments made by the Authority in relation to its 2019 Variation Application by removing the river infrastructure from the planning application boundary. It further noted that the replacement Condition proposed by the Applicant requires only that the Applicant produces a report setting out how material was transported and the cost effectiveness of measures to minimise the impact of waste transport by road, but did not impose a requirement for the report to be approved, but simply to be submitted to the Council.

### **6. THE SECRETARY OF STATE'S CONSIDERATION OF THE REMOVAL OF THE RED LINE BOUNDARY ON THE SITE PLAN**

- 6.1. In respect to the amendment of the red line boundary and to the exclusion of the Port of Tilbury land, river jetty and associated conveyer belt, the Secretary of State has taken into consideration the matters raised by both Thurrock Council and the Port of London Authority. However, the Secretary of State is satisfied that removing the land, river jetty and associated conveyor belt from the Consented Development's red line boundary, whilst removing potential direct access to the river, would not be detrimental to the Applicant's ability to deliver or export materials to or from the Consented Development at any future date by river (in the event that this becomes economically viable to do so). The Applicant has confirmed any waste material to be shipped via the River Thames would, in any case, be shipped in containers using the main Tilbury Port handling facilities and transported to the site via the internal port road network.

### **7. THE SECRETARY OF STATE'S CONSIDERATION OF THE REVISED DEEMED PLANNING CONDITION 56**

- 7.1. Thurrock Council highlighted various local and national policies promoting sustainable transport (i.e. the National Policy for Waste (2014) and adopted Core Strategy (2015); The National Planning Policy Framework and Energy National Policy Statements also refer to the importance of sustainable transport). Thurrock Council's Officers' Report (submitted to the Secretary of State as Thurrock Council's formal response) cited the Secretary of State's consideration of these policies as part of his determination of the 2019 Variation Application. The Council did not dispute the conclusions of the

Applicant's supporting document, and recognised that the National Policy Statement for Renewable Energy (EN-3) refers to the cost effectiveness and financial viability of transportation. The Council's report noted that in the absence of an objection from Highways England relating to potential impacts on the Strategic Road Network it is for the Secretary of State to balance the environmental benefits of sustainable modes of transport with the relative costs of different modes of transport and their impact on the financial viability of the scheme.

7.2. The Secretary of State has considered very carefully the proposed removal of the current consent restrictions on the delivery of waste imposed by planning condition 56. He has taken note of Thurrock Council's views regarding promoting sustainable transport, and has weighed in the planning balance, that whilst there is a clear expectation within the policy requirements in EN-1 (Overarching National Policy Statement for Energy) and EN-3 (Renewable Energy Infrastructure) that transportation of materials by water or rail should be preferred, this is where it is cost effective and that he should consider the proposed change with regard to impacts on the cost-effectiveness and viability of the scheme, at this present time in order to secure the financial viability of the second phase of the generating station. Having taken account of the evidence provided by the Applicant in regard to waste transport costs and economic viability, the view of the Secretary of State is that removal of the current restriction is justified to allow the further 200,000 tonnes of fuel waste to be transported by road.

7.3. Both Thurrock Council and the Port of London Authority raised concerns about the limited obligations imposed upon the Applicant by its proposed new planning condition 56. As noted in paragraph 5.4 above, Thurrock Council recommended that the condition should be reworded to impose obligations upon the Applicant to utilise alternatives to road transport in the event that its regular investigations concluded that this was financially viable and for Thurrock Council to consult with the Port of London Authority.

7.4. The Secretary of State has considered these representations and also the re-wording proposed by Thurrock Council to the Applicant's revised planning condition 56. The Council's suggested re-wording is as follows:

“Every five years starting from the Commissioning of the Phase 2 Development and throughout the operational life of the Phase 2 Development a report on the quantity of feedstocks delivered to the Phase 2 Development using road, rail and the River Thames shall be submitted to and approved by the local planning authority, in consultation with the Port of London Authority. The report shall include an investigation as to whether rail and/or river transport can be used for the transportation of feedstocks into the site. In the event that the report concludes that it is viable and economic to use rail and/or river transport then these modes shall be used within a timescale to be agreed in writing by the local planning authority.”

7.5. The Secretary of State agrees that the amended wording proposed by the Council is appropriate to allow the possibility of using other sustainable forms of transport to be kept under review. This new wording as proposed by the Council means that if delivery of feedstock by river transport to the Consented Development does become viable in the future, then the Applicant will be obliged to implement this. However, the condition as re-drafted, does not state what would happen in the event that the Council does not

approve the report or does not agree with the economic feasibility conclusions made by the Applicant once the five year report has been received. The Secretary of State has decided, in accepting the Council's revised wording of condition 56, therefore to add an arbitration clause to condition 56 that "In the event of any disagreement between the Company and the Relevant Planning Authority in respect of any determinative part of the report which cannot be otherwise resolved, the matter must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after notice in writing to the other) by the Secretary of State."

### Secretary of State's Conclusion

- 7.6. In respect to the amendment of the red line boundary and to the exclusion of the Port of Tilbury land, river jetty and associated conveyer belt, the Secretary of State has taken into consideration the matters raised by both Thurrock Council and the Port of London Authority. He has also taken into account the Applicant's confirmation that this area is no longer under a lease to the Applicant and will be incorporated into ongoing port operations, and that any waste material to be shipped to the Consented Development via the River Thames, should this become financially viable in the future, is likely be shipped in containers using the main Tilbury Port handling facilities and transported to the site via the internal port road network. The Secretary of State is satisfied therefore that removing the land, river jetty and associated conveyor belt from the Consented Development's red-line boundary, will not be detrimental to the Applicant's delivery or export of materials to or from the Consented Development at any future date using the River Thames, even though direct access to the river would be removed.
- 7.7. In regard to the amendment of planning condition 56 that forms part of this Variation Application, the Secretary of State has considered the views of Thurrock Council and the Port of London Authority. He has also considered that, on the basis of the information provided and the absence of any objection by Highways England, that the increase in road traffic as a result of the removal of the restriction in Condition 56 of the deemed planning permission will not have any environmental impacts above those assessed in the original application and the 2019 Variation Application. He considers it appropriate therefore to vary condition 56 in line with the re-wording proposed by Thurrock Council and with the inclusion of an arbitration clause in the event agreement between the Applicant and the Council was not possible following receipt of the Applicant's economic feasibility report. He has considered the revised planning condition recommended by Thurrock Council, and has decided that it is suitable for inclusion in any direction under section 90(2ZA) of the Town and Country Planning Act 1990 that he may give, subject to any minor drafting amendments.

## **8. SECRETARY OF STATE'S CONSIDERATION OF OTHER MATERIAL ISSUES**

- 8.1. 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 environmental



- information submitted in support of the Variation Application and the Secretary of State has judged that the likely key environmental impacts are acceptable;
- (c) the views of the relevant planning authority, and all other relevant matters have been carefully considered;
  - (d) the legal procedures for considering an application for a variation of the generating station consent and Planning Conditions have been properly followed; and
  - (e) 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 Renewable Energy (EN-3) in determining this Section 36C variation application.

8.2. The Secretary of State notes that the energy National Policy Statements continue to form the basis for decision-making under the Planning Act 2008. The Energy White Paper, Powering our Net Zero Future, was published on 14 December 2020. It announced a review of the suite of energy National Policy Statements but confirmed that the current National Policy Statements were not being suspended in the meantime. The relevant energy National Policy Statements therefore remain the basis for the Secretary of State's consideration of the Application. The Secretary of State considers, therefore, that the ongoing need for the Development is established and that granting the changes requested in the variation would not be incompatible with the amendment to the Climate Change Act 2008.

## **9. THE SECRETARY OF STATE'S DECISION ON THE HOLDING OF A PUBLIC INQUIRY**

- 9.1. 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, alongside all other material considerations.
- 9.2. In its response, the relevant planning authority did not object to the Variation Application.

### Conclusion

9.3. The Secretary of State has carefully considered the views of the relevant planning authority (Thurrock Council), the Port of London Authority and Highways England and all other material considerations. He takes the view that all matters raised in the representations have been addressed either in the conditions attached to the Original Consent which will be retained in the varied consent, and the information submitted by the Applicant in support of the Variation Application. The Secretary of State is therefore of 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 discretionary public inquiry to be held into the Variation Application.

## **10. EQUALITY ACT 2010**

10.1. 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 (e.g. age; sexual orientation; gender; gender reassignment; disability; marriage and civil partnerships ; pregnancy and maternity; religion and belief; and race.) and persons who do not share it; and
- (c) the fostering of good relations between people who share a relevant protected characteristic and those who do not share it.

10.2. 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 and sees no evidence which suggests that such differential impacts are likely in the present case.

10.3. 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.

## **11. HUMAN RIGHTS ACT 1998**

11.1. The Secretary of State has considered the potential infringement of human rights in relation to the European Convention on Human Rights, by the Varied Development. The Secretary of State considers that the grant of Varied Development would not violate any human rights as given effect in UK law by the Human Rights Act 1998.

## **12. NATURAL ENVIRONMENTAL AND RURAL COMMUNITIES ACT 2006**

12.1. 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 development consent.

12.2. The Secretary of State is satisfied that there has been due regard to conserving biodiversity and consider that the matters specified in paragraph 1(2) of Schedule 9 to the Electricity Act 1989 have been adequately addressed by means of the Supplementary Environmental Information Report provided with the 2019 Variation Application.

## **13. THE SECRETARY OF STATE'S DECISION ON THE VARIATION APPLICATION**

13.1. The Applicant has requested a change to the red line boundary of the Consented Development and an amendment to planning condition 56 in the deemed planning permission to permit all feedstock waste for the Phase 2 development to be brought onto site by road. The Secretary of State notes that there will be no change in the previously consented maximum waste throughput and there have been no significant changes in the environmental and other impacts identified in relation to the Varied Development. The Secretary of State considers that the revised wording to planning

condition 56 as proposed by Thurrock Council is relevant and has been adopted into the Varied Consent. The Secretary of State has also added an arbitration clause to condition 56 in the event that the Applicant and Thurrock Council cannot agree on the outcome of the financial viability report that is to be prepared by the Applicant every 5 years and submitted to the Council for approval. The Secretary of State is therefore of the view that the Varied Development does not result in a development that is fundamentally different in character or scale to that originally consented. The Secretary of State is of the view that the Varied Development is appropriate and necessary, and is satisfied that the changes are of a kind that is reasonable to authorise by means of the variation procedure in section 36C of the Electricity Act 1989.

- 12.3. The Secretary of State has also had regard to the above and all other matters specified in section 5 above and has decided to grant a variation to the Consented Development pursuant to section 36C of the Electricity Act 1989. The varied consent is annexed to this variation decision and is subject to the conditions set out in the varied consent. The Secretary of State also considers the deemed planning Conditions as varied, form a sufficient basis on which the Varied Development might proceed, and has, therefore decided to issue a section 90(2ZA) direction that the conditions to the deemed planning Conditions be varied in respect of condition 56 as specified in the annex to that direction. The reasons for the variation to the condition is as explained in the Annex to this letter.
- 12.4. Accordingly I enclose the Secretary of State's variation of consent under section 36C of the Electricity Act 1989 and under section 90(2ZA) of the Town and Country Planning Act 1990 varying the Planning Conditions.

#### **14. GENERAL GUIDANCE**

- 14.1. 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.
- 14.2. 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 of the Town and Country Planning Act 1990.

Yours sincerely

*Gareth Leigh*

**Gareth Leigh**

Head of Energy Infrastructure Planning