



Department for  
Energy Security  
& Net Zero

3-8 Whitehall Place  
London  
SW1A 2AW  
+44 020 7215 5000  
[energyinfrastructureplanning@energysecurity.gov.uk](mailto:energyinfrastructureplanning@energysecurity.gov.uk)  
[www.gov.uk/desnz](http://www.gov.uk/desnz)

Ref: EN010097

Mr Rob Booth  
DWD  
69 Carter Lane  
London  
EC4V 5EQ

22 May 2025

Dear Mr Booth

## **PLANNING ACT 2008**

### **PROPOSED NON-MATERIAL CHANGE TO IMMINGHAM OPEN CYCLE GAS TURBINE ORDER DEVELOPMENT CONSENT ORDER 2020 - (S.I. 2020 NO. 847)**

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 VPI Immingham B Limited (“the Applicant”) on 4 March 2025 for changes which are not material to be made to the Immingham Open Cycle Gas Turbine Order 2020 (“the Order”) under section 153 of, and Schedule 6 to, the Planning Act 2008 (“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 PA2008 was granted consent on 7 August 2020 and gave development consent for the construction and operation of an open cycle gas turbine power station with a gross electrical output of up to 299MW. The Order was corrected by the Immingham Open Cycle Gas Turbine (Correction) Order 2021 (S.I. 2021 No. 581), which was made on 14 May 2021 and came into force on 17 May 2021. The Order was amended by the Immingham Open Cycle Gas Turbine (Amendment) Order 2023’ (S.I. 2023 No. 119) which was made on 31 January 2023 and came into force on 1 February 2023, and the Immingham Open Cycle Gas Turbine (Amendment) (No. 2) Order 2024 (S.I. 2024 No. 446) which was made on 27 March 2024 and came into force on 28 March 2024.
3. The following changes are proposed by the Applicant:
  - i. The inclusion of additional land to access and utilise an existing pipe-bridge adjacent to the Order limits on which to carry the gas, electrical and utilities and services connections between the existing VPI CHP Site and the VPI OCGT Project Site; and
  - ii. The use of an additional area of land on the existing VPI CHP Site to accommodate a minor deviation in the gas pipeline routing.

4. To incorporate the changes listed above, the Applicant is seeking the following changes to the Order: amendment to selected Certified Documents listed at Schedule 11 of the Order including '3.1 – Book of Reference', '4.2 – Land Plans' and '4.3 - Works Plans' to include the additional areas for Work No. 4 (Gas Connection), Work No. 5 (Electrical Connection) and Work No. 6 (Utilities and Services Connections) within the Order limits.

### **Summary of the Secretary of State's decision**

5. The Secretary of State has decided under paragraph 2(1) of Schedule 6 to PA2008 to make non-material changes ("NMCs") to the Order to authorise the changes as detailed in the Application. This letter is notification of the Secretary of State's decision in accordance with Regulation 8 of the 2011 Regulations.
6. The Secretary of State has considered 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. So far as decisions on 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), the "Planning Act 2008: Guidance on Changes to Development Consent Orders" (December 2015) ("the Guidance")<sup>1</sup>, which makes the following points:
  - a) given the range of infrastructure projects that are consented through the Planning Act 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;
  - 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:
    - (1) 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;
    - (2) 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");
    - (3) whether the proposed change would entail compulsory acquisition of any land that was not authorised through the Order; and

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

- (4) 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:
- (1) The Secretary of State has considered the information submitted by the Applicant, including the updated Cumulative Assessment, which concludes that there are no new, or materially different likely significant effects from those assessed in the ES. 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.
- (2) 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.
- (3) In respect of compulsory acquisition, the Secretary of State notes that the proposed changes do not require any additional compulsory purchase of land.
- (4) 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 changes 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. On 19 February 2025, under Regulation 7(c) of the 2011 Regulations, the Secretary of State consented to a reduced list of consultees proposed by the Applicant. The relevant local planning authorities (North Lincolnshire Council and North East Lincolnshire Council) were advised of the application in advance by email on 14 January 2025.

13. The Applicant published a notice of the Application in accordance with Regulation 6 (publicising the application) of the 2011 Regulations (the “Regulation 6 notice”) for two consecutive weeks in the local press (Grimsby Telegraph and Scunthorpe Telegraph) on 6 March 2025 and 13 March 2025 and 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 notice and application documents were also published on the project website<sup>2</sup>. The deadline for receipt of representations on the Application was 10 April 2025.
14. The Applicant submitted its Consultation and Publicity Report as required by Regulation 7A of the 2011 Regulations on 01 May 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 document has been published on the PINS website.
15. Three responses were received from specified Interested Parties including Natural England, the Environment Agency and North Lincolnshire Council which are detailed below.

#### Environment Agency

16. The Environment Agency provided a letter on 11 April 2025. After reviewing the proposed changes it had no comments to make.

#### Natural England

17. Natural England (“NE”) provided a letter on 08 April 2025 and stated that based on the information submitted as part of the Non-Material Change Order that the proposed changes will not have significant adverse impacts on designated sites and it had no detailed comments to make.

#### North Lincolnshire Council

18. North Lincolnshire Council (“NLC”) replied by letter on 17 April 2025. It stated that: the NMC would not result in additional impact on cultural heritage or archaeological remains and the proposed amendments are unlikely to have any impact on the highway network. It had no objections, provided the works are carried out in accordance with Requirement 6 of The Immingham Open Cycle Gas Turbine Order 2020 (“the DCO”) which requires a biodiversity protection plan for each stage of the development.

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<sup>2</sup> <https://www.vpi.co.uk/news-press/>

### **The Secretary of State's consideration of the responses received**

19. 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**

20. 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 authorised by the Order.

21. 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.

22. The Secretary of State has considered all relevant information provided and the comments of consultees. The Secretary of State agrees with the Applicant's conclusions that there will not be any new or materially different likely significant 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.

23. 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.

### **The Habitats Regulations**

24. 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.

25. 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 HRA for the Order, and therefore a new HRA is not required.

## General Considerations

### Transboundary Impacts

26. 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 2022 Order.
27. 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.
28. The Secretary of State therefore concludes there is no need for transboundary consultation with EEA States.

### Equality Act 2010

29. 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;<sup>3</sup> 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.
30. 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

31. 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

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<sup>3</sup> In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

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

32. 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**

33. The Secretary of State has considered the ongoing need for the Development and considers that the Project, amended with the proposed change, continues to conform with the policy objectives outlined in 2024 EN-1 (Overarching National Policy Statement for Energy) and EN-2 (National Policy Statement for Natural Gas Electricity Generating Infrastructure). The need for the Development remains as set out in the Secretary of State’s letter of 7 August 2020.

34. As such, for the reasons set out in the paragraphs above, the Secretary of State is satisfied that the Applicant’s request is justified and demonstrates that the proposed changes will not result in changes to the impact conclusions of the ES that accompanied the original the Immingham Open Cycle Gas Turbine application.

35. The Secretary of State has considered the nature of the proposed changes, noting that the proposed changes to the Development would not result in any further environmental impacts and will remain within the parameters consented by the Order.

36. For the reasons given in this letter, the Secretary of State considers that there is a compelling case for authorising the proposed changes to Schedule 11 of the Order. The 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.

#### **Challenge to decision**

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

Yours sincerely,



John Wheadon

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/EN010097>

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)