



HERBERT  
SMITH  
FREEHILLS

Head of Energy Infrastructure Planning  
Energy Infrastructure Planning  
Department for Energy Security and Net Zero  
3-8 Whitehall Place  
London  
SW1A 2AW

energyinfrastructureplanning@energysecurity.gov.uk

For the attention of David Wagstaff

Herbert Smith Freehills LLP  
Exchange House  
Primrose Street  
London EC2A 2EG  
T +44 (0)20 7374 8000  
F +44 (0)20 7374 0888  
DX28 London Chancery Lane  
E [REDACTED]@hsf.com  
www.herbertsmithfreehills.com

Our ref  
5567/18150/31043636  
Your ref  
EN010138  
Date  
30 January 2025

By email

Dear Sirs

**The Rivenhall Generating Station Extension Order 2024 (the "Order") – Request for the Correction of Errors**

1. We are writing on behalf of our client, Indaver Rivenhall Limited (the "**Applicant**").
2. The Secretary of State for Energy Security and Net Zero (the "**Secretary of State**") granted The Rivenhall Generating Station Extension Order 2024 (the "**Order**") on 19 December 2024.
3. The Order as made contains correctable errors as defined in section 119, paragraph 1(3) of the 2008 Act.
4. Please find below and enclosed, a request under section 119 of and Schedule 4 to the Planning Act 2008 for the correction of these errors.

**REQUESTED CORRECTIONS TO ARTICLE 2(1) - INTERPRETATION**

5. The Applicant requests the following corrections to the Order:
  - 5.1 **Article 2(1) – Definition of "the 2006 Act"**
    - a) The Applicant requests that this definition is omitted from the Order. This definition is not referred to in the made Order and so is no longer required.
  - 5.2 **Article 2(1) – Definition of "approved variation"**
    - a) The Applicant requests that this definition is substituted with the following text:

*"approved variation" means any variation to the TCPA permission granted before or after the date of this Order by the relevant planning authority pursuant to section 73 or section 96A of the 1990 Act, provided that: (i) the development permitted by*

Herbert Smith Freehills LLP and its subsidiaries and Herbert Smith Freehills, an Australian Partnership, are separate member firms of the international legal practice known as Herbert Smith Freehills.

Herbert Smith Freehills LLP is a limited liability partnership registered in England and Wales with registered number OC310989. It is authorised and regulated by the Solicitors' Regulation Authority of England and Wales. A list of the members and their professional qualifications is open to inspection at the registered office, Exchange House, Primrose Street, London EC2A 2EG. We use the word partner of Herbert Smith Freehills LLP to refer to a member of Herbert Smith Freehills LLP, or an employee or consultant with equivalent standing and qualifications.



*such variation when carried out in conjunction with the authorised development does not give rise to any materially new or materially different environmental effects to those identified in the environmental information; or (ii) in the event that it does give rise to such environmental effects, an environmental impact assessment has been carried out in respect of those effects prior to the grant of the variation;*

- b) The definition of approved variation was introduced into the made Order at the decision stage by the Secretary of State without any discussion with the Applicant or any other party to the examination. It did not form part of the draft Order recommended by the Examining Authority.
- c) The definition is used to limit the types of variations to the TCPA permission (being the planning permission which controls the development of the wider site within which the authorised development is taking place) which are automatically incorporated into the Order without an application being made to the Secretary of State. The Secretary of State's reason in introducing this definition was to avoid unassessed environmental effects arising.
- d) The Applicant agrees that the authorised development and the development of the wider site should be subject to appropriate environmental assessment and safeguards.
- e) However, the Applicant considers that an amendment is required to this definition to reflect the context of the authorised development and to prevent an unnecessary duplication of assessment and consenting.
- f) The authorised development under the Order consists of internal works to a valve and an uplift in electrical generating capacity. This is in the context of a wider site, the development of which is ongoing pursuant to the TCPA permission.
- g) As discussed during the examination, in the Examining Authority's report and the Secretary of State's decision letter, the Applicant anticipates that it will seek to vary the TCPA permission in due course. For example, paragraphs 3.4.15, 3.4.18 and 3.4.33 of the Examining Authority's report and paragraph 4.39 of the Decision Letter, all discuss a proposed section 73 application by the Applicant whereby it is anticipated that the noise limits at the site will be reduced (i.e. a materially different, but beneficial, environmental effect).
- h) The relevant and appropriate planning authority for considering such applications (which do not relate to amendments to the valve or the capacity uplift – i.e. are not an application for an NSIP) is the local planning authority. It will be responsible for ensuring that an environmental impact assessment is undertaken prior to making a decision.
- i) As drafted in the made Order, the definition of "approved variation" would require the Applicant to obtain both the consent of the local planning authority (for example through a section 73 permission) and the consent of the Secretary of State (through a change to the DCO) prior to making any changes at the wider site. This would be the case even where the changes made in the variation related to other elements of the development of the wider site and did not concern the NSIP (being the internal valve and the increase in generating capacity).
- j) The Applicant does not consider that this was the Secretary of State's intention when introducing the "approved variation" definition, particularly given paragraph 4.39 of the Decision Letter where amended noise conditions attached to a future



section 73 permission (i.e. a materially different environmental effect) were discussed as being automatically within Article 6 of the Order without reference to a need for a subsequent change to the Order.

- k) Further, this duplication of controls:
- a. is likely to cause material delay and expense to the Applicant, contrary to the recognised need for new large-scale energy infrastructure and the need to diversify and decarbonise electricity generation referenced at paragraphs 4.22 and 4.23 of the Decision Letter;
  - b. effectively provides the Secretary of State with the ability to block or veto the implementation of development not forming part of an NSIP which the local planning authority has already authorised as being in the public interest;
  - c. is not required to prevent unassessed environmental effects arising at the site (the purpose of the definition), as the local planning authority is under a statutory duty to carry out an environmental impact assessment in respect of any applications it receives; and
  - d. is likely to cause material expense to the local planning authority, the Planning Inspectorate and the Secretary of State in re-assessing and consenting a variation which has already been determined by the local planning authority.
- l) Therefore, the Applicant requests that the definition of "approved variation" is corrected to make it clear that where materially new or materially different environmental effects (which may be adverse or beneficial) have been assessed by the local planning authority prior to granting a variation to the TCPA permission, the Applicant is not required to also apply for a change to the Order prior to implementing that variation.
- m) The Applicant considers that its amended definition proposed in paragraph 5.2(a) avoids the issues of duplication described above whilst still meeting the Secretary of State's purpose of ensuring that unassessed environmental effects are not incorporated into the Order. In the unlikely scenario that a variation was granted without an environmental impact assessment having taken place, the Applicant would still be required to apply to the Secretary of State to change the Order (and the Secretary of State could then ensure that the assessment was carried out).
- 5.3 **Article 2(1) – Definition of "the 2006 Act"**
- a) The Applicant requests that this definition is omitted from the Order. This definition is not referred to in the made Order and so is no longer required.
- 5.4 **Article 2(1) – Definition of "holding company"**
- a) The Applicant requests that this definition is omitted from the Order. This definition is not referred to in the made Order and so is no longer required.

6. A draft Correction Order including the above is enclosed with this letter.
7. We look forward to receiving confirmation that the Secretary of State has determined to grant a Correction Order on those terms.



HERBERT  
SMITH  
FREEHILLS

Date  
30 January 2025  
Letter to  
Head of Energy Infrastructure Planning

8. If the Applicant can be of any further assistance or the Secretary of State considers that any further clarification is required in response to the information in this request, please do not hesitate to contact us on the Applicant's behalf using the contact details provided above.

Yours faithfully,



**Herbert Smith Freehills LLP**

*Enc*

cc.

Rivenhall IWMF Case Team, National Infrastructure Planning, FAO Sian Evans

[rivenhalliwmf@planninginspectorate.gov.uk](mailto:rivenhalliwmf@planninginspectorate.gov.uk)