

Our ref: Q220592
Your ref: EN010138
Email: [REDACTED]@quod.com
Date: 11th September 2025



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

For the attention of [REDACTED] OBE

Dear Madam/Sir

The Rivenhall Generating Station Extension Order 2024 (EN010138) – Application for a Non-Material Change

- 1.1 I write as the agent for Indaver Rivenhall Limited ('Indaver' or 'the Applicant') regarding The Rivenhall Generating Station Extension Order 2024 ('the Order') that was made on 19 December 2024, as corrected by The Rivenhall Generating Station Extension (Correction) Order 2025 made on 8 April 2025.
- 1.2 Indaver propose a non-material change to the Order, made under section 153 and paragraph 2 of Schedule 6 to the Planning Act 2008 (as amended) ('the 2008 Act'). This application ('the Application') is made in accordance with Part 1 of The Infrastructure planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011 (as amended) ('the 2011 Regulations'). Indaver are the applicant for the purposes of section 2(4)(a) of Schedule 6 to the 2008 Act and the person with an interest in the land to which the Order relates.
- 1.3 In accordance with regulation 5 of the 2011 Regulations, a fee of £6,891 has been paid in respect of this application to the Secretary of State for Energy Security and Net Zero ('the Secretary of State').
- 1.4 This letter contains details of the non-material change being applied for and the consultation and publicity that is in the process of being carried out.

2 Submission documents

- 2.1 The following are submitted with this application:
 - This **Covering Letter**. This includes:
 - Details of the proposed changes and justification for these changes;
 - A consideration of the materiality of the proposed changes; and
 - A Regulation 4 checklist, demonstrating compliance with the requirements of the 2011 Regulations.



- A **Site Location Plan** showing the location of the land to which the Order (and this Application) relate;
- **Draft Amendment Order** in the form in which Indaver requests that it is made by the Secretary of State, as well as confirmation that this has been successfully validated; and
- A **Track Changes Version of the Order** (as corrected, showing the changes which are the subject of this Application in track).

3 Non-material changes proposed

3.1 The following changes are proposed to the definitions set out in Article 2(1) of the Order:

- a) omission of the definition of "approved variation"; and
- b) amendment of the definition of "TCPA permission" to the following:

"TCPA permission" means—

(a) the planning permission granted by Essex County Council with reference ESS/39/23/BTE dated 26 January 2024; or

(b) any planning permission granted by the relevant planning authority pursuant to planning application ESS/02/22/BTE,

and any other variations thereto whether granted before or after the date of this Order (which shall include for the avoidance of doubt any variations pursuant to Section 73 of the 1990 Act and any non-material amendments under Section 96A of the 1990 Act).

3.2 No other changes are proposed to the Order. A full track changes copy of the Order is provided with this application.

Justification

3.3 The definition of "approved variation" which this Application is seeking to omit from the Order 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. Similarly, the definition of "TCPA permission" that the Applicant requests in this Application be included in the Order formed part of the draft Order recommended by the Examining Authority.

3.4 The definition of "approved variation" which was introduced into the made Order is presently 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.



- 3.5 The Applicant agrees that the authorised development and the development of the wider site should be subject to appropriate environmental assessment and safeguards.
- 3.6 However, the Applicant considers that amendments to the definitions in the Order are required to reflect the context of the authorised development and to prevent an unnecessary duplication of assessment and consenting.
- 3.7 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 planning permission granted by Essex County Council (in their capacity as local planning authority for waste and minerals applications) pursuant to section 70 of the Town and Country Planning Act 1990 (as amended) under reference ESS/39/23/BTE dated 26 January 2024 ('the TCPA permission').
- 3.8 As discussed during the examination, in the Examining Authority's report and the Secretary of State's decision letter ('the 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). That application was validated by ECC on 1 April 2025 under reference ESS/23/25/BTE. It is currently pending determination by ECC.
- 3.9 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 a Nationally Significant Infrastructure Project ('NSIP')) is the local planning authority, in this case Essex County Council. It will be responsible for ensuring that an environmental impact assessment is undertaken prior to making a decision.
- 3.10 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 Order) 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). This duplication of controls:
- 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;
 - 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;



- 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
- is likely to cause material expense to the local planning authority, the Planning Inspectorate ('PINS') and the Secretary of State in re-assessing and consenting a variation which has already been determined by the local planning authority.

3.11 Therefore, the Applicant requests that the definition of "approved variation" is removed from the Order and the definition of "TCPA permission" amended so it is the same as the definition in the draft Order recommended by the Examining Authority.

3.12 The Applicant considers that these amendments avoid 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.

Materiality of the changes

3.13 In determining the materiality of the proposed changes that this Application relates to, regard has been had to the Planning Act 2008: Guidance on Changes to Development Consent Orders (December 2015) published by the Department for Communities and Local Government ('the 2015 Guidance'). This is because there is no statutory definition of materiality contained in either the 2008 Act or the 2011 Regulations.

3.14 The 2015 Guidance provides examples of characteristics that would indicate whether a change is material or not. These are summarised below in bold, with an assessment against each:

- **A change should be treated as material if it would require an updated Environmental Statement.** The proposed change is only related how "TCPA permission" is defined for the purposes of the Order. It does not propose any changes to the authorised development and nor would it result in any new or different environmental effects. Updates to the Environmental Statement are not required.
- **A change to a Development Consent Order is likely to be material if it would invoke a need for a Habitats Regulations Assessment.** The proposed change does not invoke any need for a Habitats Regulations Assessment (nor did the DCO application).
- **A change should be treated as material that would authorise the compulsory acquisition of any land, or an interest in or rights over land, that was not authorised through the existing Development Consent Order.** No compulsory acquisition of any land is required as a proposed change, nor was any required as part of the grant of the Order.
- **The potential impact of the proposed changes on local people will also be a consideration in determining whether a change is material.** There will be no impact on local people as a result of the proposed changes. There is no change to the authorised development proposed. Any variations to the TCPA permission will still have to be approved by the local planning authority who will conduct a public consultation on any such proposals that are made by the Applicant.



3.15 It is acknowledged that the 2015 Guidance provides the above characteristics as a “*starting point*” for considering the materiality of the proposals. Even so, it is clear from the above that the proposed changes should be considered non-material.

4 Consultation and Publicity

4.1 Regulations 6 and 7 of the 2011 Regulations set out the process for publicising and consulting respectively on a non-material change application. Pursuant to Regulation 7A of the 2011 Regulations, the Applicant will submit a separate Consultation and Publicity Statement confirming its compliance with Regulations 6 and 7A of the 2011 Regulations.

4.2 In summary, the following has, or is being, undertaken by the Applicant to comply with Regulations 6 and 7:

- The Applicant notified PINS and the Department for Energy Security and Net Zero of the intention to submit the Application, on 23rd May 2025 and 10th September 2025;
- In accordance with Regulation 6(1)(a) of the 2011 Regulations a notice will now be first published in the Braintree & Witham Times and the Halstead Gazette on the 18th September 2025 and will appear for two successive weeks. A copy of the notice will be included in the Consultation and Publicity Statement;
- Letters have also been sent today to Essex County Council and Braintree District Council to notify them of this application in accordance with Regulation 7 of the 2011 Regulations. The deadline for responses from all stakeholders is 23:59:59 on Friday 24th October 2025. This list of consultees has been agreed with the Secretary of State pursuant to Regulation 7(3) of the 2011 Regulations. A copy of that letter is enclosed.

Regulation 4 Checklist

4.3 The following information is provided in accordance with Regulation 4 of the 2011 Regulations:

- Reg 4(2)(a) – the applicant is Indaver Rivenhall Limited of Kao Hockham Building, Edinburgh Way, Harlow, Essex, CM20 2NQ;
- Reg 4(2)(b) – the appointed agent is Carly Vince, Senior Director at Quod Ltd of 21 Soho Square, London, W1D 3QP;
- Reg 4(2)(c) – the Secretary of State’s reference for the Order is EN010138;
- Reg 4(2)(d) – the details of the change being applied for are contained within Section 2 of this letter;
- Reg 4(2)(e) – the documents and plan considered necessary to support the application are as set out in Section 1 of this letter;
- Reg 4(2)(f)(i) – the applicant is the person who applied for the development consent order to which this application relates;
- Reg 4(2)(ff) – A Consultation and Publicity Statement will be provided to the Secretary of State promptly once the second newspaper notice has been published;



- Reg 4(2)(g) – the applicant has leasehold ownership of the land subject to this application;
- Reg 4(2)(h) – paper copies of the application can be provided upon request by the Secretary of State. No such requests have been received to date.

5 Conclusion

- 5.1 I would be grateful if you could acknowledge receipt of this letter and its enclosures and I look forward to hearing from you in relation to the outcome of this Application. Should you need anything further then please do not hesitate to contact me via the email address provided at the header of this letter.

Yours sincerely

[Redacted Signature]

Senior Director

enc. as per Section 2
Regulation 7(3) Letter from the Secretary of State
cc. Micheal Geary (Indaver Rivenhall Ltd)



Department for
Energy Security
& Net Zero

3-8 Whitehall Place
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BY EMAIL ONLY to: [REDACTED]@quod.com

Quod Limited
21 Soho Square
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W1D 3QP

03 September 2025

Dear Mr [REDACTED]

THE RIVENHALL GENERATING STATION EXTENSION ORDER 2024 – S.I. 1391 AND THE RIVENHALL GENERATING STATION EXTENSION (CORRECTION) ORDER 2025 – S.I. 533 – PROPOSED NON-MATERIAL CHANGE APPLICATION

REGULATION 7(3) OF THE INFRASTRUCTURE PLANNING (CHANGES TO, AND REVOCATION OF, DEVELOPMENT CONSENT ORDERS) REGULATIONS 2011 - WRITTEN CONSENT FROM THE SECRETARY OF STATE FOR NOT CONSULTING A PERSON OR AUTHORITY

1. Thank you for your email and letter of 12 August 2025 on behalf of Indaver Rivenhall Limited (“the Applicant”) regarding the proposed non-material change to the Order. This letter provided a description of the proposed changes, the reasons for the proposed changes, the proposed reduced consultee list, and a list of the parties consulted on the original application in respect to the Rivenhall Generating Station Extension Order 2024 and as corrected by The Rivenhall Generating Station Extension (Correction) Order 2025. The letter requested the Secretary of State’s consent under Regulation 7(3) of the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011 (as amended) (“the 2011 Regulations”) to a reduced list of consultees.
2. The letter provides the following description of the changes sought:

The proposed changes seek to make amends to Article 2(1) of the Order as follows:

- a. omission of the definition of “approved variation”; and
- b. amendment of the definition of “TPCA permission” to the following:

“TCPA permission” means—

- a. the planning permission granted by Essex County Council with reference ESS/39/23/BTE dated 26 January 2024; or

b. any planning permission granted by the relevant planning authority pursuant to planning application ESS/02/22/BTE,

and any other ~~approved variation~~ variations thereto whether granted before or after the date of this Order (which shall include for the avoidance of doubt any variations pursuant to Section 73 of the 1990 Act and any non-material amendments under Section 96A of the 1990 Act).

3. The Applicant proposes to consult two parties: Essex County Council and Braintree District Council as it considers these are “the only parties that would in reality be affected by the changes.”
4. The Secretary of State is satisfied that the consultees proposed by the Applicant for consultation as listed at paragraph 3 should be consulted, noting the nature of the proposed changes as set out at paragraph 2 above.
5. Accordingly, the Secretary of State gives written consent for the consultation to proceed in accordance with the details set out above, under regulation 7(3) of the 2011 Regulations.
6. In taking this decision, the Secretary of State acknowledges that the Applicant will provide notice of the Application in line with the requirements in Regulation 6 of the 2011 Regulations.
7. The Secretary of State’s written consent in this matter should not be taken as indicating approval for any other aspects of the proposed changes to the Order, which fall to him for consideration and determination, or whether the proposed changes will ultimately be regarded as material or not.

Yours sincerely,

James Dawkins

Head of Planning

On behalf of the Secretary of State for Energy Security and Net Zero