
From: [REDACTED]

Sent: 27 November 2019 09:14

To: 'Sara.Claxton@derby.gov.uk' <Sara.Claxton@derby.gov.uk>

Cc: NI Enquiries <NIEnquiries@planninginspectorate.gov.uk>

Subject: FW: Proposal for gas fired power station, Spondon, Derby - National Infrastructure application?

Dear Ms Claxon,

Thank you for your email requesting advice following the inquiry made to Derby City Council regarding a proposed new gas fired power station of up to 50MW to be sited on the former Derwent Cogeneration site.

You request the Inspectorate's view on whether the proposed new power station should be treated as separate to an existing power station under the same ownership on the site and therefore considered under the Town and Country Planning Act 1990 or whether, due to the proximity of the proposed power station to the existing power station and their ownership, it should be regarded as an extension to the existing power station which would exceed the threshold of 50MW set by the Planning Act 2008 (PA 2008) and therefore require a Nationally Significant Infrastructure Project (NSIP) application for development consent to be made instead.

As you are aware, under Section 14(1)(a) of PA 2008 the construction or extension of a generating station is defined as a Nationally Significant Infrastructure Project. Section 15(2) provides that the construction or extension of an onshore generating station in England is within section 14(1)(a) only if the generating station is, or (when constructed or extended) is expected: not to generate electricity from wind; and to have a capacity of more than 50

megawatts.

The definition of extension is set out in Section 235(1) of PA 2008 which provides that, in relation to a generating station, it has the meaning given by Section 36(9) of the Electricity Act 1989. That provision of the Electricity Act states that ““extension”, in relation to a generating station, includes the use by the person operating the station of any land or area of waters (wherever situated) for a purpose directly related to the generation of electricity by that station...”.

It appears that the developer’s legal advisors suggest that the circumstances of this case supports their view that the proposal ought to be regarded as a separate generating station and that it should therefore fall below the threshold set by the Section 15(2)(c) of PA 2008.

The Council will need to satisfy itself, taking into consideration its own legal advice, as to whether or not any proposal submitted to it can be considered and determined by the local planning authority under any regime other than the development consent regime provided for by PA 2008.

If the Council are minded to conclude that these two sites are interconnected you will need to explain to the Applicant why you consider this proposal to be an NSIP and suggest the Applicant contact the Inspectorate to discuss the NSIP process. However, the Applicant may choose to ignore such advice and lodge it as a TCPA application.

It should be noted that, under Section 160 of PA 2008, it is an offence if a “person carries out, or causes to be carried out, development for which development consent is required at a time when no development consent is in force in respect of the development”.

Please note that the Inspectorate has a statutory duty to record and make publicly available any advice given under s51 of the PA 2008 about: applying for an order granting development consent; or making representations about an application, or a proposed application, for such an order.

If you wish to seek any further advice in relation to the NSIP planning regime and these proposals, please don’t hesitate to contact us again.

Kind regards,

[Redacted signature]

[Redacted signature]

The Planning Inspectorate

[Redacted address] Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN

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Please note I do not work on Fridays.

This communication does not constitute legal advice.

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From: Sara Claxton <Sara.Claxton@derby.gov.uk>

Sent: 05 November 2019 13:56

To: NI Enquiries <NIEnquiries@planninginspectorate.gov.uk>

Cc: Ian Woodhead <Ian.Woodhead@derby.gov.uk>

Subject: Proposal for gas fired power station, Spondon, Derby - National Infrastructure application?

Dear Sir,

The City Council has received a pre-application inquiry about a proposed gas fired power station to be sited on the former Derwent Cogeneration site alongside the former Celanese site. There is an existing gas fired generating facility on the site, which was granted earlier this year and is referred to in the above briefing note supplied by the developer. The proposal would be to site an additional generating station with a capacity of up to 50MW.

They have asked for our opinion on whether the proposal would meet the threshold in the Planning Act 2008 to be determined by the SoS, as an extension to the existing facility or could be dealt with as a normal planning application as a stand alone facility.

We have sought opinion from our own legal officer and his view is that it is a finely balanced judgement, with arguments weighing on both sides.

On one side the site is owned, promoted and funded by the owner of the adjacent generating facility and ultimately both sites appear to be under the control of that owner (although day to day management may be elsewhere).

On the other side the site is designed to be functionally interdependent, the sites:

- Not having shared electrical or mechanical connections
- Not having linked metering
- being separately connected to the electrical distribution network
- having separately registered meters

Both sites are within close proximity of each other having shared boundaries, although physically will be separated by clearly defined and secured boundaries with separate accesses.

Our view on the matter is that from the description of the proposed development and information provided, whilst the proposal would clearly have the effect of extending the proponents business and operations, focus has to be on the existing generating station. If the proposal is implemented and operated as described, then when considering solely the existing generating station, in physical and operational terms it does not in any practical way result in an extension to that plant. On the basis of the information submitted, on behalf of the applicant we take the view that this is not an extension for the purposes of Section 15.

I would be grateful for your opinion on the type of application, which this proposal should be submitted under, so that I can advise the applicant as soon as possible.

Regards

Sara

Sara Claxton MA MRTPI | Development Control Team Leader

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