

National Infrastructure Planning
Net Zero Teesside DCO Case Team

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Your Ref
Unique Reference: 20029934;
EN010103

Our Ref
RAQ/TGH/203316.0001

Date
2 August 2022

Dear Sir or Madam

Application by Net Zero Teesside Power Limited and Net Zero North Sea Storage Limited (the Applicants) for an Order Granting Development Consent for the Net Zero Teesside Project (the Project)

**Deadline 5 Submission - South Tees Development Corporation
Oral Summary for ISH3 and CAH2**

This letter sets out South Tees Development Corporation's (STDC's) Deadline 5 submissions on:

- (1) Issue Specific Hearing into the draft Development Consent Order (dDCO) (ISH3) on 12 July 2022 (which encapsulates STDC's comments on the dDCO submitted by the Applicants at Deadline 4); and
- (2) Compulsory Acquisition Hearing 2 (CAH2) on 13 July 2022.

STDC notes that positive progress is now being made with the Applicants in seeking to agree mechanisms to resolve STDC's concerns. This is reflected in a revised draft of the Statement of Common Ground between the parties, which STDC has agreed for the Applicants to submit at Deadline 5.

However, until agreement is reached, STDC's formal position is that it continues to object to the Project in its current form and requires amendments to the Order Limits and protective provisions in the dDCO to ensure other development proposals on the Teesworks site are not prevented or unduly interfered with.

For the avoidance of doubt, STDC has no comments on ISH4 (environmental matters).

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(1) Oral Summary of Issue Specific Hearing into the draft Development Consent Order (ISH3)

Article 2 'permitted preliminary works'

The basis of STDC's concern is these widely drafted works may be carried out on STDC land without the Applicants' first needing to satisfy Schedule 2 requirements. A substantial list of Schedule 2 Requirements are exempt from such works: 3, 6, 7, 8, 10, 11, 12, 16, 17, 18, 19, 21, 23, 24, 27, 28, 29, 30, 31.

STDC notes that the amended protective provisions in its favour included at Part 19 of Schedule 12 to the dDCO [REP4-003] specifically apply to work numbers 2A, 3, 4A, 5, 6, 8, 9 and 10 within the Teesworks site. It is therefore unclear to STDC what controls it has in the DCO over these preliminary powers, e.g. a temporary means of enclosure, which could be disruptive to STDC and its tenants.

It is accepted by the Applicants that the permitted preliminary works are intended to be controlled by the protective provisions, and STDC will therefore seek to agree an appropriate amendment to the protective provisions to clarify this.

Article 8 Consent to transfer benefit of the Order and Article 25 Compulsory Acquisition of Rights

STDC notes the updated drafting in article 25 of the dDCO and can confirm that this now partially addresses STDC's concerns around powers over STDC land being transferred. However, STDC also requires an amendment to article 8 to ensure that STDC is notified of any transfers of powers affecting Teesworks. Given the scale of development proposed on Teesworks and the need for close co-operation, it is reasonable and proportionate for STDC to be notified of changes in the undertaker exercising powers over its land. Following discussions with the Applicants, STDC understands that a change will be made to the dDCO at Deadline 5 to address STDC's concerns.

The issue of vertical limits of deviation

As the Examining Authority will be aware, STDC has been requesting information from the Applicants on why the DCO does not refer to vertical limits of deviation for works at Teesworks, whereas other DCOs do contain such limits.

During ISH3, the Applicants confirmed that all land directly above pipeline and service corridors would be sterilised, making vertical limits of deviation redundant. STDC accepts that vertical limits of deviation are therefore not required in these circumstances. However, STDC continues to scrutinise the widths and locations of the proposed pipeline / service corridors. STDC hopes to resolve its concerns in this respect through agreeing appropriate protective provisions with the Applicants.

Schedule 2 Requirements

STDC made a request during ISH3 to be added as a member of the liaison group referred to in Requirement 29.

STDC reserves its position on an approval role for the requirements while it progresses discussions on protective provisions and a side agreement with the Applicants.

The Examining Authority will be aware that STDC acquired the Teesworks site under a CPO approved by the Secretary of State. Although STDC does not retain a planning function, its powers include regeneration or development of land and the facilitation of more effective use of land. It is therefore reasonable for STDC to retain a greater level of control over activities taking place on its land. The Applicants made reference to STDC's commercial interests in the Order Limits during ISH3, when making its case as to why STDC should not have an approval role. STDC considers this an immaterial consideration, given that land owned by local authorities Stockton-on-Tees Borough Council and Redcar & Cleveland Borough Council is also subject to compulsory acquisition.

Protective Provisions

STDC has provided comments to the Applicants on the revised protective provisions, which remain under negotiation. STDC is also liaising directly with the Applicants on a side agreement.

STDC will issue for the Examining Authority's consideration its preferred set of protective provisions towards the conclusion of the examination, if an agreement is not reached between the parties by that stage.

(2) Compulsory Acquisition Hearing 2 (CAH2) on 13 July 2022

Status of negotiations

STDC notes the prospective further changes to be sought to the DCO application, as notified by the Applicants at Deadline 4 [REP4-031]. STDC supports the Applicants' decision to remove STDC land from the Order Limits which is not required, although it reserves its position to seek further reductions once the relevant amended application documents are available to review, and pending the degree of progress that can be made on protective provisions and associated agreements.

STDC continues to negotiate an option agreement for the main site with the Applicants. However, STDC continues to wait for a draft option agreement from the Applicants for the easements required for the services and connections sought.

Tees Dock Road access – alternative option

STDC is currently engaged in a legal dispute with PD Ports on this proposed point of access to the Teesworks estate. The proposed point of access in question on Tees Dock Road is an unused, secured gate. STDC's case is that PD Ports do not have a right to use it to access the Teesworks estate.

STDC has proposed a reasonable alternative to temporary possession of Plot 274/279 (see STDC's Written Representation [REP2-097a]). During CAH2, STDC outlined the route of the reasonable alternative to temporary possession with reference to Appendix 2 to STDC's Written Representation. The alternative access route, via Lackenby Gate, is physically suitable for construction traffic and is already used by heavy goods vehicles. As confirmed during CAH2, the route is acceptable to the Applicants. STDC also confirmed that it has the necessary power to grant the Applicants the right to use the alternative route.

On that basis, STDC's position is that the case for taking temporary possession to form the Tees Dock Road access is not made out, and should not be granted because it has a disproportionate impact on STDC's interests, and a reasonable alternative exists. The Examining Authority will note that the *Planning Act 2008, Guidance related to procedures for the compulsory acquisition of land* (DCLG, Sept 2013) states at paragraph 8 that "*The applicant should be able to demonstrate to the satisfaction of the Secretary of State that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored.*"

While noting that the latest draft protective provisions provide a mechanism for agreeing (in future) an alternative means of construction access from the south (i.e. "lift and shift"), this is not an acceptable solution for STDC in the case of the Tees Dock Road access. STDC continues to maintain that the Lackenby Gate access is a reasonable alternative which should be incorporated into the DCO proposals.

The CA Guidance makes clear that the Secretary of State will need to weigh up the public benefits of the scheme against any private loss. Given the reasonable, viable and accepted alternative to the Tees Dock Road access, STDC maintains that no powers should be granted to the Applicants at plots 274/279 to form the Tees Dock Road access.

To resolve this matter, STDC's position is that amendments should be made to the Order Limits (with consequential amendments to the DCO and rights of way plans) to remove the Tees Dock Road access. In terms of options open to the Applicant to maintain construction access in this locality, two options would be acceptable to STDC.

Option 1 would be to add the Lackenby Gate access into the Order Limits – since this matter involves temporary possession, it should not engage the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 and appears unlikely to generate materially different environmental effects. STDC consider any consultation on this change (if required, and it may not be) can be accommodated within the remaining timescales of the examination.

Option 2 would be to secure access by agreement with STDC. Reliance on access by agreement is not an impediment to the delivery of the project because STDC has confirmed it is willing to grant access – indeed it has offered to expedite such an agreement.

Yours faithfully

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