

## **Examination of South Gloucestershire Core Strategy**

### **Matter 24 – Major Infrastructure and Oldbury Power Station (Policies CS36 & CS37)**

#### **Written Statement by National Grid plc (ID 4051649)**

#### **1. Is the Council's approach to Major Infrastructure Projects consistent with Government policy?**

It is recognised that major infrastructure projects can have significant local impacts, both adverse and positive, and that such projects are therefore important to local councils and communities. However, as far as Chapter 18 of the draft Core Strategy<sup>1</sup> is concerned, we consider that, as currently drafted, the purpose of the Chapter is not clear and, in part, it appears to be in conflict, or at least not sufficiently aligned, with the legislative framework and national policy for such projects. These shortfalls can however be addressed through appropriate amendments. The rewording of the Chapter proposed by DLP Planning Ltd on behalf of Horizon Nuclear Power of 17<sup>th</sup> February 2012 could provide a useful starting point for this.

From the way in which Chapter 18 is currently written, it seems to be the intention of the Council that the policies and supporting text would apply to a range of projects, including:-

- a. Nationally Significant Infrastructure Projects (NSIPs) under the Planning Act 2008;
- b. major infrastructure projects that do not fall under the Planning Act 2008 regime (although these are not defined in the draft Core Strategy); and
- c. development that in itself would not be a 'major infrastructure project' but which is associated with an NSIP but not included in a Development Consent Order (DCO) application under the 2008 Act.

It appears to be the intention of the Council that the policies and supporting text in Chapter 18 would apply equally and fully to all types of 'major infrastructure projects' described above. However, the role of the Council and the Core Strategy (and other plans prepared by the Council) is very different depending on the type of development in question. At best, the current wording in Chapter 18 is prone to causing confusion as to the roles and powers of the Council and, at worst, it is in conflict with, or at least could be seen as prejudging, the statutory decision making process for such projects.

In particular, we consider that there are three main areas of concern which we elaborate on below, namely:-

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<sup>1</sup> Unless otherwise stated, any reference to the "draft Core Strategy" relates to the "Core Strategy incorporating Post-Submission Changes" document of December 2011.

- i) A lack of clarity of the roles and responsibilities and of the decision making process for the different types of development referred to in Chapter 18;
- ii) Concern that the policies in Chapter 18 would apply in the same way and to the same extent to what could be very different types of projects; and
- iii) Concern about the appropriateness of some of the specific requirements contained in the Policies.

In respect of point i), much of the supporting text in Chapter 18 relates to NSIPs. The supporting text explains the role of the Council in the decision making process for NSIPs. Whilst this needs updating/rewording to reflect the latest situation (e.g. the term 'MIPU' is not used by the Planning Inspectorate), it generally recognises that the role of the Council in respect of DCO applications is not as the decision maker but as a statutory consultee. However, the way in which Policies CS36 and CS37 are then worded does not properly reflect the decision making for NSIPs and the role and power of the Council in respect of such projects (see also our response to Question 4 below).

Policy CS36 states that “developers will be required” to meet certain requirements (underlining added for emphasis). This does not reflect the legislative framework and national policy in respect of NSIPs. Section 104(3) of the Planning Act 2008 requires that the Secretary of State must generally decide a DCO application in accordance with any relevant National Policy Statement (NPS). NPS EN-1 (July 2011) at paragraph 1.1.1 explains further that the overarching energy NPS in combination with the relevant technology-specific energy NPS “provides the primary basis for decisions” on DCO applications. The NPSs also set out clearly the need for new energy infrastructure and the impacts to be assessed as part of the application process.

The Planning Act 2008 and related secondary legislation as well as national policy set the framework for decision making for NSIPs. It would therefore not be appropriate for the local Core Strategy to set out requirements on NSIPs for which the local planning authority is not the decision maker. Clearly, the Council may wish to have a policy that it could refer to, in addition to legislative requirements and national policy, when responding to DCO applications in its role as a statutory consultee. This would have to be reflected in the wording of the policy, e.g. by replacing “Developers will therefore be required to” with “In responding to NSIPs consultations, the Council will take account of the following issues:...”.

In respect of point ii), National Grid is very concerned that, as currently worded, the policies in Chapter 18 would apply in the same way and to the same extent to all of the different types of development listed above (see e.g. first sentence of Policy CS37). However, in practice these projects can vary very significantly in terms of their nature, scale and impacts (both adverse and positive). For example, NSIPs such as new nuclear power stations, ports or airports (i.e. category a. above) are very different from, say, an extension to an existing electricity substation that may be necessary to connect a new power station (i.e. category c. above). Given the very different nature, scale and impacts of these very different types of development, it would not be reasonable or justified to place the same requirements on them.

The policies and supporting text in Chapter 18 should therefore be reworded to ensure a more proportionate and flexible approach which takes account of the significant differences between the types of development currently covered by Chapter 18. This is necessary to ensure the policies are *justified* (as required by paragraph 182 of the National Planning Policy Framework or NPPF) and that they do not undermine the *viability* and *deliverability* of development proposals (as required by paragraph 173 of the NPPF).

In respect of point iii), we have concern about the overall emphasis in Chapter 18 and the appropriateness of some of the specific requirements contained in the policies and the supporting text (see also our response to Questions 2 and 4 below). As currently drafted, the Chapter tends to focus on the adverse impacts of major infrastructure projects. Whilst such impacts should clearly be part of any assessment, there should be recognition of the wider set of issues which should be taken in account in considering such projects. In particular, national policy in NPS EN-1, paragraph 4.1.3, requires that decision makers consider the potential adverse impact as well as the potential benefits of proposed development.

Chapter 18 should also be aligned more closely with other parts of the Core Strategy. Most notably the wording in the Chapter should reflect the full range of the Strategic Objectives in Section 4.2 of the draft Core Strategy. One of the Strategic Objectives relates to mitigating the impacts of climate change, including by promoting new sources of renewable and low carbon energy. Section 5 of the draft Core Strategy then also emphasises that the provision of new renewable and low-carbon energy sources will have a key role to play in responding to climate change.

In view of the national policy requirement in NPS EN-1 and the overarching objectives of the Core Strategy, the policies and supporting text in Chapter 18 should take a more balanced approach which gives equal consideration to potential adverse and positive impacts of major infrastructure development.

## **2. Does Policy CS36 and the supporting text set out appropriate factors to be considered having regard to the wide-ranging impact such schemes would have on the area?**

Within the context of the overarching areas of concern set out above, we would like to make the following additional comments on the factors listed in Policy CS36. For clarity, in any case, we consider that these should not be expressed in the form of “requirements” but as issues the Council may wish to take into account when responding to DCO applications in its role as a statutory consultee, in addition to legislative requirements and national policy.

NPS EN-1, paragraph 1.1.1, makes it clear that the NPS in combination with the relevant technology-specific energy NPS “provides the primary basis for decisions” on NSIPs. The NPSs also set out clearly the need for new energy infrastructure and the impacts to be assessed as part of the application process. EN-1, paragraph 4.1.3, states that decision

makers have to consider the potential adverse impact as well as the potential benefits of proposed development.

As set out above, we are concerned that Chapter 18 tends to focus on the adverse impacts of major infrastructure projects and that it does not fully reflect the balancing of factors required by national policy. This also applies to the factors listed in Policy CS36. In addition, we are concerned about a lack of clarity of some of the factors as well as a lack of consistency or alignment with the legislative framework and national policy on NSIPs.

**Policy CS36 sub-section 1.** states that developers will be required to demonstrate how the development and its associated infrastructure conforms with and delivers on the wider plans and aspirations of South Gloucestershire's Core Strategy.

As set out above, under the Planning Act 2008, it is the NPSs (not local development plans) which should generally be the primary basis for decisions on NSIPs. Developers are required to demonstrate conformity with relevant NPSs but there is no requirement to demonstrate conformity with individual local development documents. The policy should be amended to reflect the proper statutory provisions.

Sub-section 1. also refers to infrastructure "associated" with a major infrastructure project. It should be noted that under Section 115 of the Planning Act 2008 development which in itself would not be an NSIP could be treated as 'associated development' to an NSIP and could be granted consent under the 2008 Act. Again, for this type of development, developers are required to demonstrate conformity with relevant NPSs but there is no requirement to demonstrate conformity with individual local development documents. This should also be clarified in the Core Strategy.

**Policy CS36 sub-section 4.** states that developers will be required to provide contributions to the Local Authority to offset any adverse impacts and harm caused by the project "through effective engagement with local communities and the Council at the pre-application stage".

Pre-application consultation is already required under the Planning Act 2008. Sub-section 4. could be interpreted as seeking to impose additional requirements. For clarity, the sub-section should either be deleted or amended to reflect the existing statutory requirements under the 2008 Act.

Furthermore, it is unclear what the term "contributions" in sub-section 4. refers to. It is also unclear how this relates to existing statutory mechanisms for developer contributions and impact mitigation, and whether the Core Strategy aims to seek additional contributions from major infrastructure developers. There are already statutory provisions under Section 174 of the Planning Act 2008 which mean that development consent obligations (planning obligations) can be entered into in connection with an application (or a proposed application) for an order granting development consent. Any such obligation must relate directly to the proposed development. There are also existing statutory mechanisms for developer contributions through the Community Infrastructure Levy. In

addition, developers are required to ensure appropriate impact mitigation measures under the requirements for Environmental Impact Assessment.

In view of the existing statutory provisions in relation to developer contributions and mitigation measures, it would neither be necessary nor appropriate to introduce any additional requirement through the Core Strategy. Therefore sub-section 4. should either be deleted or amended to reflect the existing statutory provisions.

**Policy CS36 sub-section 5.** states that the Council will require “packages of community benefits” to be provided by the developer to offset and compensate the community for the burden imposed by hosting the project. It is not clear how this relates to, or is distinct from, sub-section 4. In any case, as explained above, there are already existing statutory mechanisms in relation to developer contributions and mitigation measures. Therefore sub-section 5. should either be deleted or amended to reflect the existing statutory provisions. Any duplication or confusion with sub-section 4. should also be avoided.

**Policy CS36 sub-section 6.** states that developers will be required to demonstrate how local economic and community benefits can be maximised, through agreement of strategies for procurement, employment, training and recruitment. As set out above, developers of NSIPs are required by law to engage with local councils and communities and to provide contributions to local communities, as appropriate.

Notwithstanding our general concerns about the contributions and benefits as sought in draft Policy CS36, it should also be recognised that the scope for the type of benefits referred to in sub-section 6. will depend on the scale and nature of a NSIP. For example, the scope for such benefits may be limited in the case of a high voltage electricity overhead line development which is rather specialised for most equipment and labour supplies. The wording of Policy CS36 should be amended to reflect this.

### **3. Does Policy CS37 and the supporting text require amendment in view of the changed circumstances in relation to a future power station?**

Policy CS37 and the supporting text should be amended to reflect properly the roles and responsibilities in relation to development of a future power station and associated development as well as the national policy context (see also our response to Questions 1 and 4). The rewording of the Chapter proposed by DLP Planning Ltd on behalf of Horizon Nuclear Power of 17<sup>th</sup> February 2012 could provide a useful starting point for this.

### **4. Is the range of ancillary factors to be taken into account in Policy 37 comprehensive and appropriate to the nature of the proposal?**

The main areas of concern set out under Question 1 also apply to Policy CS37 and the supporting text.

First, the policy seems to seek to impose certain ‘requirements’ on proposals for Oldbury Power Station and “development associated with or ancillary to” the power station (“the

Council will require compliance with...”). The Planning Act 2008 and related secondary legislation as well as national policy set the framework for decision making for NSIPs. It would therefore not be appropriate for the local Core Strategy to set out requirements on NSIPs for which the local planning authority is not the decision maker. Clearly, the Council may wish to have a policy that it could refer to, in addition to legislative requirements and national policy, when responding to DCO applications in its role as a statutory consultee. This would have to be reflected in the wording of the policy.

Secondly, National Grid is very concerned that the Policy seems to apply in the same way to any “development associated with or ancillary to” a new power station at Oldbury as it would to the power station itself. As explained above, a new nuclear power station is likely to be very different in terms of its nature, scale and impacts (both adverse and positive) from, for example, an extension to an existing electricity substation that may be necessary to connect a new power station. Given the very different nature, scale and impacts of these very different types of development, it would not be reasonable or justified to place the same requirements on them.

Policy CS37 and the supporting text should therefore be reworded to ensure a more proportionate and flexible approach which takes account of the significant differences between the different types of development. This is necessary to ensure the policies are *justified* (as required by paragraph 182 of the National Planning Policy Framework or NPPF) and that they ensure the *viability* and *deliverability* of development proposals (as required by paragraph 173 of the NPPF).

7<sup>th</sup> June 2012

(2666 words)