

Matter No 24
Major Infrastructure and Oldbury Power Station (CS36 & CS37)
12th July 2012
Horizon Nuclear Power Oldbury Ltd (ID: 4055617)
(DLP Planning Ltd)

SOUTH GLOUCESTERSHIRE CORE STRATEGY EXAMINATION

PRE-HEARING STATEMENT

MATTER 24: MAJOR INFRASTRUCTURE AND OLDBURY POWER STATION (POLICIES CS36 & CS37)

Preface

As would be expected, Horizon Nuclear Power Oldbury Limited (Horizon) has continued its dialogue with the Council with the aim of reducing the matters at issue on the wording of Policies CS36 and CS37 and the supporting text in Chapter 18. Accordingly, therefore, it is anticipated that the Council and Horizon will be submitting a Statement of Common Ground (SoCG) in advance of the relevant Hearing session.

At the time of submitting this Pre-Hearing Statement, it is anticipated that this SoCG will identify two similar matters in respect of each of the two policies which Horizon consider do not satisfy the tests of soundness. This Pre-Hearing Statement is, accordingly, confined largely to elaborating on those two matters and to explaining Horizon's reasons for the view it has taken.

This should not, however, be taken as confirmation that Horizon agrees without reservation to the Council's overall approach to Chapter 18 and the scope and content of the two policies. For the avoidance of doubt, Horizon remain of the view that Chapter 18 does not fully reflect the importance that the UK Government attaches to the vital role nuclear power will play in providing reliable energy supplies and the contribution it can make to achieving a secure and diverse energy mix as the UK makes the necessary transition to a low carbon economy. Moreover, we consider Policies CS36 and CS37 could have been drafted in a more effective manner. Streamlining and re-wording of this section could substantially increase clarity. This is particularly significant in the light of the importance Government clearly attaches to this matter. It is therefore anticipated that the SoCG will also highlight a number of matters on which Horizon wishes to record its lack of agreement with the Council, but since they do not individually affect the soundness of the Plan they are not explored any further in this Pre-Hearing Statement.

Issue 1: Is the Council's approach to Major Infrastructure Projects consistent with Government policy?

1. For the purposes of the Core Strategy the Council sets out its own definition of Major Infrastructure Projects (MIPs) at Paragraphs 18.1 and 18.1a. This confirms that the Council's definition of MIPs includes Nationally Significant Infrastructure Projects (NSIPs) as defined in the 2008 Planning Act, and would therefore include proposals for a 'nuclear new build' (NNB) near Oldbury. Such a proposal would therefore necessarily be the subject of an application for a Development Consent Order (DCO) determined by the Secretary of State for Energy and Climate Change. The Council's definition also includes other MIPs which fall outside the DCO regime (i.e. are not NSIPs) but where the Council would be a statutory consultee (Ref: Paragraph 18.1b).
2. For the purposes of this Pre-Hearing Statement, given Horizon's specific interest in a NNB near Oldbury, we will confine ourselves to the narrower question: *Is the Council's approach to NSIPs consistent with Government policy?*
3. The Planning Act 2008, as amended by the Localism Act 2011, provided for a new planning regime which established (subsequently) the National Infrastructure Directorate within the Planning Inspectorate (NID) and the publication of a range of National Policy Statements (NPS) across a range of infrastructure types. The aim of this new planning regime is a more streamlined, faster, fairer and more efficient system for the consideration of proposals for NSIPs.
4. The relevant Secretary of State is the decision-maker for NSIPs. NPSs are the statements of Government policy that the Secretary of State will use to determine those applications. NPSs are therefore at the heart of the new planning regime and the clear intention is that NPSs will operate as the primary policy document for the Secretary of State, as well as for applicants and other interested parties, when considering applications for development consent which are made under the 2008 Act.
5. While the new single consent regime for NSIPs is legally distinct from the town and country planning regime, there are clearly close interactions between the two. The Secretary of State can consider matters other than NPSs which he considers both important and relevant to his decision and this *may* include a local development framework and therefore a Core Strategy, though Section 104 of the 2008 Act does not go as far as to name a Core Strategy as a consideration that is material to a decision to issue a DCO. At the same time, local planning authorities *must* have regard to NPSs when preparing their plans, and where relevant, NPSs will be a material consideration which the LPA will have to take into account when determining planning applications; albeit with the weight to be applied to them determined on a case by case basis (Ref: Annex A of the letter to Chief Planning Officers issued by the DCLG on 9th November 2009).
6. Aside from any electrical connection arrangements which may involve the NPS for Electricity Networks Infrastructure (EN-5), the NPS for Nuclear Power Generation (EN-6), taken together with the overarching NPS for Energy (EN-1), provides the primary basis for decisions taken by the SoS for Energy and Climate Change on applications that the NID receives for nuclear power

stations. The Government's policy on this is summed up at Paragraph 1.1.1 of EN-6 as follows:

“The Government believes that energy companies should have the option of investing in new nuclear power stations. Any new nuclear power stations consented under the Planning Act 2008 will play a vitally important role in providing reliable electricity supplies and a secure and diverse energy mix as the UK makes the transition to a low carbon economy.”

7. The Secretary of State must also have regard to any Local Impact Report prepared by the local planning authority and Horizon acknowledges that the Core Strategy has a legitimate role in informing the preparation of the Council's Local Impact Report.
8. The Council's approach to NSIPs, insofar as a proposal for a new nuclear power station near Oldbury is concerned, is specifically set out in two policies: Policy CS36 which relates to all MIPs (including NSIPs and therefore a NNB near Oldbury) as well as any ancillary development associated with those projects for which the Council might be the determining body under the Planning Acts; and Policy CS37 which is intended to address any proposals for nuclear related development and will therefore also address proposals for a NNB near Oldbury and will also apply to any ancillary development associated with it. Policy CS37 is also intended to address any proposals arising in conjunction with the decommissioning of the existing power station *and* any proposals coming forward for the treatment or storage of nuclear waste not cover by a Development Consent Order for a new power station.
9. On this last point, and for the avoidance of doubt, Horizon is clear that NPS EN-6 Volume 1 paragraphs 2.11.5 and 2.11.6 sets out the position to be adopted by the MIPU (now the NID and the Secretary of State) in relation to radioactive waste from new nuclear power stations i.e. that they would be expected to be provided on-site and would consequently form part of the DCO application to the NID. The presumption in these circumstances would be that existing permitting and licensing regimes comprising part of a robust legislative and regulatory system for managing radioactive waste would be applied and enforced. Horizon's position is, therefore, that this particular element of Policy CS37 would, in practice, only be addressed to proposals arising which are unrelated to the NNB at Oldbury and we have therefore not commented any further on them.
10. We had previously made representations on Policies CS36 and CS37, as submitted (and the version which incorporated post submission changes), to the effect that they appeared to set out tests of compliance for NSIPs and could therefore be seen as going beyond the scope of the Act. We consequently drew the conclusion that policies CS36 and CS37 had, in effect, assumed a status above that accorded the CS by the 2008 Act and the relevant NPSs. This would not have been in accordance with national policy and would not have been fully justified and effective and would therefore have rendered the CS unsound.

11. However, to the extent that Policies CS36 and CS37 (as now proposed by the Council) incorporate explicit acknowledgments that they will be applied by the Council as appropriate: i.e. either in its role as a determining authority (in respect of applications made under the 1990 Planning Act) or as a consultee in respect of NSIPs determined by the SoS “*and within the provisions of national policy*” (Ref: Policies CS36 and CS37) the Council’s *overall* approach to NSIPs now appears to be consistent with Government policy.

12. We do, however, identify two specific areas (below) where Policies CS36 and CS37, as now proposed by the Council, are either not consistent with national policy or the intended operation of the town or country planning regime.

Issue 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?

13. Horizon is clear that all the appropriate factors to be considered in the determination of a DCO application for a NSIP by the SoS for Energy and Climate Change are set out in NPS EN-1 and NPS EN-6. Policy CS36 duplicates a number of these and also makes unnecessary references to seeking compliance with legislative provisions (e.g. Habitat Regulations and EIA Regulations).

14. We nevertheless have two specific objections to Policy CS36.

15. Firstly, we note with respect to the introductory paragraph to Policy CS36 that the Council is seeking to ensure implementation of, *inter alia*, “*other existing and emerging local plans and supporting documents.*”

16. It goes without saying that the starting point for the determination of any planning applications will be ‘the development plan’ as set out at Section 38(6) of the Planning and Compulsory Purchase Act 2004 and recently confirmed at Paragraph 2 of the NPPF. It is because of this, however, that a clear distinction needs to be drawn between adopted development plan policies and emerging development plan policies which have yet to be the subject of formal examination for, *inter alia*, consistency with national policy and the Core Strategy.

17. Such a distinction also needs to be drawn with any “*supporting documents*” which are not intended to become development plan documents and will never be independently examined. The Council’s approach to seeking implementation of these in the policy only serves to confuse the distinction between the development plan and other material considerations.

18. These non-development plan documents fall under the umbrella of *other material considerations*, with the weight to be attached to them determined at

the time by the decision-maker in accordance with the factors set out at Annex 1 Paragraph 216 of the NPPF.

19. It would appear to us therefore that in not drawing this distinction, Policy CS36 seeks to elevate these other “*emerging plans and supporting documents*” to a status which goes beyond Section 38(6) of the Planning and Compulsory Purchase Act 2004, and is not therefore in accordance with NPPF Paragraph 2, and thereby fails the test of soundness.
20. Our second objection concerns Criterion 5 and the requirement for a “*package of community benefits*”.
21. Paragraphs 18.16iii in the supporting text is clear that the “*packages of community benefits*” referred to in Criterion 5 are over and above those that would be legitimately negotiated under the terms of Section 106 of the 1990 Act (and Section 174 of the Planning Act 2008) or by way of Community Infrastructure Levy or in accordance with Sections 203 and 204 of the NPPF.
22. That is to say, such “*packages of community benefits*” would, by definition, fail one or more of the tests set out at Paragraph 204 of the NPPF:
 - *Necessary to make the development acceptable in planning terms;*
 - *Directly related to the development; and*
 - *Fairly related in scale and kind to the development*
23. We say this requirement is consequently contrary to Section 204 of the NPPF and as such we say that in this respect the plan would be unsound.

Issue 3: Does policy CS37 and supporting text require amendment in view of the changed circumstances in relation to a future power station?

24. This begs the question as to what the changed circumstances are in relation to a future power station, and we understand this to relate to the announcement made on 29th March 2012 by Horizon’s shareholders RWE npower and E.ON UK that for strategic reasons relating to a combination of wider factors, they are unable to continue to support the two projects being promoted at Wylfa (on the Isle of Anglesey) and near Oldbury-on-Severn in South Gloucestershire.
25. The two companies have, however, been clear in emphasising that they continue to believe that nuclear power has an important place in the UK energy market, and that Horizon’s sites (at Wylfa and Oldbury) are well suited to the development of new nuclear power stations.

26. Work is now in hand to see whether buyers can be found to take the project forward, and critical work activities are continuing for both sites whilst this goes on as is evident from Horizon's continued engagement with the Council in respect of the CS.
27. The site near Oldbury-on-Severn remains identified in the National Policy Statement for Nuclear Power Generation (NPS) (EN-6) as potentially suitable for a new nuclear power station and through its investigatory work to date, Horizon has remained of the view that this would be a good site for such a development.
28. The Minister of State for Energy, Charles Hendry MP, very recently (May 24 2012) visited the Gloucester headquarters of Horizon and the Press Statement issued by the Department of Energy and Climate Change ahead of the Minister's visit said:

"Horizon Nuclear Power represents an extremely attractive investment opportunity. Horizon's team is a prized asset. A group of very talented and experienced staff who have worked extremely hard over the past three years to make Wylfa and Oldbury two of the most attractive sites in Europe to invest in new nuclear.

"There has already been strong interest in Horizon and we are making the Government's commitment to new nuclear clear to interested parties. The launch of the draft energy bill this week has shown investors that we are prepared to take tough decisions to ensure confidence in our long-term vision for the electricity market.

"While this is a commercial process, I am confident everyone involved is working to ensure a swift sale can be achieved, which will protect the jobs of those working here."

29. We are in agreement with the Council that there is nothing in the changed circumstances that would require amendment to Policy CS37 or the supporting text.

Issue 4: Is the range of ancillary factors to be taken into account in policy CS37 comprehensive and appropriate to the nature of the proposal?

30. Horizon is clear that all the appropriate factors to be considered in the determination of a DCO application for a NNB near Oldbury by the SoS for Energy and Climate Change are set out in NPS EN-1 and NPS EN-6. Policy CS37, duplicates a number of these and also makes unnecessary references to seeking compliance with legislative provisions (e.g. habitat regulations).
31. We nevertheless have two specific objections to Policy CS37; similar to those identified in respect of Policy CS36.

32. Firstly, we note with respect to Policy CS37 (Criterion 1) that the Council will seek to ensure compliance with:
- a. *“any future development plan documents and Council or locally produced village/town/community strategies and plans.”*
33. It goes without saying that the starting point for the determination of any planning applications will be ‘the development plan’ as set out at Section 38(6) of the Planning and Compulsory Purchase Act 2004 and recently confirmed at Paragraph 2 of the NPPF. It is because of this, however, that a clear distinction needs to be drawn between adopted development plan policies and emerging development plan policies. Emerging development plan policies could include neighbourhood plans which have yet to be the subject of formal examination for, *inter alia*, consistency with national policy and the Core Strategy, or the subject of a successful referendum; prerequisites to attaining development plan status.
34. Such a distinction also needs to be drawn with any *“Council or locally produced village/town/community strategies and plans”* which are not intended to become development plan documents and will never be independently examined. The Council’s approach to seeking compliance with these in the policy only serves to confuse the distinction between the development plan and other material considerations.
35. These non-development plan documents fall under the umbrella of *“other material considerations”*, with the weight to be attached to them determined at the time by the decision-maker in accordance with the factors set out at Annex 1 Paragraph 216 of the NPPF.
36. It would appear to us therefore that in not drawing this distinction, Policy CS37 seeks to elevate these emerging development plan documents and *“Council and locally produced village/town/community strategies and plans”* to a status which goes beyond Section 38(6) of the Planning and Compulsory Purchase Act 2004, is not in accordance with NPPF Paragraph 2, and therefore fails the test of soundness.
37. Our second objection concerns Criterion 13 and the requirement for a *package of community benefits*.
38. Paragraph 18.23 in the supporting text is clear that that the *“packages of community benefits”* referred to in Criterion 13 are over and above those that would be legitimately negotiated under the terms of Section 106 of the 1990 Act or by way of Community Infrastructure Levy or in accordance with Section 203 and 204 of the NPPF. For the reasons set out previously in respect of Policy CS36 (Criterion 5) we say this requirement is consequently contrary to Section 204 of the NPPF and as such the plan would be unsound.