STATUTORY INSTRUMENTS

2016 No. 166

INFRASTRUCTURE PLANNING

The Palm Paper Mill Generating Station Order 2016

Made - - - -	*11th February 2016*
Coming into force - -	*12th February 2016*

An application under section 37 of the Planning Act 2008(**1**) (the "2008 Act") has been made to the Secretary of State for an order granting development consent.

The application has been examined by a single appointed person who has made a report to the Secretary of State under section 83(1) of the 2008 Act.

The Secretary of State has considered the report and recommendation of the single appointed person, has taken into account the environmental information in accordance with regulation 3 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009(**2**) and has had regard to the documents and matters referred to in section 104(2) of the 2008 Act.

The Secretary of State, having decided the application, has determined to make an order giving effect to the proposals comprised in the application on terms that in the opinion of the Secretary of State are not materially different from those proposed in the application.

Accordingly, the Secretary of State, in exercise of the powers in section 114 and 120 of the 2008 Act, makes the following Order:

Citation and commencement

1. This Order may be cited as the Palm Paper Mill Generating Station Order 2016 and comes into force on 12th February 2016.

Interpretation

2.—(1) In this Order—

"authorised development" means the development described in Schedule 1 (authorised development) and any other development authorised by this Order that is development within the meaning of section 32 of the Planning Act 2008;

(**1**) 2008 c.29. Section 37 was amended by section 137(5) of, and paragraph 5 of Schedule 13 to, the Localism Act 2011 (c.20). Section 83(1) was amended by paragraph 35 of that Schedule. Section 104(2) was amended by paragraph 49 of that Schedule and section 58 of the Marine and Coastal Access Act 2009 (c.23). Section 114 was amended by paragraph 55 of Schedule 13 to the Localism Act 2011. Section 120 was amended by section 140 of, and paragraph 60 of Schedule 13 to, that Act.

(**2**) S.I. 2009/2263; regulation 3 was amended by S.I. 2012/635 and 2012/787.

"building" includes any structure or erection or any part of a building, structure or erection;

"environmental statement" means the document certified by the Secretary of State as the environmental statement under article 13 (certification of plans, etc.);

"highway" and "highway authority" have the same meaning as in the Highways Act 1980(**3**);

"land plan and site location plan" means the plan certified by the Secretary of State as the land plan and site location plan under article 13;

"maintain" includes, to the extent assessed in the environmental statement, inspect, repair and adjust the authorised development; and any derivative of "maintain" must be construed accordingly;

"Order limits" means the limits shown on the land plan and site location plan and the site layout and works plan;

"relevant planning authority" means the Borough Council of King's Lynn and West Norfolk;

"Requirement" means a Requirement set out in Schedule 2 (Requirements); and a reference to a numbered Requirement is a reference to the Requirement set out in the paragraph of that Schedule with the same number;

"site layout and works plan" means the plan certified by the Secretary of State as the site layout and works plan under article 13;

"undertaker" means, subject to article 7(2) (consent to transfer benefit of Order), Palm Paper Limited(**4**) (company number 00813701).

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in, on or under land or in the air-space above its surface.

(3) All distances, directions and lengths referred to in this Order are approximate, and distances between points on a work comprised in the authorised development must be taken to be measured along that work.

(4) In this Order, "include" must be construed without limitation.

(5) References in this Order to any statutory body include that body's successor bodies having jurisdiction over the authorised development.

Development consent granted by Order, etc.

3.—(1) Subject to the provisions of this Order and to the Requirements, the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

(2) Schedule 2 (which contains the Requirements) has effect.

Procedure in relation to certain approvals, etc. under Requirements

4.—(1) Where an application is made to the relevant planning authority for any consent, agreement or approval required by a Requirement, the following provisions, so far as they relate to a consent, agreement or approval of a local planning authority, apply as if the Requirement were a condition imposed on a grant of planning permission—

(a) sections 78 and 79 of the Town and Country Planning Act 1990(**5**) (right of appeal in relation to planning decisions);

(**3**) 1980 c.66. "Highway" is defined in section 328(1). For "highway authority", see section 1.
(**4**) The registered office of Palm Paper Limited is Saddlebow Industrial Estate, Poplar Avenue, King's Lynn, Norfolk PE34 3AL.
(**5**) 1990 c.8. Section 78 was amended by section 17 of the Planning and Compensation Act 1991 (c.34); section 43(2) of the Planning and Compulsory Purchase Act 2004 (c.5); paragraph 3 of Schedule 10, and paragraph 2 of Schedule 11, to the Planning Act 2008; section 123(3) of, and paragraph 11 of Schedule 12 to, the Localism Act 2011; paragraph 8 of Schedule 1 to the Growth and Infrastructure Act 2013 (c.27); and paragraph 12 of Schedule 4 to the Infrastructure Act 2015 (c.7). Section

(b) any orders, rules or regulations that make provision in relation to a consent, agreement or approval of a local planning authority required by a condition imposed on the grant of planning permission,

insofar as those provisions are not inconsistent with the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 or any orders, rules or regulations made under the Planning Act 2008.

(2) For the purposes of paragraph (1), a provision relates to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission insofar as it provides in relation to—

(a) an application for such a consent, agreement or approval;

(b) the grant or refusal of such an application; or

(c) a failure to give notice of a decision on such an application.

Maintenance of authorised development

5. The undertaker may, at any time and to the extent assessed in the environmental statement, maintain the authorised development, except to the extent that this Order, or an agreement made under this Order, provides otherwise.

Operation of generating station

6.—(1) The undertaker may operate the generating station for which development consent is granted by this Order.

(2) Where Palm Paper Limited has the benefit of this article, either Palm Paper Limited or Palm Power Limited(**6**) (company number 07899303) may operate the generating station.

(3) This article does not relieve the undertaker or Palm Power Limited of any requirement to obtain a permit or licence under any legislation that may be required to authorise the operation of a generating station.

Consent to transfer benefit of Order

7.—(1) The undertaker may, with the consent of the Secretary of State,—

(a) transfer to another person (the "transferee") any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or

(b) grant to another person (the "lessee") for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the lessee.

(2) Where a transfer or grant is made under paragraph (1), references in this Order to the undertaker, except in paragraph (3), include references to the transferee or lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with a transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

79 was amended by section 18 of, and paragraph 19 of Schedule 7 to, the Planning and Compensation Act 1991 and by paragraph 4 of Schedule 10 to the Planning Act 2008.

(**6**) The registered office of Palm Power Limited is Wey Court, West Union Road, Farnham, Surrey GU9 7PT.

Defence to proceedings in respect of statutory nuisance

8.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(**7**) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within section 79(1) (c), (d), (e), (fb), (g), (ga) or (h) of that Act (statutory nuisances and inspections therefor), no order may be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance—

(a) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites), of the Control of Pollution Act 1974(**8**);

(b) is a consequence of the construction or maintenance of the authorised development and cannot reasonably be avoided;

(c) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised development and is attributable to the authorised development which being used in accordance with the scheme for noise management approved by the relevant planning authority under Requirement 13; or

(d) is a consequence of the use of the authorised development and cannot reasonably be avoided.

(2) Section 61(9) of the Control of Pollution Act 1974 does not apply where a consent given under that section relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

Access to works

9. The undertaker may, for the purposes of the authorised development, with the approval of the relevant planning authority, form and lay out such means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

Discharge of water

10.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) must be determined as if it were a dispute under section 106 of the Water Industry Act 1991(**9**) (right to communicate with public sewers).

(3) The undertaker must not discharge water into a watercourse, public sewer or drain except with the consent of the person to whom it belongs, and such consent may be given subject to such terms and conditions as that person may reasonably impose, but may not be unreasonably withheld.

(**7**) 1990 c.43. Section 79(1)(fb) was inserted by section 102(2) of the Clean Neighbourhoods and Environment Act 2005 (c.16). Section 79(1)(ga) was inserted by section 2(2) of the Noise and Statutory Nuisance Act 1993 (c.40) and amended by paragraph 2 of Schedule 17 to the Environment Act 1995 (c.25). Section 82(1) was amended by paragraph 6 of Schedule 17 to the Environment Act 1995. Section 82(2) was amended by section 5(2) of the Noise and Statutory Nuisance Act 1993 and paragraph 6 of Schedule 17 to the Environment Act 1995.

(**8**) 1974 c.40. Section 61 was amended by Schedule 7 to the Building Act 1984 (c.55), paragraph 15 of Schedule 3 to the Environmental Protection Act 1990 and Schedule 24 to the Environment Act 1995.

(**9**) 1991 c.56. Section 106 was amended by section 35(8) and 43(2) of the Competition and Service (Utilities) Act 1992 (c.43) and sections 36(2) and 99 of the Water Act 2003 (c.37). Section 106 was also amended by paragraph 16 of Schedule 3 to the Flood and Water Management Act 2010 (c.29), but this amendment is not yet in force.

(4) The undertaker must not make any opening into any public sewer or drain except—

(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval may not be unreasonably withheld; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2010(**10**) (requirement for an environmental permit).

(8) In this article—

(a) "public sewer or drain" means a sewer or drain that belongs to the Environment Agency, an internal drainage board, a local authority or a sewerage undertaker(**11**);

(b) "watercourse" includes any river, stream, ditch, drain, canal, cut, culvert, dyke, sluice, sewer and passage through which water flows except a public sewer or drain; and

(c) other expressions, except those otherwise defined in this Order, used both in this article and in the Environmental Permitting (England and Wales) Regulations 2010 have the same meaning as in those Regulations.

Application of landlord and tenant law

11.—(1) This article applies to—

(a) an agreement for leasing to a person the whole or part of the authorised development or the right to operate it; and

(b) an agreement entered into by the undertaker with a person for the construction, maintenance, use or operation of the authorised development or any part of it,

so far as the agreement relates to the terms on which land that is the subject of a lease granted by or under the agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of an agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law applies in relation to the rights and obligations of the parties to a lease granted by or under an agreement to which this article applies so as to—

(a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;

(b) confer or impose on a party to the lease any right or obligation arising out of or connected with anything done or omitted on or in relation to land that is the subject of the lease, in addition to a right or obligation provided for by the terms of the lease; or

(c) restrict the enforcement (whether by action for damages or otherwise) by a party to the lease of an obligation of any other party under the lease.

(**10**) S.I. 2010/675.
(**11**) "Sewerage undertaker" is defined in Schedule 1 to the Interpretation Act 1978 (c.30).