STATUTORY INSTRUMENTS

2015 No. 1574

INFRASTRUCTURE PLANNING

The Hirwaun Generating Station Order 2015

Made - - - -	*23rd July 2015*
Coming into force - -	*14th August 2015*

An application has been made to the Secretary of State in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(**1**) for an Order under sections 114, 115 and 120 of the Planning Act 2008(**2**) (the "2008 Act").

The application was examined by a single appointed person (appointed by the Secretary of State) in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(**3**).

The single appointed person, having considered the representations made and not withdrawn and the application together with the accompanying documents has submitted a report and recommendation to the Secretary of State.

The Secretary of State, having considered the report and recommendation of the single appointed person, and decided the application, has determined to make an Order giving effect to the proposals comprised in the application with modifications.

The Secretary of State, in exercise of the powers conferred by sections 114, 115 and 120 of the 2008 Act, makes the following Order—

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Hirwaun Generating Station Order 2015 and comes into force on 14th August 2015.

(**1**) S.I. 2009/2264 as amended by the Localism Act 2011 (Infrastructure Planning) (Consequential Amendments) Regulations 2012 (S.I. 2012/635) and the Infrastructure Planning (Prescribed Consultees and Interested Parties etc) (Amendment) Regulations 2013 (S.I. 2013/522). There are other amendments to the Regulations which are not relevant to this Order.

(**2**) 2008 c.29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of, and Schedule 13 to, the Localism Act 2011 (c.20), and by sections 22 to 27 of the Growth and Infrastructure Act 2013 (c.27), see S.I. 2013/1124 for transitional provisions.

(**3**) S.I. 2010/103, as amended by S.I. 2012/635.

Interpretation

2.—(1) In this Order—

"the 1961 Act" means the Land Compensation Act 1961(**4**);

"the 1965 Act" means the Compulsory Purchase Act 1965(**5**);

"the 1980 Act" means the Highways Act 1980(**6**);

"the 1984 Act" means the Road Traffic Regulation Act 1984(**7**);

"the 1990 Act" means the Town and Country Planning Act 1990(**8**);

"the 1991 Act" means the New Roads and Street Works Act 1991(**9**);

"the 2008 Act" means the Planning Act 2008;

"address" includes any number or address used for the purposes of electronic transmission;

"apparatus", unless otherwise provided for, has the same meaning as in Part 3 of the 1991 Act;

"authorised development" means the development described in Schedule 1 (authorised development) which is development within the meaning of section 32 of the 2008 Act;

"the book of reference" means revision 3 of the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

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

"carriageway" has the same meaning as in the 1980 Act;

"commence", unless otherwise provided for, means beginning to carry out any material operation, as defined in section 155 of the 2008 Act (which explains when development begins), comprised in or carried out for the purposes of the authorised development and the words "commencement" and "commenced" and cognate expressions are to be construed accordingly;

(**4**) 1961 c.33. There are amendments to the 1961 Act which are not relevant to this Order.

(**5**) 1965 c.56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c.71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991. Section 11(1) and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c.67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No. 1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c.23). Section 13 was amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c.15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991. Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c.39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006. There are other amendments to the 1965 Act which are not relevant to this Order.

(**6**) 1980 c.66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c.22); sections 1(2), 1(3) and 1(4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c.51); section 1(2A) was inserted, and section 1(3) was amended, by section 259(1), (2) and (3) of the Greater London Authority Act 1999 (c.29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 36(2) was amended by section 4(1) of, and paragraph 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c.71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11), by section 64(1), (2) and (3) of the Transport and Works Act 1992 (c.42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c.37); section 36(3A) was inserted by section 65(5) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985; and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994. Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c.29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c.15). There are other amendments to the 1980 Act which are not relevant to this Order.

(**7**) 1984 c.27.

(**8**) 1990 c.8. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c.29) (date in force in relation to England: 6th April 2012: S.I. 2012/601). There are other amendments to the 1990 Act which are not relevant to this Order.

(**9**) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 78(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).

"date of final commissioning" means the date on which the authorised development commences operation by generating power on a commercial basis;

"design principles statement" means the design principles statement contained within Appendix 2 of the design and access statement document with submission document reference number 10.2.0 submitted with the application and certified as the design principles statement by the Secretary of State for the purposes of this Order;

"ecological mitigation plan" means the ecological mitigation plan, revision 1.0, dated September 2014 and certified as such by the Secretary of State for the purposes of this Order;

"electronic transmission" means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

"the environmental statement" means the environmental statement submitted with the application and updated as follows—

(a) Appendix 11.2 is superseded by the outline lighting strategy;

(b) Figure 8.5 is superseded by the ecological mitigation plan; and

(c) Appendix 4.1 is superseded by the outline construction environmental management plan;

and certified as such by the Secretary of State for the purposes of this Order;

"flood risk assessment" means the flood risk assessment with submission document reference number 5.2.0 submitted with the Order application and certified as the flood risk assessment by the Secretary of State for the purposes of this Order;

"footpath" and "footway" have the same meaning as in the 1980 Act;

"gas turbine generator" means either one or two gas turbines which drive a single electricity generator for the purposes of generating electricity;

"gross rated electrical output" means the aggregate of the gross electric power as measured at the terminals of each generator comprised in the generating station in accordance with standards agreed with the regulating authority under the Environmental Permitting (England and Wales) Regulations 2010(**10**);

"highway" and "highway authority" have the same meaning as in the 1980 Act;

"Hirwaun Power Limited" means Hirwaun Power Limited (Company No. 8190283) whose registered office is at 33 Cavendish Square, London W1G 0PW;

"the land plans" means revision 3 of the plans identified with document reference number 2.2 certified as the land plans by the Secretary of State for the purposes of this Order;

"limits of deviation" means, in respect of numbered works 1 and 2 the outer limits of the corresponding numbered area shown on the works plans;

"maintain" includes, to the extent assessed in the environmental statement, inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part, but not the whole, of the authorised development and "maintenance" and "maintaining" are to be construed accordingly;

"mitigation commitments register" means the document identifying mitigation commitments with document reference MCR submitted during the examination of the Order application and certified as the mitigation commitments register by the Secretary of State for the purposes of this Order;

(**10**) S.I. 2010/675, as amended by the Environmental Permitting (England and Wales) (Amendment) Regulations 2011 (S.I. 2011/2043), the Environmental Permitting (England and Wales) (Amendment No. 2) Regulations 2011 (S.I. 2011/2933), the Environmental Permitting (England and Wales) (Amendment) Regulations 2012 (S.I. 2012/630), the Controlled Waste (England and Wales) Regulations 2012 (S.I. 2012/811).

"MWe" means megawatts of electrical output;

"National Grid" means National Grid Electricity Transmission plc. (Company No. 02366977) whose registered office is at 1-3 Strand, London, WC2N 5EH and/or National Grid Gas plc. (Company No. 02006000) whose registered office is at 1-3 Strand, London, WC2N 5EH as the context requires;

"operational phase" means the period of time that the relevant part of the authorised development is in operation after construction and "operation" should be construed accordingly;

"Order application" means the application made by the undertaker to the Secretary of State in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 and Part 5 of the 2008 Act for this Order;

"Order land" means the land required for, or affected by, the authorised development shown on the land plans and described in the book of reference;

"the Order limits" means the limits shown on figure 1 of the works plans within which the authorised development may be carried out;

"outline construction environmental management plan" means the outline construction environmental management plan, revision 1.0, dated September 2014 and certified as such by the Secretary of State for the purposes of this Order;

"outline lighting strategy" means the outline lighting strategy, revision 1.0, dated September 2014 and certified as such by the Secretary of State for the purposes of this Order;

"owner", in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(**11**);

"relevant planning authority" means the district planning authority for the area in which the land to which the provisions of this Order apply is situated;

"requirements" means those matters set out in Schedule 2 to this Order;

"rights of way, streets and access plan" means revision 3 of the plan identified with document reference number 2.7 certified as such by the Secretary of State for the purposes of this Order;

"statutory undertaker" means any person within the meaning of section 127(8) of the 2008 Act;

"street" means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes any footpath and "street" includes any part of a street;

"street authority", in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

"the tribunal" means the Lands Chamber of the Upper Tribunal;

"undertaker" means Hirwaun Power Limited;

"watercourse" includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and

"the works plans" means revision 3 of the plans identified with document reference number 2.3 certified as such by the Secretary of State for the purposes of this Order.

(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 are taken to be measured along that work.

(**11**) 1981 c.67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34).

(4) All areas described in square metres in the book of reference are approximate.

(5) References in this Order to numbered works are references to the works comprising the authorised development as numbered in Schedule 1 and shown on the works plans and a reference to numbered work 2 means numbered works 2A – 2G (inclusive).

(6) References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the rights of way, streets and access plan.

(7) The expression "includes" is to be construed without limitation.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

3.—(1) Subject to the provisions of this Order and to the requirements in Schedule 2, the undertaker is granted development consent for the authorised development in Schedule 1 to be carried out within the Order limits.

(2) Subject to paragraph (3), each numbered work must be situated in the numbered area shown on the works plans.

(3) In constructing each numbered work, the undertaker may construct numbered works within the corresponding numbered areas shown on the works plans up to the limits of deviation.

Maintenance of authorised development

4.—(1) Except to the extent that this Order or an agreement made under this Order provides otherwise, the undertaker may at any time maintain the authorised development.

(2) This article only authorises the carrying out of maintenance works within the Order limits.

Operation of authorised development

5.—(1) The undertaker is hereby authorised to operate the generating station comprised in the authorised development.

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

Benefit of the Order

6. Subject to article 7 (consent to transfer benefit of the Order), the provisions of this Order will have effect solely for the benefit of Hirwaun Power Limited.

Consent to transfer benefit of the 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 in writing 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 in writing between the undertaker and the lessee,