
STATUTORY INSTRUMENTS

2021 No. 1259

The South Humber Bank Energy Centre Order 2021

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the South Humber Bank Energy Centre Order 2021 and comes into force on 2nd December 2021.

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(1);

“the 1980 Act” means the Highways Act 1980(2);

“the 1990 Act” means the Town and Country Planning Act 1990(3);

“the 1991 Act” means the New Roads and Street Works Act 1991(4);

“the 2008 Act” means the Planning Act 2008(5);

“the 2009 Regulations” means the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(6);

“access and rights of way plan” means the plan submitted under regulation 5(2)(k) of the 2009 Regulations and certified as such by the Secretary of State for the purposes of this Order;

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

“Anglian Water” means Anglian Water Services Limited (company number 2366656) whose registered address is Lancaster House Lancaster Way, Ermine Business Park, Huntingdon, Cambridge, United Kingdom PE29 6XU;

“AOD” means above ordnance datum;

“apparatus” has the same meaning as in Part 3 of the 1991 Act (street works in England and Wales) save that “apparatus” further includes pipelines (and parts of them), aerial markers, cathodic protection test posts, field boundary markers, transformer rectifier kiosks, electricity cables, telecommunications equipment and electricity cabinets;

(1) 1961 c. 33.

(2) 1980 c. 66.

(3) 1990 c. 8.

(4) 1991 c. 22.

(5) 2008 c. 29.

(6) S.I. 2009/2264, as amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522 and S.I. 2013/755.

“authorised development” means the development and associated development described in Schedule 1 (authorised development) to this Order, which is development within the meaning of section 32 of the 2008 Act (meaning of “development”);

“biodiversity strategy” means the biodiversity strategy dated April 2021 and certified as such by the Secretary of State for the purposes of this Order;

“the book of reference” means the book of reference submitted under regulation 5(2)(d) of the 2009 Regulations and certified as such by the Secretary of State 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;

“the charge” means the charge held by Lloyds Bank plc registered at HM Land Registry against title number HS239444 dated 18 December 2018;

“commence” means the carrying out of a material operation 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;

“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 under regulation 5(2)(a) of the 2009 Regulations and certified as such by the Secretary of State for the purposes of this Order;

“EP Waste Management Limited” means EP Waste Management Limited (Company No. 12144128) whose registered office is Paradigm Building, 3175 Century Way, Thorpe Park, Leeds, United Kingdom LS15 8ZB;

“EP SHB Limited” means EP SHB Limited (Company No. 02571241) whose registered office is Berger House, 36-38 Berkeley Square, London, United Kingdom W1J 5AE;

“footpath” and “footway” have the same meaning as given in section 329(1) of the 1980 Act;

“framework construction traffic management plan” means the plan dated December 2020 included as annex 28 of appendix 9A of the environmental statement;

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

“the indicative landscape strategy” means the indicative landscape strategy submitted under regulation 5(2)(q) of the 2009 Regulations and certified as such by the Secretary of State for the purposes of this Order;

“the indicative lighting strategy” means the indicative lighting strategy submitted under regulation 5(2)(q) of the 2009 Regulations and certified as such by the Secretary of State for the purposes of this Order;

“the land plans” means the land plans submitted under regulation 5(2)(i) of the 2009 Regulations and certified as such by the Secretary of State for the purposes of this Order;

“Lloyds Bank plc” means Lloyds Bank plc (Company No. 00002065) whose registered office is 25 Gresham Street, London, EC2V 7HN;

“maintain” includes (i) inspect, repair, adjust, alter, refurbish or improve the authorised development and (ii) in relation to any part (but not the whole of the authorised development) remove, reconstruct or replace that part provided those works do not give rise to materially new or materially different environmental effects; and “maintenance” and “maintaining” are to be construed accordingly;

“material operation” has the same meaning as in section 155 of the 2008 Act;

“National Grid” means National Grid Electricity Transmission plc or National Grid Gas plc as the context requires;

“National Grid Electricity Transmission plc” means National Grid Electricity Transmission plc (Company No. 2366977) whose registered office is at 1-3 Strand, London WC2N 5EH;

“National Grid Gas plc” means National Grid Gas plc (Company No. 2006000) whose registered office is at 1-3 Strand, London WC2N 5EH;

“Network Rail” means Network Rail Infrastructure Limited (Company No. 02904587) whose registered office is at 1 Eversholt Street, London NW1 2DN;

“the Order limits” means the limits shown on the works plans within which the authorised development may be carried out;

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981 (interpretation)(7);

“public sewer or drain” means a sewer or drain which belongs to Homes England, the Environment Agency, a harbour authority within the meaning of section 57 of the Harbours Act 1964 (interpretation)(8), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation;

“relevant planning authority” means the 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 (requirements) to this Order;

“requirements discharge schedule” means a document setting out the following information—

- (a) the submissions and approvals that have been made in relation to each condition attached to the SHBEC planning permission;
- (b) the submissions and approvals that the undertaker anticipates are required pursuant to each requirement;
- (c) details of any outstanding applications for discharge of conditions attached to the SHBEC planning permission and which will be subject to article 5(2)(b)(iii); and
- (d) any steps to which paragraph 36 of Schedule 2 applies;

“section 106 agreement” means the agreement made pursuant to section 106 of the 1990 Act between North East Lincolnshire Borough Council and EP SHB Limited dated 11 April 2019 as varied by a deed of variation made between the same parties dated 19 April 2021;

“SHBEC planning permission” means the planning permission for an energy from waste generating station of up to 49.9MW gross generation, granted by North East Lincolnshire Council on 12 April 2019 with reference DM/1070/18/FUL and including any variation and amendment to it;

“statutory undertaker” means any person falling within section 127(8) of the 2008 Act (statutory undertakers’ land);

“street” means a street within the meaning of section 48 of the 1991 Act (streets, street works and undertakers), 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;

“street works” means the works listed in article 10(1);

(7) 1981 c. 67.

(8) 1964 c. 40. Paragraph 9B was inserted into Schedule 2 by paragraph 9 of Schedule 3 of the Transport and Works Act 1992 (c. 42). There are other amendments to the 1964 Act that are not relevant to this Order.

“swept path analysis plan” means the site entrance swept path analysis and visibility splay drawings dated January 2021 or such other alternative plan as the highway authority may approve;

“undertaker” means EP Waste Management Limited or a person who has the benefit of this Order in accordance with articles 8 and 9;

“varied condition” means a condition of the SHBEC planning permission—

- (a) that is imposed at any time under a new planning permission pursuant to section 73 of the 1990 Act (determination of applications to develop land without compliance with conditions previously attached) and which is in variance with the conditions under the original SHBEC planning permission as issued on 12 April 2019;
- (b) which has at any time been varied pursuant to section 96A of the 1990 Act (power to make non-material changes to planning permission or permission in principle); or
- (c) where the numbering of the condition has changed compared to the numbering as originally issued on 12 April 2019;

“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;

“working day” means any day other than a Saturday, Sunday or English bank or other public holiday; and

“the works plans” means the works plans submitted under regulation 5(2)(j) of the 2009 Regulations and certified as the works plans by the Secretary of State for the purposes of this Order.

(2) All distances, directions, measurements and lengths referred to in this Order are approximate, except the measurements and lengths set out in requirement 3.

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

(4) References in this Order to “numbered works” or “Work No” are references to the works comprising the authorised development as numbered in Schedule 1 (authorised development) and shown on the works plans.

(5) The expression “includes” is to be construed without limitation.

Electronic Communications

3.—(1) In this Order, subject to Article 26—

- (a) references to documents, plans, drawings, certificates, or to copies, include references to them in electronic form; and
- (b) references to a form of communication being “in writing” include references to an electronic communication that satisfies the conditions in paragraph (3); and “written” and cognate expressions are to be construed accordingly.

(2) If an electronic communication is received outside the recipient’s business hours, it is to be taken to have been received on the next working day.

(3) The conditions are that the communication is—

- (a) capable of being accessed by the recipient;
- (b) legible in all material respects; and
- (c) sufficiently permanent to be used for subsequent reference.

(4) For the purposes of paragraph (3)(b), a communication is legible in all material respects if the information contained in it is available to the recipient to no lesser extent than it would be if transmitted by means of a document in printed form.

(5) In this article “electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000 (general interpretation)(9).

(9) 2000 c. 7. As amended by section 406(1) of, and paragraph 158 of Schedule 17 to, the Communications Act 2003 c. 7.