
STATUTORY INSTRUMENTS

2021 No. 173

INFRASTRUCTURE PLANNING

The Wheelabrator Kemsley K3 Generating Station Order 2021

Made - - - - *19th February 2021*

Coming into force - - *15th March 2021*

An application has been made to the Secretary of State under section 37 of the Planning Act 2008⁽¹⁾ (“the 2008 Act”) in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009⁽²⁾ for an Order granting development consent.

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

The single appointed person, having considered the application with the documents that accompanied it and the representations made and not withdrawn, in accordance with section 83 of the 2008 Act, has submitted a report with a recommendation to the Secretary of State.

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 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017⁽⁴⁾ 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 with modifications which in the opinion of the Secretary of State do not make substantial changes to the proposals.

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

(1) 2008 c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20).
(2) S.I. 2009/2264 as amended by S.I. 2013/522.
(3) S.I. 2010/103 was amended by S.I. 2012/635.
(4) S.I. 2017/572.

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Wheelabrator Kemsley K3 Generating Station Order 2021 and comes into force on 15th March 2021.

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961⁽⁵⁾;

“the 1980 Act” means the Highways Act 1980⁽⁶⁾;

“the 1989 Act” means the Electricity Act 1989⁽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⁽¹⁰⁾;

“the 2016 Regulations” means the Environmental Permitting (England and Wales) Regulations 2016⁽¹¹⁾;

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

“book of reference” means 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;

“commissioning” means the process of testing all systems and components of Work No 1 (including systems and components which are not yet installed but the installation of which is near to completion), in order to verify that they function in accordance with the design objectives, specifications and operational requirements of the undertaker; and “commission” and other cognate expressions are to be construed accordingly;

“environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of this Order and submitted with the application on 11 September 2019 including all appendices thereto;

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

“K3 Generating Station” means a generating station having a capacity of up to 75MW, which was originally commissioned on 16 July 2020 pursuant to the K3 Sustainable Energy Plant Planning Permission and the approved plans and documents listed in Part 2 of Schedule 2 permitting the construction and operation of a generating station having a capacity of up to 49.9MW;

(5) 1961 c. 33.

(6) 1980 c. 66.

(7) 1989 c. 29.

(8) 1990 c. 8.

(9) 1991 c. 22.

(10) 2008 c. 29.

(11) S.I. 2016/1154.

“K3 Sustainable Energy Plant Planning Permission” means planning permission SW/19/501345 granted on 14 June 2019 by Kent County Council pursuant to section 73 of the 1990 Act permitting the construction and operation of a generating station having a capacity of up to 49.9MW;

“land plan” means the plan certified as the land plan by the Secretary of State for the purposes of this Order;

“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 any materially new or materially different environmental effects to those identified in the environmental statement; and “maintenance” is construed accordingly;

“MW” means megawatts of electrical output;

“operational use” of the development comprising the authorised development means operational use for the purposes for which it is authorised under this Order but not including commissioning;

“Order land” means the land shown on the land plan within the Order limits and described in the book of reference;

“Order limits” means the limits shown on the works plan 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(12);

“relevant highway authority” means the highway authority for the area in which the relevant highway to which the relevant provision of this Order applies is situated;

“relevant planning authority” means the local planning authority for the area in which the land to which the relevant provision of this Order applies is situated;

“requirements” means those matters set out in Schedule 2 (requirements) to this Order;

“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 (subject to confirmation from the relevant highway authority), and includes part of a street;

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

“undertaker” means WTI/EFW Holdings Ltd. (company number 07593865) or any other person who for the time being has the benefit of this Order in accordance with article 8 of this Order;

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

“works plan” means the plan certified as the works plan by the Secretary of State for the purposes of the Order.

(2) A reference in this Order to a “grid reference” is a reference to the map co-ordinates on the National Grid used by the Ordnance Survey.

(3) All distances, directions and lengths referred to in this Order are approximate.

(4) Any reference in this Order to a work identified by the number of the work is to be construed as a reference to the work of that number authorised by Schedule 1 of this Order.

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

(12) 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. There are other amendments to the 1981 Act which are not relevant to this Order.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

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

Effect of the Order on the K3 Sustainable Energy Plant Planning Permission

4.—(1) The undertaker may not start operational use of the K3 Generating Station under this Order until notice has been served on the relevant planning authority that the undertaker is ceasing to operate the K3 Sustainable Energy Plant under the K3 Generating Station Planning Permission.

(2) Upon service of the notice under paragraph (1) the K3 Sustainable Energy Plant Planning Permission will cease to have effect.

Authorisation of the operation of the authorised development

5.—(1) The undertaker is authorised to operate the generating station forming part of the authorised development.

(2) Paragraph (1) does not relieve the undertaker of any requirement to obtain any permit or licence under any other legislation that may be required to authorise the operation of a generating station.

Power to maintain authorised development

6. The undertaker may, at any time maintain the authorised development, except to the extent that this Order or an agreement made under this Order provides otherwise.

Benefit of the Order

7. Subject to article 8 (consent to transfer benefit of order), the provisions of this Order conferring powers on the undertaker have effect solely for the benefit of the undertaker.

Consent to transfer benefit of the Order

8.—(1) Except where paragraph (4) applies, the undertaker may with the written 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 so agreed between the undertaker and the lessee.

(2) Where an agreement has been made in accordance with sub-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 any 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.

(4) The consent of the Secretary of State is required for a transfer or grant under this article, except where—

- (a) the transfer or grant is made to K3 CHP Limited (Company number 09240062); or
- (b) the transfer or grant is made to a licence holder within the meaning of section 6(1) of the 1989 Act.

(5) Where the consent of the Secretary of State is not required under paragraph (4) the undertaker must provide written notification to the Secretary of State and the relevant planning authority at least 14 days prior to transferring and/or granting any benefit under paragraph (1).

PART 3

SUPPLEMENTARY POWERS

Access to works

9. The undertaker may with the approval of the relevant highway 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) Subject to paragraphs (3) to (5) 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) shall be determined as if it were a dispute under section 106 of the Water Industry Act 1991(13) (right to communicate with public sewers).

(3) The undertaker must not discharge any water into any 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 shall not be unreasonably withheld.

(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 shall 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 without the prior written consent of the Environment Agency.

(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) This article does not authorise a groundwater activity or a water discharge activity for which an environmental permit would be required under regulation 12 of the 2016 Regulations.

(13) 1991 c. 56. Section 106 was amended by sections 36(2) and 99 of the Water Act 2003 (c. 37). There are other amendments to this section which are not relevant to this Order.

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board or a local authority; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(14) have the same meaning as in that Act.

Authority to survey and investigate the land

11.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—

- (a) survey or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under sub-paragraph (1) unless at least 14 days’ notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) must if so required on entering the land, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes shall be made under this article—

- (a) in land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority.

(5) A consent for the purpose of sub-paragraph (4)(a) or (b) may be given subject to such terms and conditions as the authority giving it may reasonably impose, but may not be unreasonably withheld.

(6) As soon as practicable following the exercise of any powers under paragraph (1), any vehicles, apparatus or equipment must be removed and the land shall be restored to the reasonable satisfaction of the owners of the land.

(7) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Felling or lopping of trees

12.—(1) The undertaker may fell or lop any tree or shrub within the Order limits, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development.

(14) 1991 c. 57.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, shall be determined under Part 1 of the 1961 Act.

PART 4

MISCELLANEOUS AND GENERAL

Defence to proceedings in respect of statutory nuisance

13.—(1) Paragraph (2) applies where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(**15**) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance).

(2) 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 that construction or maintenance—
 - (i) in accordance with a notice served under section 60 (control of noise on construction site) of the Control of Pollution Act 1974(**16**);
 - (ii) in accordance with a consent given under section 61 of that Act (prior consent for work on construction site); or
- (b) is a consequence of the construction, maintenance or operation of the authorised development and cannot reasonably be avoided.

(3) Section 61(9) (prior consent for work on construction site) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for purposes of or in connection with the construction or maintenance of the authorised development.

Application of landlord and tenant law

14.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that 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 shall prejudice the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law shall apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

(15) 1990 c. 43.

(16) 1974 c. 40.

- (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 any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict enforcement (whether by action for damages or otherwise) by any part to the lease of any obligation of any other party under the lease.

Operational land for purposes of the 1990 Act

15. Development consent granted by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as not being operational land).

Certification of plans etc

16. The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

- (a) the book of reference (dated August 2020);
- (b) the land plan (drawing number 9812-0071-02 dated July 2020);
- (c) the work plan (drawing number 9812-0072-02 dated July 2020);
- (d) the environmental statement (dated September 2019);
- (e) the K3 Generating Station approved plans as follows:
 - (i) 16315-A1-P-0100 4.3D Proposed Site Layout Rev U dated November 2009;
 - (ii) 16315-A1-P-0110 4.4D South East Elevation Rev U dated November 2009;
 - (iii) 16315-A1-P-0111 4.5D North East Elevation Rev T dated November 2009;
 - (iv) 16315-A1-P-0112 4.6D South West Elevation Rev U dated November 2009;
 - (v) 16315-A1-P-0113 4.7D North West Elevation Rev T dated November 2009;
 - (vi) 16315-A1-4.21 Landscape Masterplan Rev M dated June 2013;
- (f) the K3 rail and water transportation strategy (dated September 2019);
- (g) the Design and Access Statement dated September 2019;
- (h) the draft K3 operational traffic routing and management plan; and
- (i) the draft K3 travel plan – Highways England version (dated 7 August 2020)

for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Arbitration

17. Any difference under any provision of this Order, unless otherwise provided for, shall be referred to and settled in writing by a single arbitrator to be agreed between the parties, or failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.

Procedure in relation to certain approvals

18.—(1) Where an application is made to or request is made of the relevant planning authority, a highway authority, a street authority or the owner of a watercourse, sewer or drain for any agreement or approval required or contemplated by any of the provisions of this Order, such agreement or approval must, if given, be given in writing and may not be unreasonably withheld.

(2) Schedule 3 (procedure for discharge of requirements) has effect in relation to all agreements or approvals granted, refused or withheld in relation to Schedule 2 (requirements).

Service of notices

19.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (5) to (8), by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978(17) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

(10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

Signed by authority of the Secretary of State for Business, Energy and Industrial Strategy

Gareth Leigh
Head of Energy Infrastructure Planning
Department for Business, Energy and Industrial
Strategy

19th February 2021

SCHEDULES

SCHEDULE 1

Article 3

AUTHORISED DEVELOPMENT

In the County of Kent a nationally significant infrastructure project as defined in sections 14(1)(a) and 15 of the 2008 Act and associated development within the meaning of s115(2) of the 2008 Act—

Work No. 1- An electricity generating station (the K3 Generating Station) with a gross installed generating capacity of up to 75MW and capacity to process up to 657,000 tonnes of waste per annum, comprising the following works—

- (a) tipping hall;
- (b) waste fuel bunker;
- (c) boiler hall;
- (d) flue gas treatment building;
- (e) turbine hall housing steam turbine and generator;
- (f) air cooled condenser;
- (g) stack and associated emissions monitoring system;
- (h) electricity substation;
- (i) stores and utilities;
- (j) administration office;
- (k) fire water tanks;
- (l) stores;
- (m) weighbridges, gatehouses, fuel tank, raw water tank, vehicle ramps, diesel generators.

Work No. 1A – Installation of grid connection for Work No 1.

Work No. 1B – Installation of steam connection for Work No 1.

Associated development

Associated development within the meaning of section 115(2) of the 2008 Act in connection with those works including—

Work No. 1C - Alteration of existing private access road to construct, use and maintain Work No 1.

Work No. 1D - Creation of a temporary construction compound and laydown area for the construction of Work No 1.

Work No. 1E - Construction and operation of a surface water outfall for Work No. 1.

In connection with and in addition to Work No. 1 to the extent that it does not otherwise form part of that work, further associated development including—

- (a) pipe racks and pipe runs;
- (b) external lighting;
- (c) fencing, boundary treatment and other means of enclosure;
- (d) signage;

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (e) CCTV and other security measures;
- (f) surface and foul water drainage facilities;
- (g) potable water supply;
- (h) new telecommunications and utilities apparatus and connections;
- (i) hard and soft landscaping;
- (j) biodiversity enhancement measures;
- (k) works to permanently alter the position of existing telecommunications and utilities apparatus and connections;
- (l) works for the protection of buildings and land affected by the authorised development;
- (m) site establishment and preparation works, including site clearance (including temporary fencing and vegetation removal), earthworks (including soil stripping and storage and site levelling) and excavations, the creation of temporary construction access points and the temporary alteration of the position of services and utilities apparatus and connections;
- (n) establishment of temporary construction compounds, vehicle parking areas, materials storage and laydown areas, construction related buildings, structures, plant and machinery, lighting and fencing, internal haul routes and wheel wash facilities;

and, to the extent that it does not form part of such works, further associated development comprising such other works as (i) may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and (ii) fall within the scope of the works assessed in the environmental statement.

SCHEDULE 2

Article 3

REQUIREMENTS

Interpretation

1.—(1) In this Schedule—

“approved Landscape Masterplan” means the K3 Generating Station approved Landscape Masterplan listed in Part 2 of Schedule 2;

“approved plans” means any approved plans or other plans, details, schemes or other documents which require approval by the relevant planning authority pursuant to any requirement or which are already approved and listed in Part 2 of Schedule 2;

“commencement” means beginning to carry out any material operation, as defined in section 155 of the 2008 Act (which explains when development begins), other than permitted preliminary works, comprised in or carried out for the purposes of the authorised development; and “commence” and other cognate expressions are to be construed accordingly;

“Kemsley Paper Mill” means the paper mill on the land immediately adjacent to the Order land at Sittingbourne, Kent operated by DS Smith Limited;

“means of enclosure” means fencing, walls or other means of boundary treatment and enclosure;

“permitted preliminary works” means site clearance work, survey work, the erection of any temporary means of enclosure, the preparation of facilities for the use of the contractor, the temporary display of site notices and advertisements and the provision of site security, and archaeological field work, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, and the

diversion and laying of services, provided that no permitted preliminary works will give rise to any materially new or materially different effects from those assessed in the environmental statement;

“rail and water transportation strategy” means the rail and water transportation strategy certified by the Secretary of State under article 16.

(2) A reference in this Schedule to an agreement, approval, consent, notice, report, scheme, submission or any other form of communication is a reference to that form of communication in writing.

(3) A reference in this Schedule to details, a method statement, a plan, a programme, a scheme or any other document approved by the planning authority is a reference to that document including any amendments subsequently approved by the relevant planning authority.

PART 1 REQUIREMENTS

Commencement of the authorised development

2. The authorised development must commence within five years of the date on which this Order comes into force.

Notice of commissioning

3.—(1) Notice of commencement of commissioning of Work No 1 must be given to the relevant planning authority within 7 days of the date on which commissioning is commenced.

(2) Notice of completion of commissioning of Work No 1 must be given to the relevant planning authority within 7 days of the date on which commissioning is completed.

Decommissioning

4.—(1) Within six months after it notifies the relevant planning authority that it intends to decommission the K3 Generating Station, the undertaker must submit to the relevant planning authority for its approval a written decommissioning environmental management plan for that generating station.

(2) Decommissioning works must not be carried out until the relevant planning authority has approved the scheme.

(3) The decommissioning environmental management plan submitted and approved must include details of—

- (a) the buildings to be demolished;
- (b) the means of removal of the materials resulting from the decommissioning works;
- (c) the phasing of the demolition and removal works;
- (d) all measures necessary for the protection from the potential environmental effects pursuant to decommissioning;
- (e) any restoration works to restore the Order land to a condition agreed with the relevant planning authority;
- (f) the phasing of any restoration works;
- (g) a timetable for the implementation of the scheme.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(4) The undertaker must implement the scheme as approved and is responsible for the costs of the decommissioning works.

Fuel storage

5.—(1) All fuels, oils and other liquids with the potential to contaminate the Order land shall be stored in a secure bonded area in order to prevent any accidental or unauthorised discharge to the ground.

(2) The area for storage shall not drain to any surface water system.

(3) Where it is proposed to store more than 200 litres of any type of oil must be stored in accordance with the provisions of the Control of Pollution (Oil Storage) (England) Regulations 2001(18).

(4) Where a drum or barrel has a capacity less than 200 litres a drip tray capable of retaining 25% of the maximum capacity of the drum or barrel may be used in lieu of storing the drum or barrel in the secure bonded area.

Rail and water transportation strategy

6. The K3 Generating Station must be operated in accordance with the approved K3 rail and water transportation strategy.

Amendments to approved plans, etc.

7.—(1) With respect to any approved plans, the undertaker may submit to the relevant planning authority for approval any amendments to the approved plans and following any such approval by the relevant planning authority the approved plans are to be taken to include the amendments approved pursuant to this paragraph.

(2) Approval under sub-paragraph (1) for any amendments to the parameters must not be given except where it has been demonstrated to the satisfaction of the relevant planning authority that the subject-matter of the approval sought does not give rise to any materially new or materially different environmental effects in comparison with the authorised development as approved (as identified in the environmental statement).

Works in the vicinity of gas apparatus

8.—(1) No work involving excavations shall take place within 3 metres of gas apparatus belonging to Southern Gas Networks PLC unless the undertaker has first obtained written consent from Southern Gas Networks PLC for those works to proceed.

(2) The undertaker shall provide such information as Southern Gas Networks PLC may reasonably require in order for it to respond to a request for consent under sub-paragraph (1).

Approved details

9. The authorised development must be carried out in accordance with the K3 Generation Station approved plans and documents as listed in Part 2 of this Schedule.

(18) [S.I. 2001/2954](#).

Operational traffic and travel plans

10.—(1) The number of Heavy Goods Vehicle Movements to and from the K3 Generating Station shall not exceed 348 movements per day until the following have been submitted to and, after consultation with the relevant highway authority, approved by the relevant planning authority:

- (a) a written operational traffic routing and management plan; and,
- (b) a written travel plan for operational staff.

(2) The plan submitted and approved under sub-paragraph (1)(a) must be in accordance with the draft K3 operational traffic routing and management plan certified by the Secretary of State under article 16.

(3) The plan submitted and approved under sub-paragraph (1)(b) must be in accordance with the draft K3 travel plan certified by the Secretary of State under article 16.

(4) The plans referred to in sub-paragraphs (1)(a) and (1)(b) must be implemented as approved.

(5) Subject to paragraph (1), the total maximum number of Heavy Goods Vehicle Movements to and from the K3 Generating Station shall not exceed a combined total of 416 movements per day subject to any prior written variation as approved by the relevant planning authority

(6) Sub-paragraphs (1) to (5) do not apply to waste deliveries originating from and returning to the railway depot at Ridham Docks accessing and egressing the K3 Generating Station by the use of Ridham Dock Road.

Trees

11.—(1) All trees and shrubs planted under the approved Landscape Masterplan shall be maintained for a period of 5 years.

(2) Any trees or shrubs that either die, are lost, damaged or become diseased during this 5 year period shall be replaced with a tree or shrub of the same species within the next available planting season.

Surface water drainage

12. All surface water drainage from the authorised development discharging to a local water course shall be attenuated for a 1:100 year return storm with a limited discharge of 7 litres per second per hectare or the equivalent run off from a greenfield site for a 1:2 storm.

Combined heat and power

13.—(1) Within 12 months of ceasing to supply heat and/or power to the Kemsley Paper Mill, the undertaker must submit to the relevant planning authority for its approval a strategy (“the CHP strategy”).

(2) The CHP strategy submitted and approved must—

- (a) consider the opportunities that reasonably exist at the time of submission for the export of heat and/or power from the K3 Generating Station to other users; and
- (b) include a list of actions (if any) that the undertaker is reasonably to take (without material additional cost to the undertaker) to increase the potential for the export of heat from the K3 Generating Station to other users.

(3) The undertaker must take such actions as are included, within the timescales specified, in the approved CHP strategy.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Part 2

K3 GENERATING STATION APPROVED PLANS AND DOCUMENTS

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Title</i>	<i>Reference</i>	<i>Revision</i>
Environmental Statement	March 2010	
ES Addendum (Air Quality)	June 2013	
ES Chapter 10 – Hydrology and Flood Risk – Supplementary Report	May 2017	
ES Addendum	May 2018	
Design and Access Statement	March 2010	
Surface Water Management and Foul Drainage Design Philosophy	December 2016	
Ecological Mitigation and Management Plan	JPP1804-MP-001d	July 2013
Flood Risk Assessment	May 2019	
Proposed (Permitted) Site Location Plan	16315/A0/P/0060	Rev N
Proposed Site Layout	16315/A1/P/0100	Rev U
Proposed Building Layout	16315/A0/P/0105	Rev L
Boundary Treatment	16315/A0/P/0106	Rev R
South East Elevation	16315/A1/P/0110	Rev U
North East Elevation	16315/A1/P/0111	Rev T
South West Elevation	16315/A1/P/0112	Rev U
North West Elevation	16315/A1/P/0113	Rev T
Proposed Structure for Air Cooled Condenser (URC) Elevations	16315/A1/P/0121	Rev N
Main Building – Proposed South East Elevation	16315/A0/P/0125	Rev K
Main Building – Proposed North East Elevation	16315/A1/P/0126	Rev K
Main Building – Proposed South West Elevation	16315/A1/P/0127	Rev L
Main Building – Proposed North West Elevation	16315/A0/P/0128	Rev K
Site Layout and Access	16315/A1/P/0160	Rev K

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Title</i>	<i>Reference</i>	<i>Revision</i>
Typical Office and Staff Amenities Building (UYA) Floor Plans	16315/A1/P/0171	Rev H
Proposed Gatehouse Floor Plan	16315/A2/P/0172	Rev L
Site Sections	16315/A0/0250	Rev J
Proposed Drainage Layout	16315/A0/0301	Rev J
Proposed Levels Site Plan	16315/A1/0600	Rev H
Illustrative Visual 1 of 7	16315/P/0150	Rev R
Illustrative Visual 2 of 7	16315/P/0151	Rev P
Illustrative Visual 3 of 7	16315/P/0152	Rev O
Illustrative Visual 4 of 7	16315/P/0153	Rev Q
Illustrative Visual 5 of 7	16315/P/0154	Rev O
Illustrative Visual 6 of 7	16315/P/0155	Rev O
Illustrative Visual 7 of 7	16315/P/0156	Rev R
Landscape Masterplan	16315/A1/4.21	Rev M
Fuel Bunker Level +2.0000m	16315/A1/P/0220	Rev D
Fuel Bunker Level +20.000m and Level +36.000m	16315/A1/P/0221	Rev E
Fuel Bunker Section A-A	16315/A1/P/0222	Rev C
Fuel Bunker Section B-B	16315/A0/P/0223	Rev C
Tipping Hall Layout Level +2.000m	16315/A1/P/0201	Rev E
Tipping Hall Section A-A	16315/A1/P/0202	Rev D
Overall Roof Layout Comparison Drawing	16315/A1/P/0200	Rev H
Lighting Discharges Report	20020117LXI0019	Rev C
External Lighting Technical Submission	20020117LXJ0922	Rev I
External Lighting Drawing	20020117LXG0907	Rev H
K3 External Lighting Strategy	ECO00047 Fig1	
Access Road - Proposed Proposed Internal Access Layout	9163-0135-01-JNY9060	Rev 01
K3 Employment Strategy	March 2012	

SCHEDULE 3

Article 18

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Application of this Schedule

1. This Schedule applies to an application made by the undertaker to the planning authority (referred to in this Schedule as “the authority”) for an approval, consent or agreement required by any of the requirements.

Decision Period

2.—(1) The authority must give written notice to the undertaker of its decision on the application before the end of the decision period.

(2) In sub-paragraph (1), “the decision period” means—

- (a) where the authority does not give written notice under paragraph 3(1) or (2) requiring further information, the period of eight weeks from the later of—
 - (i) the day immediately following the day on which the authority receives the application, and
 - (ii) the day on which the authority receives the fee payable under paragraph 4; or
- (b) where the authority gives written notice under paragraph 3(1) or (2) requiring further information, the period of eight weeks from the day immediately following the day on which the undertaker provides the further information; or
- (c) such longer period as may be agreed in writing by the undertaker and the authority.

Further information

3.—(1) If the authority considers that it requires further information to make a decision on the application, it must give written notice to the undertaker specifying the further information required within seven business days from the day on which it receives the application.

(2) If the relevant requirement requires that authority to consult a person (referred to in this Schedule as a “consultee”) in relation to the application—

- (a) the authority must consult the consultee within five business days from the day on which it receives the application;
- (b) if the consultee considers that it requires further information to respond to the consultation, it must so notify the authority, specifying what further information is required, within 18 business days from the day on which the authority received the application; and
- (c) within five business days from the day on which it receives any such notification from the consultee, the authority must give written notice to the undertaker specifying the further information required by the consultee.

(3) If the authority, after consultation with any consultee, considers that further information provided by the undertaker in response to a written notice from the authority under sub-paragraph (1) or (2) is not sufficient to allow it to make a decision on the application, it must give written notice to the undertaker specifying what further information is still required, within seven business days from the day on which the undertaker provided the information.

(4) If the authority does not give written notice in accordance with sub-paragraph (1), (2) or (3), it is not entitled to request any additional information in relation to the application without the prior agreement in writing of the undertaker.

Fees

4.—(1) The undertaker must pay the authority a fee of £116, or such greater fee as for the time being is payable to the authority in respect of an application for the discharge of a condition imposed on a grant of planning permission, in respect of each application.

(2) The authority must refund the fee paid under sub-paragraph (1) to the undertaker, within the relevant period, if it—

- (a) rejects the application as being invalidly made;
- (b) fails to give the written notice required by paragraph 2(1).

(3) Sub-paragraph (2) does not apply if, within the relevant period, the undertaker agrees in writing that the authority may retain the fee paid and credit it in respect of a future application.

(4) In sub-paragraphs (2) and (3) “the relevant period” means the period of eight weeks from, as the case may be—

- (a) the day on which the authority rejects the application as being invalidly made;
- (b) the day after the day on which the decision period expires.

Appeal to the Secretary of State (procedure)

5.—(1) The undertaker may appeal to the Secretary of State against—

- (a) the authority’s refusal of an application;
- (b) the authority’s grant subject to conditions of an application;
- (c) the authority’s failure to give the written notice required by paragraph 2(1);
- (d) a written notice given by the authority under paragraph 3(1), (2) or (3).

(2) In order to appeal, the undertaker must, within 10 business days from the relevant day, send the Secretary of State the following documents—

- (a) its grounds of appeal;
- (b) a copy of the application submitted to the authority;
- (c) any supporting documentation which it wishes to provide.

(3) In sub-paragraph (2), “the relevant day” means—

- (a) in the case of an appeal under sub-paragraph (1)(a) or (b), the day on which the undertaker is notified by the authority of its decision;
- (b) in the case of an appeal under sub-paragraph (c), the day after the day on which the decision period expires;
- (c) in the case of an appeal under sub-paragraph (1)(d), the day on which the undertaker receives the authority’s notice.

(4) At the same time as it sends the documents mentioned in sub-paragraph (2) to the Secretary of State, the undertaker must send copies of those documents to the authority and any consultee.

(5) As soon as reasonably practicable following receipt of the documents mentioned in sub-paragraph (2), the Secretary of State must—

- (a) appoint a person (referred to in this Schedule as “the appointed person”) to determine the appeal on his behalf;
- (b) give written notice to the undertaker, the authority and any consultee of the appointment and of the appointed person’s address for correspondence in relation to the appeal.

(6) Within 20 business days from the day on which the Secretary of State gives notice under sub-paragraph (5)(b), the authority and any consultee—

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (a) may submit written representations in respect of the appeal to the appointed person; and
 - (b) must, at the same time, send a copy of any such representations to the undertaker and (if applicable) to each other.
- (7) Within 10 business days from the last day on which representations are submitted to the appointed person under sub-paragraph (6), any party—
- (a) may make further representations to the appointed person in response to the representations of another party; and
 - (b) must, at the same time, send a copy of any such further representations to each other party.

Appeal to the Secretary of State (powers of the appointed person)

- 6.—(1) The appointed person may—
- (a) allow or dismiss the appeal;
 - (b) reverse or vary any part of the authority’s decision, irrespective of whether the appeal relates to that part;
 - (c) make a decision on the application as if it had been made to the appointed person in the first instance.
- (2) The appointed person—
- (a) if he considers that he requires further information to make a decision on the appeal, may by written notice require any party to provide such further information to him and to each other party by a specified date;
 - (b) if he gives such a notice, must—
 - (i) at the same time send a copy of it to each other party, and
 - (ii) allow each party to make further representations in relation to any further information provided in response to the notice, within 10 business days from the day on which it is provided.
- (3) The appointed person may waive or extend any time limit (including after it has expired) for the provision of representations or information in relation to an appeal.

Appeal to the Secretary of State (supplementary)

- 7.—(1) The decision of the appointed person on an appeal may not be challenged except by proceedings for judicial review.
- (2) If the appointed person grants approval of an application, that approval is to be taken as if it were an approval granted by the authority in relation to the application.
- (3) Subject to sub-paragraph (4), the undertaker must pay the reasonable costs of the appointed person incurred in deciding the appeal.
- (4) On written application by the authority or the undertaker, the appointed person may make a direction as to the costs of the parties to the appeal and of the appointed person, including imposing an obligation on any party to pay all or part of such costs to the party which incurred them.
- (5) In considering an application under sub-paragraph (4) the appointed person must have regard to the National Planning Practice Guidance: Advice on planning appeals and the award costs or any circular or guidance which may from time to time replace it.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants development consent for WTI/EFW Holdings Ltd (company number 07593865) to construct, operate and maintain the K3 Generating Station, an electricity generating station with a gross installed capacity of up to 75MW.

The Order also authorises associated development and imposes requirements in connection with the development.

A copy of the various documents referred to in this Order and certified in accordance with article 16 (certification of plans, etc) of this Order may be inspected free of charge during working hours at the offices of Kent County Council, Sessions House, County Hall, Maidstone, Kent ME14 1XQ.