

29 June 2010

Nigel Hewitson  
Norton Rose LLP  
3 More London Riverside  
London  
SE1 2AQ

Our Ref: APP/A5270/A/09/2114021  
Your Ref:

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY BLUE-NG  
AT SOUTHALL GAS PRESSURE REDUCTION STATION AND ADJACENT  
LAND, THE STRAIGHT, SOUTHALL, LONDON UB1 1QX  
APPLICATION REF: P/2009/0780**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Mr K D Barton, BA(Hons) DipArch DipArb RIBA FCIArb, who held a public local inquiry between 9 and 17 March 2010 into your client's appeal for non-determination of an application by the Council of the London Borough of Ealing for the construction of a combined heat and intelligent power plant (CHiP) adjacent to the existing gas holder to generate renewable energy comprising: i) ChiP building including visitors area (82m long x 43m wide x 39m high at its highest point with a 65m exhaust stack); ii) turbo expander building (21m long x 21m wide x 8m high); and iii) associated infrastructure including fuel storage area and perimeter security fence at Southall Gas Pressure Reduction Station and adjacent land, The Straight, Southall, London UB1 1QX in accordance with application number P/2009/0780, dated 17 March 2009.
2. On 13 October 2009, the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 to Schedule 6 to, the Town and Country Planning Act 1990 because it relates to proposals of major significance for the delivery of the Government's climate change programme and energy policies.

### **Inspector's recommendation and summary of the decision**

3. The Inspector recommended that the appeal be dismissed and planning permission refused. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, and agrees with his recommendation. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

### **Procedural Matters**

4. In reaching this position the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, as well as the additional information referred to by the Inspector at IR1.10. The Secretary of State is content that the Environmental Statement complies with the above regulations and that sufficient information has been provided for him to assess the environmental impact of the application.
5. At the inquiry an application for costs against the appellant was made by Blue-NG against the Council of the London Borough of Ealing. That application is the subject of a separate decision letter.
6. The table at Annex A lists the representations which were submitted shortly before, during, or after the inquiry and which were not considered by the Inspector in writing his report and making his recommendation. The Secretary of State has given careful consideration to these representations. However, he does not consider that they raise any new issues which require him to refer back to parties before reaching his decision. Copies of the representations may be obtained upon request from the address at the foot of the first page of this letter or from PCC@communities.gsi.gov.uk.

### **Policy considerations**

7. In deciding the application, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
8. In this case, the development plan comprises the London Plan – Spatial Development Strategy for Greater London (consolidated with alterations since 2004) published in February 2008 and the saved policies of the Ealing Unitary Development Plan 2004. The Secretary of State considers that the development plan policies most relevant to the appeal are those set out by the Inspector at IR3.2, IR3.4 – 3.6, and IR3.8 - 3.10.
9. Other material considerations which the Secretary of State has taken into account include Planning Policy Statement (PPS)1: *Delivering Sustainable Development*, including the supplement on Planning and Climate Change;

Planning Policy Guidance (PPG) 13: *Transport*; PPS22: *Renewable Energy* and PPS22 Companion Guide: *Planning for Renewable Energy*; PPS23: *Planning & Pollution Control*; PPG24: *Planning and Noise*; ODPM Circular 11/95: *The Use of Conditions in Planning Permission*; and ODPM Circular 05/05: *Planning Obligations*. He has also had regard to: the Mayor's *Transport Strategy* (published in final form on 10 May 2010), the Mayor's *Energy Strategy* (2004); Ealing Borough Council's *Air Quality Action Plan* (2003); and its *Air Quality Progress Report April 2008*; and Environment Protection UK's *Development Control: Planning for Air Quality*

### **Main issues**

10. The Secretary of State considers that the main issues in this case are those set out below.

#### **Transportation**

11. The Secretary of State has carefully considered the Inspector's analysis of the transportation issues at IR10.2.1 – 10.2.13.

12. For the reasons set out by the Inspector (IR10.2.1 – 10.2.6), the Secretary of State agrees with him that the use of a 12 metre rigid vehicle for deliveries would adversely affect the free flow of traffic (IR10.2.3, 10.2.4 and 10.2.5), and that the existing use of refuse or other large vehicles does not justify allowing a proposal that would significantly increase the likelihood of a fuel delivery vehicle affecting the free flow of traffic (IR10.2.6). Having had regard to the Inspector's analysis at IR10.2.7 – 10.2.9, the Secretary of State shares his view that the slight improvement that the use of a smaller, articulated delivery vehicle would bring would not be sufficient to overcome the adverse effect on the free flow of traffic and make increased use of the proposed access acceptable (IR10.2.9).

13. The Secretary of State has had regard to the Inspector's explanation at IR10.2.11 about why, subject to a suitable traffic management and access strategy, the use of an existing access from Beaconsfield Road to the Purple Parking Area would be preferable in highway terms to the use of Randolph Road. However, the Secretary of State has had regard to the fact that there is no application plan that shows access from the north (IR10.2.12), and he has come to no conclusion on the acceptability of such an access. He agrees with the Inspector (IR10.2.12) that the alteration of a fundamental part of the application without notice or consultation would prejudice those not notified. The Secretary of State has had regard to the Inspector's comments at IR10.2.12 that the West Southall Regeneration Scheme would include improved access to South Road and a direct access to the Hayes By-Pass, avoiding residential areas. The Secretary of State agrees with the Inspector that this is very different to the suggestion of using the existing access from Beaconsfield Road (IR10.2.12). With regard to the s106 obligation dated 16 March 2010 which deals with access, the Secretary of State agrees with the Inspector's comments at IR10.2.13.

14. Like the Inspector (IR10.2.14), the Secretary of State concludes that the proposed access arrangements would have an unacceptably detrimental impact on the free flow of traffic, contrary to the aims of saved UDP policies 9.1 and 9.9.

#### Air Quality

15. The Secretary of State has given very careful consideration to the Inspector's analysis of air quality issues at IR10.3.1 – 10.3.23. He observes that the Mayor's 2009 draft *Air Quality Strategy* to which the Inspector refers at IR10.3.4 has been replaced with a more recent draft (published in March 2010). Given that the draft *Air Quality Strategy* published in March 2010 is currently being consulted upon, the Secretary of State gives it limited weight.
16. The Secretary of State sees no reason to disagree with the Inspector's view at IR10.3.5 that, with appropriate mitigation and good site practices, the impact on air quality during construction would be negligible.
17. For the reasons given by the Inspector at IR10.3.7, the Secretary of State agrees with him that the evidence does not indicate that pollution levels are falling, and that the site's location makes improving air quality a challenge. Having taken account of the Inspector's remarks about the modelling process and the particular factors causing uncertainty here, the Secretary of State agrees with the Inspector that the predicted results should be treated with some caution (IR10.3.8).
18. The Secretary of State observes that there is no dispute that pollution levels would rise as a result of the appeal scheme, but that the experts for the two main parties are divided as to whether air quality should be described as an overriding or a high priority (IR10.3.15). He fully agrees with the Inspector that the argument that increases in pollutant concentrations would be acceptable, as they would be small, needs to be tempered with consideration of the other factors identified by the Inspector at IR10.3.15. Having considered the Inspector's comments at IR10.3.16 – 10.3.17 (and notwithstanding the changes between the 2009 and the 2010 drafts of the Mayor's *Air Quality Strategy*), the Secretary of State agrees with him that local residents might suffer disproportionate health effects due to the proposal (IR10.3.17). Furthermore, he agrees with the Inspector at IR10.3.18 that, whilst not all applications within an *Air Quality Management Area* that have a detrimental impact should be refused, the proposal would produce about 126 tonnes of NO<sub>x</sub> and 46 tonnes of PM<sub>10</sub> a year, and it is not a run of the mill scheme.
19. The Secretary of State shares the Inspector's view that the appellant's success in securing consent for a similar plant at Beckton would not justify allowing this proposal in a densely populated residential area in Southall (IR10.3.22). He agrees with the Inspector (IR10.3.21) that, whilst the London Borough of Ealing did not refuse the West Southall Regeneration Scheme on air quality grounds, that was a different scheme and the lack of an air quality reason for refusal would not justify allowing this scheme. He agrees with the Inspector that the proposal is within an *Air Quality Management Area* where NO<sub>2</sub> levels are already well above Limit Values, and that whilst this proposal would have an adverse effect on air quality, Combined Heat and Power systems do not have to have such an effect (IR10.4.5).

20. In conclusion, the Secretary of State takes the same view as the Inspector at IR10.3.23: given that the proposal would have an adverse effect on air quality, that some absolute levels would be 50% above the limit values, there is little evidence of existing levels falling, and that many people would be affected in a deprived area where there is already a shorter life expectancy than elsewhere in the Borough, the proposal would be contrary to the aims of LP Policy 4A.19 and saved UDP policy 2.6. Like the Inspector (IR10.3.23) the Secretary of State takes the view that the scheme should be refused on air quality grounds.

### Other Matters

21. With respect to the potential for odour, for the reasons given by the Inspector at IR10.4.1, the Secretary of State agrees that there is no reason to believe that odours would cause any nuisance beyond the site boundary. Having had regard to IR10.4.2, the Secretary of State also shares the Inspector's view that the scheme does not give rise to conflict with LP policy 4B.1 and that, in relation to the advice in paragraphs 33 to 39 of PPS1, the proposal would be appropriate in its context and would take the opportunities available for improving the character and design quality of the area. However, he agrees with the Inspector at IR10.4.3 and, like the Inspector, he concludes that the scheme would fail to comply both with paragraph 16 of PPS1 and with the aims of UDP Policy 2.6.

22. The Secretary of State has given careful consideration to the Inspector's comments at IR10.4.4 and he agrees that the scheme would generate over 20% of the renewable electricity target and potentially up to half the heat target in the Mayor's *Energy Strategy* and that to a certain extent the scheme would support national policy in PPS22 and the *Planning and Climate Change Supplement* to PPS1.

### Conditions

23. The Secretary of State has considered the proposed conditions and the Inspector's comments on these at IR10.5.1 – 10.5.9. He is satisfied that the conditions recommended in the Inspector's schedule are reasonable and necessary and meet the tests of Circular 11/95. However, these conditions do not overcome the Secretary of State's reasons for dismissing the appeal.

### Obligation

24. The Secretary of State has considered the 2 section 106 Undertakings, the Inspector's remarks at IR10.5.10 – 12, and national policy as set out in Circular 05/2005 and the Community Infrastructure Levy (CIL) Regulations which came into force on 6 April 2010, after the close of the inquiry. With regard to the Undertaking dated 5 March 2010, the Secretary of State agrees with the Inspector (IR10.5.11) that the Undertaking does not meet the tests in Regulation 122. He has given no weight to its provisions in his determination of this case.

25. With regard to the Undertaking dated 16 March 2010, the Secretary of State has already concluded (at paragraph 13 above) that the alteration of the proposed access route without notice or consultation would be prejudicial, and that the Undertaking only provides for the use of "best endeavours" and would allow the

use of the unacceptable route along Randolph Road for an indefinite period. He attributes very little weight to the provisions in the Undertaking.

### **Overall Conclusions**

26. The Secretary of State considers that the scheme gains support from national and London energy policies for the long term CO<sub>2</sub> and renewable energy targets. He attributes significant weight to the fact that the scheme would generate over 20% of the renewable energy target and potentially up to half the heat target in the Mayor's Energy Strategy.
27. However, he has also concluded that the scheme would have an adverse effect on air quality in a densely populated area which already suffers from poor air quality and that the scheme would have an unacceptably detrimental impact on the free flow of traffic. He has found that it would conflict with UDP policies 2.6, 9.1 and 9.9 and with LP policies 4A.9, and it would not be fully compliant with PPS1.
28. In conclusion, the Secretary of State considers that the adverse effects from this particular scheme in terms of air quality and transportation impacts are not acceptable. He concludes that the material considerations are not of sufficient weight to determine the appeal other than in accordance with the development plan. Furthermore, given his view that Combined Heat and Power Schemes do not inevitably have an adverse impact on air quality (paragraph 19 above), and that less harmful access routes to the site exist or may come forward (paragraph 13 above), he considers it likely that a preferable alternative scheme could be devised for the site.

### **Formal Decision**

29. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for the construction of a combined heat and intelligent power plant (CHiP) adjacent to the existing gas holder to generate renewable energy comprising: i) ChiP building including visitors area (82m long x 43m wide x 39m high at its highest point with a 65m exhaust stack: ii) turbo expander building (21m long x 21m wide x 8m high); and iii) associated infrastructure including fuel storage area and perimeter security fence at Southall Gas Pressure Reduction Station and adjacent land, The Straight, Southall, London UB1 1QX in accordance with application number P/2009/0780, dated 17 March 2009.

### **Right to challenge the decision**

30. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

31. A copy of this letter and the full IR has been sent to the Council of the London Borough of Ealing and a copy of this letter and the Inspector's conclusions has been sent to all parties who appeared at the inquiry.

Yours faithfully

**Christine Symes**

Authorised by Secretary of State to sign in that behalf

## Annex A

<b>Late Representations</b>	
07 June 2010	Robert Palgrave
06 April 2010	Richard Lyddon
27 March 2010	Surinder Khera
09 March 2010	Malcolm and Susan Chapman
08 March 2010	Stephen Macfarlane
08 March 2010	Nick Protchard
07 March 2010	Lynne Crowe
07 March 2010	Ruth Neary
01 March 2010	Avenue Road and Villiers Road Residents' Association