

**TATA CHEMICALS EUROPE LIMITED AND E.ON ENERGY FROM WASTE UK LIMITED**

**ELECTRICITY ACT 1989, SECTION 36**

**PROPOSED 60MW ENERGY FROM WASTE GENERATING STATION, LOSTOCK, NORTHWICH  
PUBLIC INQUIRY**

**APPLICANT'S STATEMENT ON THE RELEVANCE OF THE NATIONAL PLANNING POLICY  
FRAMEWORK TO THE SECRETARY OF STATE'S DECISION**

**1 Introduction**

- (a) The Secretary of State has invited Tata Chemicals Europe Limited (**Tata Chemicals**) and E.ON Energy From Waste UK Limited (together, **the Applicant**) and the Rule 6 parties to the Lostock SEP Inquiry to submit comments to him on the relevance of the National Planning Policy Framework (**Framework**) to the case presented to the Inquiry in respect of the proposed Sustainable Energy Plant at Lostock (**Proposed Development**). This document sets out the comments of the Applicant.

**2 Application of the Framework**

- (a) The Applicant's planning policy evidence to the Inquiry was presented in the written and oral evidence of Kirsten Berry and Christopher Lecointe. Miss Berry addressed energy and waste policy and Mr Lecointe addressed the planning merits of the Proposed Development.
- (b) The Applicant notes that the Framework states, at Paragraph 3, that it does "*not contain specific policies for*" nationally significant infrastructure projects. The Proposed Development has a generating capacity of over 50 megawatts and is, therefore, under Sections 14 and 15 of the Planning Act 2008, a nationally significant infrastructure project (**NSIP**). Accordingly, although the application for the Proposed Development was submitted prior to the existence of the Infrastructure Planning Commission (now the National Infrastructure Directorate) the Applicant considers that the primary national policy documents relevant to the Proposed Development, in terms of energy policy, are National Policy Statements (**NPS**) for Energy EN-1 and EN-3 rather than the Framework.
- (c) The Applicant also notes from Paragraph 5 of the Framework that the document does not contain any specific waste management policies. It states, at footnote 5, that Planning Policy Statement 10 remains in place until the National Waste Management Plan for England comes into force. However, it is noted that Paragraph 5 of the Framework also states that local authorities taking decisions on waste applications should have regard to the Framework's policies so far as relevant.
- (d) The Applicant submitted to the Inquiry, in Miss Berry's evidence, that waste policy "*provides a framework within which to deliver the national waste management infrastructure, it is not an approach applicable to energy schemes designed to serve a particular pre-existing user*". In any event, Miss Berry's evidence demonstrated that the Proposed Development is compliant with waste policy in key material respects.
- (e) Accordingly, while the Applicant submits that the primary national policies relevant to the Proposed Development are contained in NPSs EN-1 and EN-3 and Planning Policy Statement 10, the Applicant recognises that the Framework is a relevant consideration to which some weight should be attached. In the following paragraphs

this note explains how, in the Applicant's view, the Proposed Development both complies with the Framework and why it also adds weight to the case for the grant of the consent.

### **Presumption in Favour of Sustainable Development**

- (f) The policy "*at the heart of*" the Framework is the "*presumption in favour of sustainable development*". Paragraph 14 of the Framework states that development proposals that accord with the development plan should be approved without delay; and where the development plan is absent, silent or relevant policies are out of date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
- (g) In their evidence on behalf of the Applicant, Christopher Lecointe and Kirsten Berry concluded that there is strong local and national planning and energy policy support for the Proposed Development. Miss Berry's proof of evidence concluded that the Proposed Development "*fits comfortably with the Government's increasing drive towards enabling growth of green investment and energy in the UK and is consistent with policy.*" [emphasis added]. Mr Lecointe's proof of evidence states at paragraph 11.26 that the relevant "*local waste policies are contained in a plan that is not up to date and have been applied with undue weight to a scheme that is an energy led scheme. Secondly, even if weight should be attached to them, I and other witnesses have shown we are not in conflict with them. In my opinion, the Applicant also benefits from weight in respect of compliance with waste policy too.*"
- (h) Further, the Applicant considers that any perceived adverse impacts that may exist could in no way outweigh the benefits (which are set out in detail in the Applicant's evidence) of the Proposed Development, and certainly do not "significantly and demonstrably" outweigh such benefits. Accordingly, the presumption in favour of sustainable development adds weight to the case for the grant of the consent.

### **Sustainability**

- (i) On the question of the sustainability of the Proposed Development, Paragraph 7 of the Framework sets out "*three dimensions to sustainable development*" being economic, social and environmental. The Proposed Development is consistent with each of these dimensions. It would result in Tata Chemicals being less reliant on fossil fuels thereby strengthening the business and contributing "*towards building a strong, responsive and competitive economy*" (Paragraph 7 of the Framework). It is a type of development required by Tata Chemicals and is appropriately located adjacent to the business's manufacturing works. Accordingly, it is development on "*land of the right type [...] in the right place and at the right time to support growth and innovation*" (Paragraph 7 of the Framework). The Proposed Development would provide a social benefit of providing much needed employment for the local community. Also, it has an environmental role of minimising pollution by reducing the use of fossil fuels and diverting waste from landfill assisting the transition to a low carbon economy, in line with the environmental dimension to sustainable development explained at Paragraph 7 of the Framework.

### **Core Land Use Planning Principles**

- (j) The Proposed Development complies, where relevant, with the planning principles, which "*underpin*" decision taking, set out at Paragraph 17 of the Framework, in particular it:
- (i) will deliver vital energy infrastructure (and in the process divert a considerable amount of waste from landfill) that the country needs in accordance with the third principle at Paragraph 17 of the Framework;
  - (ii) supports the transition to a low carbon future by creating renewable energy and in the process reducing the need to burn fossil fuels to power Tata Chemicals' manufacturing processes in accordance with the sixth principle at Paragraph 17 of the Framework;
  - (iii) is to be located on an existing industrial site in accordance with the eighth principle at Paragraph 17 of the Framework which states that planning should "*encourage the effective use of land by reusing land that has been previously developed (brownfield land), provided that it is not of high environmental value*"; and
  - (iv) attains high quality design standards in accordance with the fourth principle at Paragraph 17 of the Framework.

### **Economic Growth**

- (k) Paragraph 18 of the Framework states that "*the Government is committed to securing economic growth in order to create jobs and prosperity, building on the country's inherent strengths, and to meeting the twin challenges of global competition and of a low carbon future.*" [emphasis added]. It is important to note in the context of the Lostock decision that Paragraph 19 of the Framework states that "*significant weight should be placed on the need to support economic growth through the planning system*" [emphasis added]. As was submitted in evidence to the Inquiry, the Proposed Development supports jobs and economic growth.

### **Climate Change and Renewable Energy**

- (l) Paragraph 97 of the Framework addresses the need to increase the use and supply of renewable and low carbon energy. Paragraph 97 identifies the role of local planning authorities in increasing this supply, including:
- (i) having a positive strategy to promote energy from renewable and low carbon sources;
  - (ii) identifying suitable areas for renewable and low carbon energy sources, and supporting infrastructure, where this would help secure the development of such sources; and
  - (iii) identifying opportunities where development can draw its energy supply from decentralised, renewable or low carbon energy supply systems and for co-locating potential heat customers and suppliers.
- (m) NPSs EN-1 and EN-3 state that energy from waste can be considered to be 'renewable energy'. The glossary in the Framework recognises that energy from biomass is also to be considered 'renewable energy' and that low carbon technologies are "*those that can help reduce emissions (compared to the*

*conventional use of fossil fuels*"). The Applicant submitted evidence to the Inquiry demonstrating the overall carbon benefit of the Proposed Development and the consequential reduction in green house gas emissions by reducing the burning of fossil fuels to power Tata Chemicals' manufacturing operations and diverting waste from landfill. Accordingly, the Proposed Development accords with the Framework's policies in relation to renewable and low carbon energy.

### **Need**

- (n) Paragraph 98 of the Framework clarifies that, in the determination of planning applications, applicants should not be required to demonstrate the overall need for renewable or low carbon energy. In any event, the Applicant submitted evidence to the Inquiry on the policy support for the Proposed Development in terms of energy and waste policy. Further, evidence was also submitted demonstrating the benefits of diverting waste from landfill and the significant level of need for waste management capacity on a national basis.

### **Transport**

- (o) Paragraph 30 of the Framework states that "*Encouragement should be given to solutions which support reductions in greenhouse gas emissions and reduce congestion.*" The desire of the Applicant to use rail transport for the movement of feedstock to the site is supported by this policy.
- (p) Further, Paragraph 32 of the Framework states that in making decisions "*development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.*" [emphasis added] It should be noted that the highway authority had no objections to the Proposed Development in highway terms, as evidenced by the Highway Matters Statement of Common Ground.
- (q) Paragraph 36 of the Framework encourages the use of travel plans and the Applicant acknowledges the importance of incorporating travel plan measures within the operation of the Proposed Development. In relation to travel to and from the Proposed Development by employees, the Applicant has proposed a range of measures to encourage sustainable travel including bike storage, shower and changing facilities. Further, a proposed condition to be attached to the Section 36 consent requires that the Proposed Development shall not be operated until various measures (including providing information in relation to walking and cycling routes and car sharing databases) to encourage staff to travel via sustainable modes have been introduced.
- (r) Accordingly, the Proposed Development accords with the Framework in relation to its sustainable transport policies.

### **Environmental and Health Impacts**

- (s) Paragraph 120 of the Framework states:

*To prevent unacceptable risks from pollution and land instability, planning policies and decisions should ensure that new development is appropriate for its location. The effects (including cumulative effects) of pollution on health, the natural environment or general amenity, and the potential sensitivity of the area or proposed development to adverse effects from pollution, should be taken into*

*account. Where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner.*

- (t) The Applicant dealt with these issues comprehensively during the Inquiry submitting evidence that the location of the Proposed Development is entirely appropriate and that any environmental and health effects would not be significant.
- (u) Further it is helpful to note Paragraph 122 of the Framework which states that "*In doing so [determining planning applications], local planning authorities should focus on whether the development itself is an acceptable use of the land, and the impact of the use, rather than the control of processes or emissions themselves where these are subject to approval under pollution control regimes. Local planning authorities should assume that these regimes will operate effectively.*" [emphasis added]

#### **Noise**

- (v) Paragraph 123 of the Framework states that "*Planning policies and decisions should aim to avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development.*" At the same time the Framework recognises that "*development will often create some noise and existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established*". In any event, the Applicant submitted evidence to the Inquiry demonstrating that the Proposed Development would not give rise to any unacceptable noise impacts.

#### **Design**

- (w) Paragraph 56 of the Framework states that "*The Government attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people*". The Applicant submitted evidence to the Inquiry that the replacement of a derelict coal fired power station with a well designed energy from waste facility on an industrial site is appropriate in design terms.

### **3 Conclusions**

- (a) The Applicant submits that the Framework does not in any way detract from the strength of its case submitted to the Inquiry for the grant of the Section 36 consent. It further submits that, in its view, the Proposed Development accords with the relevant policies in the Framework and, indeed, that the Framework adds weight to the case for the grant of consent.

**Addleshaw Goddard LLP**

**9 May 2012**