

Mr David Walker  
Hammonds LLP  
2 Park Lane  
Leeds  
LS3 1ES

Our Ref: APP/G1630/A/10/2123550

13 December 2010

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 - SECTIONS 78 and 266  
APPEAL BY NATIONAL GRID PLC  
TIRLEY GAS PRESSURE REDUCTION INSTALLATION, LAND ADJACENT TO  
THE B4213 ROAD BETWEEN ITS JUNCTION WITH THE B4211 ROAD AT TIRLEY,  
GLOUCESTERSHIRE. GRID REFERENCE SO 829294**

1. We are directed by the Secretary of State for Communities and Local Government and the Secretary of State for Energy and Climate Change ("the Secretaries of State") to say that consideration has been given to the report of the Inspector, David Tester CChem MRSC C.WEM FCIWEM, who held a public local inquiry, which opened on 13 July 2010 and sat for 8 days, into your client's appeal against the decision of Tewkesbury Borough Council to refuse planning permission for a new National Gas Pressure Reduction Installation (GPRI) to connect the Milford Haven to Tirley (1200mm) Pipeline to the existing National Grid High Pressure Gas Transmission system. The development will comprise: erection of detached buildings, including standby generator, boiler, and instrument buildings and above ground pipe work equipment, security fence, lights and earth bunding (to reduce visual impact of the site) in accordance with application number 08/01665/FUL, dated 18 December 2008.

2. On 17 March 2010 the Secretaries of States directed, under section 266(1A) of the Town and Country Planning Act 1990, that section 266(1) should have effect in relation to this appeal by a statutory undertaker to develop either operational land or land which would become operational if planning permission were to be granted; and that it was therefore to be determined jointly by them.

**Inspectors' recommendation and summary of decision**

3. The Inspector, whose report is enclosed, recommended that the appeal be allowed and planning permission granted. For the reasons given below, the Secretaries of State agree with the Inspector's recommendation. All references to paragraph numbers, unless otherwise stated, are to the Inspector's report (IR).

**Post-Inquiry correspondence**

4. Since the close of the Inquiry, the Secretaries of State have received a written representation related to the proposals from Mark Harper MP. The Secretaries of

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London SW1A 2AW  
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State have carefully considered this representation. However, they do not consider that it constitutes new evidence or raises new issues which need to be referred back to parties before they proceed to a decision. Copies of this representation may be obtained by written request to the addresses above.

### **Procedural matters**

5. The Secretaries of State note that a number of revisions were made to the proposal as set out in IR1.4. They have determined the application on this basis and do not consider that any prejudice has been caused to any party in doing so.

6. In reaching their decision, the Secretaries of State have taken into account the Environmental Statement (ES) and Addendum which were submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (IR1.10). They agree with the Inspector (IR8.12), that the ES and Addendum meet the requirements of the 1999 Regulations, and that sufficient information has been provided for them to assess the environmental impact of the proposal.

### **Policy Considerations**

7. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan, unless material considerations indicate otherwise.

8. Following the decision of the Courts on 10 November on “The Queen on the application of Cala Homes (South) Limited v Secretary of State for Communities and Local Government” (CO/8474/2010) the Regional Spatial Strategy for the South West (RPG10, published in 2001) has been re-instated. It is therefore part of the Development Plan. The Secretaries of State have taken this into account in determining this appeal, but do not consider it necessary to refer back to parties on the implications of this change before reaching their decision. This is because they agree with the Inspector that, as no policies within RPG10 have been used by the parties in this appeal in support of their case, no weight can be attached to it (IR1.58).

9. The development plan also comprises the Gloucestershire Structure Plan (Second Review) (1999), and the Tewkesbury Borough Local Plan (2005). The Secretaries of State agree with the Inspector that the most relevant development plan policies are those set out in IR1.38-1.51.

10. Other material considerations which the Secretaries of State have taken into account include: Planning Policy Statement (PPS) 1: *Securing Sustainable Development*; Planning Policy Statement 7: *Sustainable Development in Rural Areas*; PPS 9: *Biodiversity and Geological Conservation*; PPS 23: *Planning and Pollution Control*; Planning Policy Guidance note 24: *Planning and Noise*; Circular 05/2005: *Planning Obligations*, Circular 11/95: *Use of Conditions in Planning Permission*, and the Community Infrastructure Regulations 2010 (CIL). Those matters relating to Draft National Policy Statements (NPS) EN-1 and EN-4 and gas supply set out in IR1.52-

1.57 and the duties of National Grid (NG) set out in IR8.21 are also material considerations.<sup>1</sup>

## **Main issues**

11. The Secretaries of State agree with the Inspector that the main considerations are those set out in IR8.2. They have noted the background issues set out in IR8.4-8.11. They have commented above on the ES, policy matters and material considerations.

### The need for the proposed installation

12. The Secretaries of State agree with the Inspector's reasoning and conclusions on the need for the proposal as set out in IR8.22-8.41. They agree that there remains a national need to transport gas derived from liquid natural gas from Milford Haven (MH) into England and Wales and to fully utilize the MH terminals and the new national transmissions system pipeline from Felindre to Tirley. They also agree that there is no justification for reassessing the Wormington option, but re-siting the GPRI at an alternative site up to 10km from the Tirley above ground installation would be acceptable if the Tirley site proved unsuitable in planning terms. They further agree that the proposal would comply with NG's duty under the Gas Act to develop and maintain an efficient and economic pipeline system (IR8.41).

### Landscape and visual impact

13. The Secretaries of State agree with the Inspector's reasoning and conclusions on landscape and visual impact as set out in IR8.42-8.56. They agree that in the short-term, particularly in the first winter, the GPRI and the bunding would be more obvious in the landscape, and harmful. However, they also agree that in the longer term, as the landscaping scheme matures, the development would gradually be assimilated into the countryside until it would be barely noticeable from public viewpoints, and that the character and appearance of the area would not be unacceptably harmed (IR8.56). They do not consider that the fact that the stacks are higher than other structures forming part of the development (IR8.7) alters this conclusion.

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<sup>1</sup> The draft NPSs have yet to be designated or ratified by Parliament (Government having committed to seek such ratification before designation). Since their publication in November 2009, revised versions of them have been published (on 18th October 2010) and they remain subject to consultation and therefore possible change before they are designated. However, while it is clear that more weight should be put on a designated than on a draft NPS, and while the aspects of the draft NPSs referred to in the IR have undergone some changes in the revised draft NPSs, the Secretaries of State note that it is essentially two aspects of the NPSs which are referred to in the IR. The first is the statements about the need for new energy infrastructure; the second is the consideration to be given, in the context of impacts on landscape character, to whether adverse landscape and visual impacts of development are long- or short-term. It is plain (e.g. from the April 2010 gas security statement and the reports and statements mentioned at IR3.40) that the Government remains of the view, expressed in the draft EN-1, that new Gas supply infrastructure (including LNG facilities) continues to be needed to maintain the security and diversity of energy supply. The fact that such views are expressed in a draft NPS is, in the view of the Secretaries of State, a material but not in itself a decisive consideration, particularly given, for example, the matters set out at IR8.33. Equally, the proposition that long-term harm to landscape character is more undesirable than short-term, or that short-term harm is less likely than long-term to outweigh other considerations in the planning balance is not one which needs the authority of an NPS to support it. Accordingly, although the draft NPSs are material considerations, the Secretaries of State have only afforded them limited weight in this decision.

### Technical constraints and alternative sites

14. The Secretaries of State agree with the Inspector's reasoning and conclusions on technical constraints and alternative sites as set out in IR8.57-8.82. They agree that, given that there is a national need for the development and the GPRI needs to be located in the countryside, these factors need to be weighed against its short-term visual impact to determine whether there is a planning objection to the proposal. The Secretaries of State also agree that the GPRI needs to be located in the countryside (both in the sense that it is desirable for safety reasons to locate such installations away from centres of population and in the sense that this particular installation needs to be within 10km of the Tirley node) and that the difference in visual impact between the appeal site and "Site 16" when weighed against the substantial additional costs of Site 16 would not warrant the development of that site rather than the appeal site unless the latter was found to be unacceptable in planning terms (IR8.82). In this respect, they agree that the fact that Site 16 would be more acceptable in terms of visual impact, does not in itself justify a refusal of planning permission and that neither scheme would have an unacceptable impact on the character and appearance of the area (IR8.81).

### Safety and security

15. The Secretaries of State agree with the Inspector's reasoning and conclusions on safety and security as set out in IR8.83-8.106. They agree that NG has undertaken its required statutory duty with HSE to allow it to design, install and operate the proposal in line with the Pipeline Safety Regulations 1996 (IR8.85). They also note that the risk assessment for the site and for people in the locality concludes that the risk of fatality to persons living in the immediate vicinity would be a lot lower than the definition of tolerable risk based on HSE guidelines, and that the level of societal risk was found to be very low and well within that acceptable in government guidance (IR8.104). In terms of terrorist attack, the Secretaries of State agree with the Inspector that there is no reason to suppose that this GPRI would be a particular target compared with some other key installations that by necessity are in rural locations (IR8.105); and that, providing NG undertook and implemented security advice from the relevant agencies, security concerns should not be allowed to prevent the development of the proposal (IR8.106).

### Other matters

16. The Secretaries of State agree with the Inspector's reasoning and conclusions on noise, air quality, ecology and greenhouse gases as set out in IR8.108-8.110. With regard to the matter of the localism agenda (IR8.111), the Secretaries of State have carefully considered the representations made by local people in determining this appeal (and set out by the Inspector at IR5.1-6.4). Whilst they fully appreciate these concerns, they agree with the Inspector that the national importance of infrastructure projects such as this also needs to be considered (IR8.111) and, for the reasons given in this letter, they consider that on balance, in the circumstances of this case, planning permission should be granted.

## Section 106 obligation and conditions

17. The Secretaries of State agree with the Inspector's reasoning and conclusions on conditions and obligations, as set out in IR8.112-8.115. They consider that the s106 agreement is relevant to the proposal and are satisfied that its provisions would be in line with Circular 05/2005 and the tests set out in the CIL Regulations. The Secretaries of State are also satisfied that the conditions as set out at Annex A to this letter are reasonable and necessary and meet the tests of Circular 11/95.

### **Overall conclusion**

18. Having taken account of the Inspector's conclusions at IR8.116-8.126, the Secretaries of State agree with his overall recommendation as set out in IR8.127. They consider that there is a need for the proposal in order to secure and maintain diversified and competitive gas supplies. They consider that whilst the proposal would have a short term adverse visual impact on the landscape, it would gradually be assimilated over time into the countryside, thereby justifying a short-term conflict with development policies (IR8.118). They also consider that the difference in visual impact between the appeal site and Site 16 when weighed against the substantial additional costs of Site 16 would not warrant the development of that site rather than the appeal site, given that they conclude that the appeal proposal would be acceptable in planning terms and would, in any case, be assimilated into the landscape over time. They are satisfied that safety and security matters have been properly addressed. In coming to their conclusion, they consider the Inspector has incorrectly equated the national policy objectives whose attainment will be furthered by the proposed development with "the social or economic needs of the area or wider environmental objectives" as set out in GSP policy NHE8.1, (IR8.119). Nevertheless, they consider that any conflict with the development plan in this respect and in respect of any short term harm to the character and appearance of the countryside, are outweighed by those other factors weighing in favour of the proposal referred to above.

19. The Secretaries of State therefore consider that the factors weighing in favour of the proposal outweigh its shortcomings and that there are no material considerations of sufficient weight which would justify refusing planning permission.

### **Formal decision**

20. Accordingly, for the reasons given above, the Secretaries of State agree with the Inspectors' recommendation. They hereby allow your client's appeal and grant planning permission for a new National Gas Pressure Reduction Installation to connect the Milford Haven to Tirley (1200mm) Pipeline to the existing National Grid High Pressure Gas Transmission system, comprising: erection of detached buildings and structures, including standby generator, boiler, and instrument buildings and above ground pipe work equipment, flue stacks, security fence, lights and earth bunding (to reduce visual impact of the site), in accordance with application number 08/01665/FUL dated 18 December (as amended), subject to the conditions set out in Annex A.

21. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretaries of State if consent, agreement or approval is refused or granted

conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

22. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

23. This letter serves as the Secretary of State's statement under regulation 21(2) of the Town and Country (Environmental Impact Assessment) (England and Wales) Regulations 1999.

Right to challenge the decision

24. 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.

25. A copy of this letter has been sent to Tewkesbury Borough Council and all parties who appeared at the inquiry.

Yours faithfully

Yours faithfully

Jean Nowak  
Authorised by the Secretary  
of State for DCLG to sign in that behalf

Giles Scott  
Authorised by the Secretary  
of State for DECC to sign in that behalf

**Conditions**

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. Not less than 14 days notice in writing shall be given to the Local Planning Authority prior to the commencement of development.
3. Unless otherwise agreed in writing by the Local Planning Authority, all on-site services required to be connected to the development hereby approved shall be laid underground.
4. The proposed comprehensive landscaping scheme, including areas of all temporary and permanent bunding and earthworks, shall be carried out in full accordance with the details and timings as shown on drawing nos. H132/BH/01/05/4629/527A Rev. A; H132/BH/08/03/4629/506 Rev B; and H132/BH/01/01/3917/537 Rev A, and in accordance with the approved Landscape Management Plan document referenced: H132/BH/99/00/4629/528 Rev 3, unless otherwise agreed in writing by the Local Planning Authority.
5. Within 6 months of the cessation of the use of the development hereby approved for the purposes of the conveyance of gas, a scheme for the removal of the development and the re-instatement of the land shall be submitted to the Local Planning Authority. The removal of the development and the re-instatement of the land shall be carried out in accordance with the approved scheme.
6. The proposed lighting scheme shall be installed on the site fully in accordance with the Operational Lighting Study Report reference: H132/BF/99/00/4629/512A Rev B; and Drawing Nos. H132/BF/02/04/4629/543A Rev A, H132/BF/05/02/4629/544 Rev A and H132/BH/01/01/4629/516A Rev A, unless otherwise agreed in writing by the Local Planning Authority. The lighting shall only be illuminated when maintenance or emergency works are undertaken at the site or when the lights have been illuminated as part of the site security system.
7. Notwithstanding the submitted information, the Lighting scheme shall comply with the parameters of Environmental Zone 2 of the Institute of Lighting Engineers Guidance Notes for the Reduction of Intrusive Light, unless otherwise agreed in writing by the Local Planning Authority.
8. Unless otherwise agreed in writing by the Local Planning Authority, construction works shall only take place between the hours of:  
  
07.00 to 19.00 Mondays to Fridays  
  
08.00 to 16.00 Saturdays.  
  
No construction works shall take place on Sundays or Bank Holidays.
9. A construction noise mitigation scheme shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. Construction works shall thereafter be operated in accordance with the approved scheme.
10. No development shall take place, until an updated Traffic Management Plan (TMP) has been submitted to, and approved in writing by the Local Planning Authority. The approved TMP shall be fully adhered to throughout the construction period of the development. The TMP shall provide for:

- lorry/HGV management and routing scheme

- Phasing scheme showing the proposed period of operation, hours of operation and numbers and weights of HGVs during each phase
- Specific local safety issues, such as the mini-roundabout at Staunton and the avoidance of out of hours routing through Tewkesbury, to be addressed
- A local freight quality partnership or other briefing forum to help inform the local communities about constructional activity
- Details of a temporary traffic order to reduce the speed limit on the roads directly affected by the construction access
- The parking of vehicles of site operatives and visitors
- Loading and unloading of plant and materials
- Storage of plant and materials used in constructing the development
- All constructional traffic/commercial vehicles to leave the site sheeted, except those carrying stone in excess of 500mm diameter
- Wheel washing facilities
- Measures to control the emission of dust and dirt during construction
- A scheme for recycling/disposing of waste resulting from demolition and construction works.

11. The access to the development shall be laid out and constructed in accordance with the details shown on drawing number H132/BH/01/02/4629/507 Rev B. Any entrance gates shall be set back a minimum of 20 metres from the carriageway edge and hung so as not to open outwards. The access driveway shall be surfaced in bituminous macadam or other approved materials for a minimum of 30 metres into the development site from the existing carriageway edge and the proposed access shall be the sole means of vehicular access to the development. All such access arrangements shall be similarly retained at all times thereafter, unless otherwise agreed in writing by the Local Planning Authority.

12. If the access arrangements in condition (11) are constructed between March and November, a temporary traffic management scheme providing for 3-way traffic lights and a 40mph speed restriction shall be submitted to the Local Planning Authority for its approval prior to the commencement of the works. The scheme shall be implemented in accordance with the approved details.

13. No works (other than those referred to in conditions 11 and 12) shall commence on site until measures to segregate the public footpath from the proposed access road have been provided in accordance with approved details. Such measures shall be retained for the duration of use thereafter.

14. The gradient of the proposed access road within 20 metres of the classified B4213 shall not be steeper than 1 in 20.

15. The proposed development shall not be brought into use until the car parking and manoeuvring areas have been completed in all respects in accordance with the details shown on drawing number H132/BH/01/01/4629/517A Rev A and those areas shall not thereafter be used for any purpose other than the parking and manoeuvring of vehicles.

16. No development shall take place within the application site until the Appellant, or its agent or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved in writing by the Local Planning Authority.

17. No development shall take place until an Ecological Method Statement, covering pre-construction, construction and post-construction phases has been submitted to and approved in writing by the Local Planning Authority. The Ecological Method Statement shall be compiled by a suitably qualified ecologist, and shall include appropriate mitigation measures and best practice working methods for birds, bats and badgers as well as details of an ecological enhancement scheme including details of after care management. The works shall be



implemented in accordance with the approved measures of the Ecological Method Statement, unless otherwise approved in writing by the Local Planning Authority.

18. No new buildings, structures (including gates, walls and fences) or raised ground levels shall be constructed within 5 metres of the top of any bank of the adjacent watercourse, unless agreed otherwise in writing by the Local Planning Authority.

19. Floor levels should be set at 300mm above the modelled 1 in 1000 year flood level for the site.

20. Development shall not commence until full drainage details, incorporating sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development have been submitted in full and approved by the local planning authority. Any approved scheme shall be implemented in accordance with the approved details before the development is completed or occupied.

21. A scheme for the disposal of foul drainage shall be submitted to and approved in writing by the Local Planning Authority prior to development commencing and shall thereafter be implemented in accordance with the approved scheme.

22. Any facilities for the storage of oil, fuels or chemicals shall be sited on impervious bases surrounded by impervious bund walls. The volume of the bunded compound shall be at least equivalent to the capacity of the tank plus 10%. If there is multiple tankage, the compound shall be at least equivalent to the capacity of the largest tank, vessel or the combined capacity of any inter-connected tanks or vessels plus 10%. All filling points, associated pipe work, vents, gauges and sight glasses must be located within the bund or have separate secondary containment. The drainage system of the bund shall be sealed with no discharge to any watercourse, land or underground strata. Associated pipe work shall be located above ground and protected from accidental damage. All filling points and tank/vessel overflow pipe outlets shall be detailed to discharge downwards into the bund.

23. Notwithstanding the submitted plans, details of the colour of the flue stacks, buildings, fencing, plant and ground surfacing hereby permitted shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented strictly in accordance with the approved scheme and the permitted colours shall not be changed other than in accordance with details approved in writing by the Local Planning Authority.

24. A scheme of notification of nearby residents of venting arrangements for the Pressure Reduction Installation shall be submitted to and approved in writing by the Local Planning Authority prior to the installation being brought into use. The approved scheme shall be strictly adhered to for the duration of the use of the installation.

25. Within 6 months of the completion of the development hereby approved the temporary site establishment area shall be removed and the land reinstated in accordance with details to be submitted to and approved in writing by the Local Planning Authority.

## **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;**

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### **Challenges under Section 288 of the TCP Act**

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

### **SECTION 2: AWARDS OF COSTS**

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

### **SECTION 3: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.



# Report to the Secretary of State for Communities and Local Government and to the Secretary of State for Energy & Climate Change

by David Tester CChem MRSC

C.WEM FCIWEM

an Inspector appointed by the Secretary of State  
for Communities and Local Government and by the  
Secretary of State for Energy & Climate Change

The Planning Inspectorate  
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Date: 18 October 2010

**TOWN AND COUNTRY PLANNING ACT 1990**

**APPEAL BY**

**NATIONAL GRID GAS plc**

**TIRLEY GAS PRESSURE REDUCTION INSTALLATION**

**TEWKESBURY BOROUGH COUNCIL**

Inquiry opened on 13 July 2010

land adjacent to the B4213 road between the junction with the B4211 road at Tirley.  
Grid Reference SO829294

File Ref: APP/G1630/A/10/2123550

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## Glossary, Abbreviations and Acronyms

AGI	Above Ground Installation
AOD	Above Ordnance Datum
AONB	Area of Outstanding National Beauty
barg	Bar gauge – unit of pressure
bcmy	billion cubic metres per year
CAPRI	Campaign Against Pressure Reduction Installation
CCGT	Combined Cycle Gas Turbines
CD	Core Documents
CPRE	Campaign to Protect Rural England
CPNI	Centre for the Protection of National Infrastructure
DECC	Department of Energy and Climate Change
Doc	Document
DP	Development Plan
DTI	Department of Trade and Industry
EMO	Energy Markets Outlook
ES	Environment Statement
ESA	Environment Statement Addendum
FoDDC	Forest of Dean District Council
FRA	Flood Risk Assessment
GB	Great Britain
GBA	Gas Balancing Alert
GEMA	Gas and Electricity Markets Authority
GLC	Greater London Council
GSP	Gloucestershire Structure Plan
IPC	Infrastructure Planning Commission
IR	2007 Inspector's Report
HSE	Health and Safety Executive
JAGUAR	Joint Action Group for Upleadon Area Residents
LMP	Landscape Management Plan
LNG	Liquified Natural Gas
LP	Local Plan
MH	Milford Haven
Mcmd	million cubic metres per day
NG	National Grid
NGG	National Grid Gas plc
NPS	National Policy Statement
NTS	National Transmissions System (Gas)
Ofgem	Industry Regulator
para(s)	paragraph(s)
pg	page
PIM	Pre-Inquiry Meeting
PPG	Planning Policy Guidance
PPS	Planning Policy Statement
PRI	Pressure Reduction Installation

PSR	Pipeline Safety Regulations
R2P2	Reducing Risk Protecting People
Re-x	Re-examination
RPG	Regional Planning Guidance
RSS	Regional Spatial Strategy
SOCG	Statement of Common Ground
SoS	Secretary of State
SSSI	Site of Special Scientific Interest
SSR	Site Selection Report
SUDS	Sustainable Urban Drainage Systems
TBC	Tewkesbury Borough Council
TBLP	Tewkesbury Borough Council Local Plan
TMP	Traffic Management Plan
TS	Transcript
UK	United Kingdom
UKCS	United Kingdom Continental Shelf
US	United States
xx	Cross examination
ZVI	Zone of Visual Influence

**File Ref: APP/G1630/A/10/2123550**

**Land adjacent to the B4213 road between its junction with the B4211 road at Tirley, Gloucestershire. Grid reference SO 829294**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by National Grid Gas plc against the decision of Tewkesbury Borough Council.
- The application Ref 08/01665/FUL, dated 18 December 2008, was refused by notice dated 02 February 2010.
- The development proposed is National Gas Supply Reinforcement. New National Gas Pressure Reduction Installation (PRI) to connect the Milford Haven to Tirley (1200mm) Pipeline to the existing National Grid High Pressure Gas Transmission system. The development will comprise: erection of detached buildings, including standby generator, boiler, and instrument buildings and above ground pipe work equipment, security fence, lights and earth bunding (to reduce visual impact of the site).
- The Reason for refusal is: "by virtue of its scale, height and appearance, the development would have an adverse impact upon the appearance and character of the countryside and would be contrary to policy NHE1 of the Gloucestershire County Structure Plan Second Review and policy LND4 of the Tewkesbury Borough Local Plan to 2011 (March 2006), which seeks to protect the open countryside from development which would adversely impact upon the visual appearance of the landscape."

**Summary of Recommendation: That the appeal be allowed, subject to the amended application plans and the conditions listed in the Appendix, and the Section 106 Obligation.**

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## 1. INTRODUCTION

### The Matters for Consideration

The Secretaries of State have requested that they particularly wish to be informed about the following matters for the purposes of their consideration of the appeal:

- (a) the extent to which the proposed development would be in accordance with the development plan for the area;*
- (b) the need for the proposed installation;*
- (c) any relevant duties imposed on National Grid Gas plc under, or by virtue of the Gas Act 1986;*
- (d) whether there are any technical constraints affecting the selected site, what other sites were considered and why they were rejected;*
- (e) whether there are any other technically feasible sites for the proposed development which would be a more appropriate alternative in planning terms;*
- (f) the landscape and visual impact of the proposed development;*
- (g) what safety and security issues are raised by the proposed development and how they have been dealt with;*



- (h) whether any permission granted for the development should be subject to any conditions and, if so, the form these should take;*
- (i) whether any planning permission granted should be accompanied by any planning obligations under Section 106 of the 1990 Act and, if so, whether the proposed terms of such obligations are acceptable;*
- (j) any other matters that the Inspector considers relevant.*

## **Procedural and Background Matters**

- 1.1. The Inquiry sat on 8 days from 13/7/10 to 16/7/10 and 20/7/10 to 23/7/10 at the Corse Village Hall. An accompanied site inspection was carried out on 22/7/10 (Doc 7), and a number of unaccompanied visits on other days.
- 1.2. The Secretaries of State for Communities and Local Government and Energy and Climate Change direct under Section 266(1A) of the Town & Country Planning Act 1990, that Section 266(1) should have effect in relation to this appeal, which shall be determined by them.
- 1.3. A Pre-Inquiry Meeting (PIM) took place on 27 May 2010 at which the format and a draft timetable for the Inquiry were established (Doc 5).
- 1.4. At the PIM (Doc 5), National Grid Gas (NG) advised that, since the refusal of the application, it had modified the lighting proposals for the development in response to representations made and would be submitting a revised lighting scheme at the Inquiry. This revised scheme was submitted to the Council on 14 June 2010 and is referred to in Section 5 and Appendix 2 of the Statement of Common Ground (SOCG) (CD49) and in draft planning conditions 6 and 7 (NG53). At the Inquiry I received amended application plans, which included the revised operational lighting scheme (NG36). The revised scheme would significantly reduce the height and number of operational site lighting columns, thereby reducing the visual impact of the development. The Council raised no objection to the proposed modification and I consider that the revised scheme should be accepted on the basis that this is a minor beneficial amendment to the application.
- 1.5. In this Report, I have used the closing submissions of the main parties as the basis for their cases, with the minimum of alteration where possible. Clearly, this has resulted in differences of presentation, but the slight lack of consistency in this regard is not of significance to the comprehension of this report. All proofs of evidence are listed as documents, to assist with reporting, albeit that some will have been 'damaged' as a result of cross-examination (XX). All documents have been listed with a suitable prefix: NG for National Grid, T for Tewkesbury Borough Council (TBC), C for the Campaign Against Pressure Reduction Installation (CAPRI), CD for Core Documents and Doc for other documents submitted at the Inquiry. For example, paragraph 23, section 4 of Document NG8 is shown as NG8.4.23.

Elsewhere an abbreviation 'para' has been used for paragraph and 'pg' for page.

- 1.6. In addition, this application follows a previous application and an appeal on a nearby site and reference to the Secretary of States' Decision on this are denoted by the abbreviation DL and the paragraph No. e.g. DL5 and references to the Inspectors' Report by the abbreviation IR and paragraph No. e.g. IR8.6.
- 1.7. A full transcript has been made of the proceedings, for which I am grateful to the Appellant. It provides certainty in referencing and accuracy and clarity for the record of the proceedings and it has proved to be of great assistance in writing this Report. Reference to the transcript in the Report is given by the day followed by the page number e.g. 3:18 refers to Day 3 page 18.
- 1.8. Mention must also be made of the many volunteer helpers within the village community, led by Mr Graham Dickinson and Mrs Jane Cox, who spent very many hours assisting with arrangements at the Hall, the serving of food and drinks at breaks and the inevitable tidying up afterwards. Their help ensured the proceedings ran smoothly throughout. Their names are listed in Doc 6.
- 1.9. For ease and speed of reporting I use extracts from the SOCG (Doc CD49) with suitable amendments for the details of the proposal, site description, previous appeal and the like, with references as appropriate.
- 1.10. An Environmental Statement (ES) dated 10 December 2008 and an Addendum (ESA) of 17 July 2009 dealing with updated and additional information were submitted (Docs CD53 & CD51).
- 1.11. A completed draft S106 Obligation (NG20) was submitted before the start of the Inquiry and two individually signed and dated (13 July 2010) documents were provided during the Inquiry (NG35). As individually signed documents do not comply with PINS best practice, a document signed by both NG and the landowner was sought and received following the Inquiry. This Obligation would secure compliance with an appended Landscape Management Plan (LMP) which includes: the realignment of a boundary hedgerow bordering the B4213, strengthening of existing hedgerows, together with the establishment and management of woodland and tall shrub mixes and other landscape types over a 20 year maintenance period at the site. The Plan provides for a watering regime that would include a trickle irrigation system in years 2-5 for the proposed woodland and tall shrub mixes. Forward 3 year maintenance programmes would be submitted to the Council, together with monitoring and maintenance reports for the previous 3 year period.
- 1.12. The Committee report of 02/02/10 (CD50) includes a summary of the representations received at the application stage, the background to the case, including a summary of the Inspectors' Report from the previous Corse appeal nearby (CD26) and the Secretaries of States' Decision (CD25), the relevant planning policies and the key planning issues. A

recommendation is made that delegated authority be given to the Head of Borough Development to grant conditional planning permission subject to the completion of a S106 Obligation for landscaping works and the decommissioning and removal of the existing Tirley Above Ground Installation (AGI) and the reinstatement of the land.

### **The Proposal**

- 1.13. NG owns and operates the natural gas transmission pipeline system (NTS) in the UK and is licensed by the Gas and Electricity Markets Authority (GEMA) to transport gas via its pipeline network (CD49 .21-2.5). NG has a contracted requirement to provide up to 950GWh/day (equivalent to 88 million cubic metres per day (Mcmd)) gas transmission capacity from the new South Hook and Dragon Liquefied Natural Gas (LNG) importation terminals at Milford Haven. It is anticipated that this supply from Milford Haven will provide approximately 20% of the UK total gas demand in 10 years time.
- 1.14. Two new 1220mm diameter pipelines are now in place and are capable of transporting gas at 94 barg pressure from the new terminals to both South Wales and the rest of the UK. Although now operational the Felindre (South Wales) to Tirley pipeline cannot transport gas at these pressures. The pipe work from Tirley towards a compressor station at Wormington comprises 900mm and 600mm pipes respectively, which can only operate to a maximum of 75 barg pressure. Therefore a Pressure Reduction Installation (PRI) is required in order to reduce the ultimate 94 barg pressure of the transported gas from Milford Haven so that it can be transferred into the existing grid at Tirley.
- 1.15. A total of three new PRIs are required along the Felindre to Tirley Pipeline. Two of these have already been constructed at Cilfrew and Treaddow and are now operational. The PRI subject to this appeal would allow connection to the new pipeline from the existing underground 600mm and 900mm pipe work at the Tirley AGI and the removal of that above ground infrastructure. It is the remaining installation required to allow the gas to flow at the maximum 94 barg design pressure along its entire route from the west to Tirley. Unless such an installation is provided NG cannot operate the new pipeline at its design pressure and the purchased capacity of 88 Mcmd cannot be transported.
- 1.16. The proposed PRI (CD49.4.2) would include an instrument building, 2 boiler house buildings with 12 No. 8.5 metre high flue stacks (in 6x2 chimney stacks), a stand-by generator building, a landscaping scheme, including areas of bunding 3-5 metres high, operational site lighting comprising 4 No. lighting units on 4 metre high columns, 10 No. lighting units on buildings at 3 metres above ground, 1 No. lighting unit on a 2.5 metre high column, integral equipment lighting comprising 4 No. integral door lights and 5 No. fluorescent lights, security lighting comprising 19 No. security lighting units mounted on 4.5 metre high columns and 1 No. on a 6 metre high column, 2.4 metre high palisade fencing and 4 metre high pulsed electric security fencing set immediately inside the palisade fencing, CCTV camera units, one located on a 6 metre high column and the others

on 4.5 metre high columns.

- 1.17. The access onto the B4213 would require the realignment of the existing hedgerow to provide adequate visibility splays. All pipe work and buildings would be painted olive green and no building would exceed 4 metres in height. The proposal would also permit the decommissioning of the existing Tirley AGI and the reinstatement of the site, which would be secured by the Section 106 Obligation (NG35).

### **Site and Surroundings**

- 1.18. The appeal site (CD49.3.1-3.4) relates to land to the east of Flat Farm, Tirley, close to the western boundary of Tewkesbury Borough with the Forest of Dean District and not all that far from the boundary with the Malvern Hills District Council to the north. The site is located off the B4213 road to the south, with the B4211 running in a north-easterly direction approximately 200 metres to the west, with the buildings being set well back from these two roads (NG9 A fig 5). The site is located approximately 1.5 km to the north-west of the village of Tirley and nearly 2km to the east of the villages of Corse and Staunton. There are also 2 farm buildings and 3 dwellings in isolated positions within 400m of the site.
- 1.19. The site is located in the open countryside within the landscape character type 'unwooded vale' (CD51), but it is not covered by any defined landscape designation by the Tewkesbury Borough Local Plan to 2011 (adopted March 2006). It comprises an area of approximately 6.61 ha in parts of two arable fields, separated by a hedgerow and is open in its character. A public right of way runs along the eastern site boundary from north to south, and there is also a watercourse running along its northern boundary. A mature triangular shaped copse woodland abuts the appeal site to the north-east. Mature hedgerows run along the northern side of the B4213 and along the eastern side of the B4211, although there are various gaps which allow views towards the appeal site. The land generally falls gently towards a copse to the north-east and is relatively low lying at the site itself.
- 1.20. NG's existing AGI at Tirley is located approximately 200m to the west of the appeal site and is accessed off the B4211. The AGI was originally granted planning permission in 1969, although it was extended following planning permission in 2000. At this point two existing underground pipelines of 900mm and 600mm diameter, with a maximum operating pressure of 75 barg pressure, converge.
- 1.21. The site is visible from a number of properties, rights of way and roads in the area and the site visit itinerary (Doc 7) included the site and surroundings, the Tirley AGI, Site 3 (the extended Corse PRI appeal site) and Site 16 and its surroundings, including the A438 and Mitre Farm. The visit also included internal views from The Folly, 400 metres to the east of the site, and from the gardens of Tirley Court, New Pools Cottage, Glenyard and Knowle Farm. Most of the viewpoints in the photographs in NG9A, NG25 and T5(a) and T5(b) were visited, as well as those submitted by Mrs Mills (Doc 16).

- 1.22. The photographs, and in particular the photomontages and wire frames, give a good idea of the existing views into the site and those that could be expected in year 1 and year 10 following the completion of the PRI. During construction and in the early years of the completed site there would be views of the PRI above the bunding from the B4211 and B4213 roads, from the public footpath that borders the site and from several local residential receptors. But its low lying position means that it would generally be seen against the backdrop of the surrounding land and landscape features. In the longer term the photomontages indicate that the views would become progressively screened by the maturing vegetation from the landscaping scheme.

### **The Corse PRI Appeal**

- 1.23. The planning application and this appeal follow a previous application to the Forest of Dean District Council (FoDDC) in 2006. That proposal was for a similar installation on land adjoining the B4211 opposite the junction with the B4213 in Corse and closer to the Tirley AGI. The application was refused for similar reasons by the District Council and this led to an appeal in April 2007.
- 1.24. The joint appeal Inspectors issued a Report APP/P1615/A/06/2029294 (CD26) in August 2007 to the Secretary of State for Communities and Local Government and to the Secretary of State for Business, Enterprise and Regulatory Reform, now known as the Department for Energy and Climate Change (DECC), which recommended that the Appeal be dismissed. On 20 December 2007 the Secretaries of State agreed with the Inspectors' recommendation and dismissed the appeal (CD25).
- 1.25. The key conclusions reached by the Secretaries of State in the Corse Appeal are as follows:

#### *FoDDC Development Plan*

- 1.26. The Secretaries of State agreed with the Inspectors that the FoDDC Development Plan had no specific policies dealing with the location of infrastructure such as the PRI, but recognised that some developments require a countryside location and that the PRI was one such development. They also agreed with the Inspectors that the location of the proposed PRI within a built-up area would increase risks. However, they agreed the proposal would be in conflict with FoDDC Local Plan Policies (R) FNE .1 and (R) FNE .2 and Gloucestershire Structure Plan Policies NHE .1 and S.6 insofar as these relate to the protection of the open countryside from development which would adversely impact upon the visual appearance of the landscape. They also agreed that the landscaping design of the proposal, stemming at least in part from the limited size of the site, would be of poor quality in conflict with the aim of Structure Plan Policy S.7, which seeks high standards of design, and Local Plan policy (R) FBE.1 in that the design would fail to be compatible with the surrounding landscape or safeguard the amenities of the general location (DL17-19).

*Need*

- 1.27. The Secretaries of State agreed (DL 20) with the Inspectors that:
- There was an important national need, and urgency, to transport Liquefied Natural Gas (LNG) from the LNG terminals at Milford Haven to England. It was noted that the need was driven primarily by the Appellant's obligation to respond to supplier/shipper capacity requests;
  - the existing system was inadequate to transport the gas;
  - "do nothing" was not an option if the appellant was to meet its licence and contractual obligations;
  - the proposed scheme would provide the necessary capacity, and meet the Appellant's licence and contractual obligations; and
  - any alternative connection to the proposed scheme that could accommodate the contracted capacities must involve a PRI installation to a connection at the Tirley AGI, or to another existing node to the east of it.
- 1.28. In relation to the Wormington option (DL 21), the Secretaries of State agreed that this would remove the need for the Corse and Treaddow PRIs and provide a marginal gas transport capacity improvement above the contracted requirement, but that the two existing feeder pipes between Tirley and Wormington would be under utilised. They also agreed with the Inspectors that any Wormington option would involve significant additional costs when compared with the appeal proposal, with associated regulatory implications. For the reasons explained above, they agreed that, in technical and regulatory terms, there was a need to connect a PRI to the existing gas system node at the Tirley AGI.

*Technical Siting Constraints between a PRI and the Existing AGI*

- 1.29. The Secretaries of State agreed that (DL23-24) there would be some flexibility in the relative siting of the PRI to the existing Above Ground Installation (AGI), but that any site east of the existing AGI would incur additional pipeline installation and costs, and more discussions and consents for pipeline installations. Furthermore, whilst it would be possible to vary the relationship between Tirley AGI and the PRI by up to 5 km with a 900mm connecting pipe and up to 10 km with a 1200 mm connecting pipe, without significant detriment to the overall performance of the proposed installation, it would be best to locate the PRI and AGI sites as close together as possible in order to reduce the pressure-drop through the connecting pipe work.

*Landscape and Visual Impact*

- 1.30. The Secretaries of State agreed with the Inspectors that (DL 25-26) the proposals would result in views of the industrial scale and character of the development from very close proximity, especially by those on adjacent highways, and that the development would be particularly intrusive on the

site and damaging to the character and appearance of this rural area. The site was also of an inadequate size to permit effective landscape screening and, possibly as a consequence of this, the proposed landscaping would itself be harmful to the rural scene. They considered that the 2 alternative sites identified by the Inspectors would have a less intrusive impact.

#### *Alternative Sites*

- 1.31. The Secretaries of State agreed that (DL 27-28) there was a need, in that case, to examine alternative sites and that the context of any such examination must take account of the constraints that would exist. They considered that, whilst consultation had not been carried out, the two possible alternative sites discussed at that Appeal, which included the current Appeal site at Flat Farm and a larger plot of land at the Corse Appeal site, would have been likely to have less environmental impact than the appeal proposal.
- 1.32. The Secretaries of State also agreed that there was clear evidence that 99% of the potential area of search had not been examined for the application, although for the appeal, five landscape areas were considered by the Appellant within a 5 km radius. These factors persuaded them to agree that little weight could be placed on the appellant's argument that there was no better site than the one that was the subject of the Appeal. However, they considered that siting the proposed facility on either of the two alternative sites, combined with appropriate landscaping measures, could affect the weight accorded to the case for "need" identified above.

#### *Safety*

- 1.33. The Secretaries of State agreed (DL29) with the Inspectors that the appellant had undertaken the required statutory actions to allow it to design, install and operate the proposed installation in line with the Pipeline Safety Regulations. They also noted that the risk assessments to determine the risk on the site itself, and where on-site incidents could affect persons living in the locality, concluded that the risk of fatality to persons living in the immediate vicinity of the site would be about 10 - 15 times less than the 'tolerable' level of risk imposed on a population for the 'wider interests of society' based on the HSE guidance.

#### *Security*

- 1.34. The Secretaries of State agreed (DL30) with the Inspectors that, whilst terrorist attack would comprise an additional risk, it was a risk that could not be quantified. For these reasons they agreed that provided the appellant undertook and implemented security advice from the relevant agencies, security concerns should not be allowed to prevent the development of the proposed PRI.

#### *Corse PRI Appeal Conclusions*

- 1.35. The Secretaries of State therefore concluded (DL35-37) that the proposal was contrary to the Development Plan. In making this decision, they were mindful that there was an important and urgent national need for the

proposal. However, they considered that the appeal proposal would be an alien, intrusive and harmful industrial feature in the rural landscape, and that the details of the proposal, in particular the quality of landscaping, would fall far short of what should be expected from this statutory undertaker for this PRI development in a sensitive rural landscape.

- 1.36. The Secretaries of State considered that, had the Appellant demonstrated that the only possible PRI location was within the confines of the appeal site, it would almost certainly have been a conclusive argument in favour of the proposal despite its adverse environmental impact. However, they agreed with the Inspectors' conclusion that there were two possible alternative sites, each of which would be likely to have less harmful environmental impact than the appeal proposal. Whilst, it was acknowledged that it would be best to locate the PRI and AGI as close together as possible, it was felt that some 99% of the potential area of search had not been examined in any detail which did not strengthen the 'need' argument because the PRI need is not one that is site-specific. The Secretaries of State afforded little weight to the Appellant's argument that there was no better site than the appeal site. In their opinion, a proposal to site the facility on an alternative site could affect the weight to be given to the case of need.

### **The Development Plan**

- 1.37. The "Development Plan" for the purpose of this Inquiry and Section 38 of the Planning and Compulsory Purchase Act 2004 includes the Gloucestershire Structure Plan (Second Review) (adopted November 1999) (GSP) and the Tewkesbury Borough Local Plan to 2011 (adopted March 2006) (TBLP). The Council's reason for refusal cites only Policy NHE.1 of the Structure Plan and Policy LND 4 of the Local Plan. Whilst there are no specific policies relating to the location of statutory undertakers' infrastructure in the Development Plan, the following Development Plan policies and references are material to this appeal.

#### *Gloucestershire Structure Plan (Second Review) (GSP)*

- 1.38. The GSP was adopted on 17th November 1999 and sets the strategic planning policy context for the area. It was to be superseded by the Regional Spatial Strategy but, in the meantime, the Secretary of State issued a direction in September 2007 'saving' the policies from the Structure Plan Second Review.
- 1.39. The GSP places sustainability at the heart of its guiding principles and sets a series of key objectives which, as can be seen at paragraph 4.1.7, include amongst others: to promote a level of growth which can be sustained within the constraints of the County's natural resources, the quality of the environment, and the provision of infrastructure; to minimise adverse impacts on the environment, and to stimulate economic activity and employment in the County.
- 1.40. GSP Strategic Policy S.3 seeks to prioritise development within existing built up areas that will be accessible by public transport and to jobs,



schools, shopping, leisure and other services. Policy S.4 of the Plan states that "development within the open countryside will be strictly controlled". The supporting text to the policy does, however, recognise that the protection of the countryside for its own sake is a fundamental aim of Government advice and it is necessary to limit development to that which is both appropriate in type and form and sensitive to its location (paragraph 5.6.24 refers). Paragraph 5.6.25 states that outside existing settlements "...there remains the need to avoid sporadic, isolated and visually intrusive development..." . Paragraph 5.6.26 further states that "any proposal will be determined on its merits" by the District Councils. The Inspectors and the Secretary of State in the Corse appeal concluded that the proposed PRI was a form of development that required a countryside location.

- 1.41. Policy S.6 aims to safeguard and, wherever possible, enhance: the quality of the landscape; the setting of the settlements and buildings within the landscape; the quality of the built and historic environment; the sites and landscapes of archaeological and historical value; the distinctive wildlife and habitats, and the special qualities of rivers, canals and other watercourses and features. Only the first of these bullet points is material to the Council's reason for refusal.
- 1.42. Policy S.7 of the Plan states that development proposals should maintain and enhance the quality of the County's environment by, amongst other things, high standards of design and traffic management.
- 1.43. Policy NHE.1 of the GSP, amongst other things, aims to protect the character and appearance of the countryside and states "the countryside's character, appearance and non renewable and natural resources will be protected from harmful development unless the social and economic needs of the area or wider environment objectives outweigh such harm". The Council asserts that there is conflict with Policy NHE.1 by virtue of the scale, height and appearance of the appeal proposals.
- 1.44. Policy NHE.2 of the Plan seeks to protect and, where possible, enhance the bio-diversity, including wildlife and habitats, of the County.
- 1.45. The Plan also contains a series of detailed development control policies which seek to ensure that new development will not lead to an unacceptable reduction in the quality of surface and groundwater (Policy W.1), development will not be permitted where it will be at direct risk from flooding (Policy F.1), and to ensure that development does not have an unacceptable impact on the environment and local community in terms of air, noise or light pollution or contamination of the land.

*Tewkesbury Borough Local Plan (TBLP)*

- 1.46. On 31st March 2006 Tewkesbury Borough Council adopted the TBLP to guide development within the Borough during the period to 2011. The Secretary of State issued a Direction on 25th March 2009 to 'save' policies of the Local Plan to 2011 pursuant to the Planning and Compensation Act 2004.

- 1.47. The Plan's overall vision for the Borough is to ensure that development within the area contributes positively to creating sustainable communities. Its key objectives, which underlie the policies of the Local Plan as a whole and upon which the locational policies are based, are: to promote sustainable development; to conserve and enhance the built and natural heritage of the Borough; to stimulate an approach to new development which respects local environmental conditions in the detailed siting and design, amongst other things; to stimulate a healthy local economic base, and to meet the needs of residents whilst enhancing their quality of life.
- 1.48. Policy EVT2 explains that the Borough Council will seek to "minimise light pollution resulting from new development proposals." Details of the external lighting were submitted with the planning application and these have subsequently been amended to reduce the number and height of operational lighting units (see 1.4 above). Policy EVT3 states that "planning permission will not be granted for development where noise would cause harm and it cannot be ameliorated."
- 1.49. Policy EVT5 advises that proposals for development must be accompanied by a Flood Risk Assessment (FRA) in accordance with PPS25. Development will be permitted provided that it has been demonstrated that the specified criteria are met in respect of flood protection. The planning application was accompanied by a FRA. Policy EVT9 relates to Sustainable Urban Drainage Systems (SUDS). A SUDS has been included in the Scheme. There is no objection to the proposal from the Environment Agency.
- 1.50. Policy LND4 requires that, when considering proposals for development in rural areas other than the Area of Outstanding Natural Beauty, Special Landscape Area and Landscape Protection Zone, regard will be given to the need to protect the character and appearance of the rural landscape. The LPA asserts that there is conflict with this policy by virtue of the scale, height and appearance of the appeal proposals.
- 1.51. Policy LND7 requires the provision of a high quality landscaping scheme which will form an integral part of the overall development. Proposals may also require a landscape appraisal indicating existing landscape features and these should be integrated where appropriate into the landscaping scheme." A landscaping scheme and landscape management plan for this proposal are secured by a Section 106 Obligation (NG35). Policy NCN5 aims to protect and enhance biodiversity when considering development proposals.

## **Other Planning Policy Considerations**

### *Draft National Policy Statements*

- 1.52. Since the Corse appeal decision the Department of Communities and Local Government has issued a number of draft National Policy Statements (NPSs) in accordance with the provisions of the Planning Act 2008. These Statements are intended to operate as the primary policy documents for the Infrastructure Planning Commission (IPC) (now to be replaced by a Major Infrastructure Planning Unit within the Planning Inspectorate) to use

to determine applications for nationally significant infrastructure projects. This proposal for the PRI does not fall within the IPC threshold and must therefore be determined under the normal planning process. However, the advice makes it clear that these National Policy Statements should be taken into consideration by Local Planning Authorities when determining planning applications for new infrastructure under the normal planning process. These NPSs are currently in draft form, but constitute material planning considerations in the determination of this appeal.

- 1.53. Paras 10 and 27 – 30 of the 'Draft NPS EN-1 (CD23), the Overarching NPS for Energy, say that the UK should improve its capacity both to import and to store gas by enabling new infrastructure to come forward. The Gas Market participants may aim to have some redundancy in their supply arrangements above the minimum amount to meet peaks in order to manage the risk that other capacity may not be available, and there must be sufficient supply capacity to provide access to the most competitive gas supplies, implying some further redundancy in gas supply infrastructure. There is also a need to manage the risks associated with the evolution of the demand for gas. [3.22-3.23].
- 1.54. Draft National Policy Statement EN-4 relates specifically to gas supply infrastructure and gas and oil pipelines. This NPS sets out the principles of good design that should be applied to all energy infrastructures. Decision-makers should be satisfied that, having regard to regulatory and other constraints, gas supply facilities are as attractive, durable and adaptable as they can be. Furthermore, gas reception facilities should, where possible, be sited as to avoid any long-term impact on nationally designated landscapes such as AONBs. Only in exceptional circumstances should this type of development take place within AONBs, where it is in the public interest. In non-designated areas, the character of the landscape should be taken into account and given due weight. The decision maker must be satisfied that long term harm to the landscape is minimised, including by reasonable mitigation measures to restore the landscape.

#### *Other Government Statements on Gas Supply*

- 1.55. Government's policy position statements on gas supply infrastructure referred to at the Corse PRI Inquiry included the 'Statement of Need' for additional gas supply infrastructure on 16 May 2006 (CD27) from SoS for the DTI, and the Energy White Paper in 2007 (CD30). These papers emphasise the declining supplies of gas from the United Kingdom Continental Shelf (UKCS) resulting in the UK becoming a net importer of gas in 2004 and the need for new gas supply infrastructure to increase the capacity to import, store and transport gas efficiently.
- 1.56. Gas Security of Supply – A policy Statement from DECC – April 2010 (NG16/C12), the most recent statement, emphasises that gas provides 50% of our primary energy and that the UK is committed to a 34% reduction in greenhouse gas emissions from 1990 levels by 2020. As a result, the demand for gas is expected to fall. The document sets out the Government's assessment of the security of UK gas supply to 2020 and beyond. In 2009, two-thirds of the UK's net annual gas demand was met

from gas produced domestically (C12.E5), but 25% of our imported gas was LNG.

- 1.57. The UK is likely to become increasingly reliant on gas imports because of dwindling UKCS supplies. Nevertheless, the Government's latest risk assessment on the resilience of the system concluded that the UK gas system is highly resilient. However, vigilance is required in order to sustain energy security and this means maintaining a diversity of gas supply combined with a resilient domestic energy system based on the appropriate balance of regulation and market incentives (C12.E7). The Government has identified a number of potential further measures to further strengthen the security of gas supply (C12.6.4).

*Regional Policy Guidance for the South West (RPG10)*

- 1.58. Regional Planning Guidance for the South West (RPG 10) was published in September 2001 and constitutes regional guidance for the South West to 2016. However, it is now revoked following the Government's announcement on 07/07/10 abolishing Regional Spatial Strategies (RSS), the successor regional policy guidance documents. Publication of the RSS for the South-West had been delayed by High Court Judgement and so this document had not superseded RPG10. In any event no policies within RPG10 have been used by the parties in this appeal in support of their case and no weight can be attached to it.

*Gloucestershire Structure Plan (Third Alteration)*

- 1.59. Following the adoption of the GSP, Gloucestershire County Council commenced work on the Structure Plan Third Alteration. Whilst the Plan was progressed through an examination in public in 2003 with modifications published in 2004 and 2005, it was not formally adopted as the Secretary of State issued a direction against several of its policies (Policies SC.2, SC.3, and SD.9). Although the Plan is not adopted, however, it does represent a material consideration of very limited weight.
- 1.60. Policy SD.7 seeks to strictly control development in the open countryside. Policy MR4 seeks to protect the countryside's character, appearance and renewable and natural resources requiring development to maintain and wherever possible enhance the character of its location. Policy MR10 indicates that development that results in unacceptable air, noise, water or light pollution or land contamination will not be permitted.

*Tewkesbury Borough Local Development Framework*

- 1.61. The Tewkesbury LDF will eventually replace the TBLP as the main development plan policy document for the Borough. However, it is at an early stage and the preparation of Development Control Policies, which will form part of the Development Plan Documents, is not currently programmed. There are, therefore, no emerging Local Development Plan Documents that are likely to become a material consideration in the determination of this appeal.

## Other Agreed Facts

### *Residential Amenity*

- 1.62. The submitted ES (CD53) includes sections on both noise and local air quality. The ES confirms, and the parties agree, that the nearest residential properties to the proposed working areas are Flat Farm Cottage (210 metres south-west of the site), Cider Barn (260 metres to the south-west of the site) and The Folly (some 400 metres east of the site).
- 1.63. The submitted Noise Assessment explains that extensive noise monitoring has taken place around the site to predict the likely impact on nearby residential properties. The monitoring work was undertaken during the night-time hours of 10pm and 6am, which is considered to be the quietest part of the 24 hour period. The Borough Environmental Health Officer has assessed the submitted information and does not object to the proposed development. He is satisfied that the assessment indicated that noise levels will be below acceptable background levels. Whilst there will be some noise implications during the construction period of the development, he is also satisfied that a limited working hours condition and other sensible mitigation measures can be secured by planning conditions to reduce the noise and disturbance during this period. Venting of gas would also occasionally take place and a scheme to notify nearby residents of venting arrangements when the site becomes operational would also need to be approved by the Council.
- 1.64. The submitted Local Air Quality Impact Assessment indicates that an extensive air quality investigation has been carried out, including modelling work which uses data collected by Tewkesbury Borough Council on nitrous oxide and nitrogen dioxide emissions, which can be damaging to human health. However, it is agreed that the assessment concludes that emissions will be limited from the plant and will not affect the health of residents.
- 1.65. The Borough Environmental Health Officer is also aware that concerns have been raised by local residents in relation to carbon dioxide emissions, however, such emissions do not present a direct health risk to residents. It is also agreed that planning conditions are capable of mitigating dust emissions during the construction phase. As such, the Borough Environmental Health Officer is satisfied that there will not be an undue impact on the residential amenity of local residents in terms of noise and air quality.
- 1.66. It is clear that operational and security lighting will be required in order for the PRI to function. The submitted Lighting Assessment confirms that, as the site will be predominately unmanned, it will not be routinely lit. However, the lighting will be designed so that, on the infrequent occasions that maintenance or security lighting is required, the lighting will be restricted to the appropriate part of the site. This will be achieved by segregating the lighting on individual circuits such that only the lighting required for specific activities and locations can be switched on while other areas within the PRI will remain unlit. The revised operational lighting

scheme significantly reduces the height and number of operational site lighting columns thereby reducing the visual impact of the proposed development

### *Archaeology*

- 1.67. The submitted ES confirms that a desk based archaeological and geophysical survey has taken place and concludes that the archaeological potential for the site is low. The geophysical survey does, however, indicate the presence of a number of pit-like anomalies of probable archaeological origin scattered within the appeal site and with a notable cluster in the north-western sector of the proposed development area. But, on the basis of further information supplied, the County Archaeologist accepts that further field evaluation and mitigation can be secured by means of an appropriately worded planning condition.

### *Ecology*

- 1.68. The County Ecologist initially raised concerns on the lack of analysis in relation to the impact on the "Avenue Meadow" SSSI (which is located approximately 1km from the appeal site); possible impact on the nearby badger sett from constructing the new bunding, and the impact on nesting bird and roosting bats. The submission of further information within the ESA (CD51) resulted in the County Ecologist confirming that these outstanding ecological issues have been resolved, subject to a planning condition requiring the submission and implementation of an Ecological Method Statement that must be first agreed by the Council.

### *Flood Risk and Pollution Prevention*

- 1.69. The submitted FRA confirms that the site is located within Flood Zone 1 (low risk) according to the Environment Agency's most recent data, which means that the site has less than a 1 in 1000 annual chance of flooding (0.1% possibility of flooding).
- 1.70. The Environment Agency has assessed the proposal and has raised no significant queries in relation to the FRA methodology and the hydraulic modelling carried out. However, it has noted that a small part of the original proposed landscape bunding would have encroached into the floodplain of the brook, thus potentially harming bank flood flows and flood storage volumes. As a result of this National Grid responded within the ESA by removing this part of the bunding from the floodplain. As such, the Environment Agency is satisfied that this amendment has satisfactorily addressed this issue subject to a number of planning conditions to further limit any risk of flooding, including requirements for a Sustainable Urban Drainage Scheme (SUDS) and to protect water quality.

### *Highway Safety*

- 1.71. The proposed access to the site would be provided off the B4213, with a standard T-junction providing sight lines based on a setback of 4.5 metres located in the position of an existing substandard field gate. The ES (CD53) states that these visibility lines would allow a clear view along the

road at a distance of 215 metres, although it is noted that 200 metres of the existing hedge along the B4213 would need to be translocated to achieve this, and there would be a loss of 20 metres of existing hedgerow along the northern margin of the B4213. The 4m wide access track would run along the west of the existing eastern field boundary hedge in order to maintain the alignment of the existing public footpath running adjacent to the hedge.

- 1.72. The County Highways Authority is of the view that the proposed PRI and associated works would be unlikely to have a significant impact upon highway safety, subject to a number of planning conditions. Due to the nature of the development and the fact that it is proposed to be a predominately unmanned site, sustainable transport and accessibility is not considered to be an issue.

#### *Site Selection Study*

- 1.73. Following the Secretaries of States' decision in respect of the previous appeal proposal a thorough site options evaluation exercise has been undertaken (CD52). The identification of the proposed site for the PRI involved a detailed site selection process within a study area centred on the existing Tirley AGI and extending to potential sites within 10 km of it. The methodology for the Site Selection Study was agreed in advance by the relevant parties and was based on the adoption of a three stage process. National Grid hosted a number of update meetings throughout 2008 in order to inform all the key relevant local planning authorities (including Tewkesbury Borough, Forest of Dean District, Malvern Hills District and Herefordshire Councils) and CAPRI of the progress of the study.
- 1.74. Stage 1 of the site selection process involved elimination of areas of primary constraint where it would be inappropriate to build a PRI based on safety, national and internal environmental criteria, as well as planning constraints.
- 1.75. Stage 2 involved the identification and plotting of "Environmental Areas" comprising areas of discernibly high environmental quality which, although not excluded by virtue of their primary value, were demonstrably of relatively high environmental quality in the context of the study area.
- 1.76. Stage 3 involved the evaluation of areas nominated as "Candidate Areas" in the form of plots within the site selection study area which had not been excluded during the first two stages. A total of 23 Candidate Areas were identified, with representative locations for a potential PRI identified to facilitate a comparison on the relative merits of each of the Candidate Areas, taking into account the environmental and engineering/operational/cost implications of locating a PRI in each location.
- 1.77. This resulted in the identification of 8 Candidate sites which were then subject to further detailed evaluation against these criteria. Two potential Candidate Areas were initially identified by National Grid. Indicative designs were prepared and taken to public consultation for the

Representative Locations within the two Candidate Areas and comment was sought relative to the merits of the two areas and also the merits of other areas within the study area which consultees considered should be given further consideration. This resulted in a further six of the Candidate Areas identified by the study being added to the two areas identified by National Grid during the final evaluation of Candidate Areas. Having assessed the 8 Candidate Areas in more detail, the Site Selection Report (SSR) then set out National Grid's preferred location for the PRI at the Flat Farm, Tirley site.

- 1.78. It has been suggested by the Council and third parties that land at Downend Farm in the Parish of Eldersfield in Malvern Hills District (Site 16) would be a more suitable site for the PRI. Locating the PRI at Site 16 would necessitate an extension to the existing Tirley AGI, and the excavation of a double pipeline corridor spread between Tirley and Site 16 (covering an approximate distance of 6 km), all of which the Appellant contends would have significant additional environmental impacts, both temporary and permanent. Locating the appeal proposal at Flat Farm allows for the removal in its entirety of the existing Tirley AGI and, given its close proximity to the existing pipeline, would not result in a need for a significant length of new pipeline, and there would be significantly less costs.

### **Security**

- 1.79. The PRI would be surrounded by a 2.4 metre high palisade security fence, with an internal electric fence of 4 metres in height. The site would also be equipped with CCTV cameras and security lighting, although it would be unmanned for the majority of the time. In the event of any unauthorised access attempt, the 4 metre high electronic wired detection fencing and security lighting would alert National Grid's Control Centre. This would then alert Gloucestershire Police Constabulary's Emergency Response Team, who would then take the necessary action.
- 1.80. At the 2007 Corse Public Inquiry the Secretaries of State agreed with the Inspectors that the risk from terrorism could not be quantified and that, provided the appellant undertook and implemented security advice from the relevant agencies, security concerns should not be allowed to prevent the development of the proposed PRI. (DL30)
- 1.81. The Gloucestershire Police Constabulary Terrorism Security Advisor notes (CD 49) that the level of the security proposed is comparable to that being installed at other sites of a similar profile. The proposed security arrangements are suitable for this development. If the development is approved, the Police, in line with the work undertaken on other such sites, would work closely with the site management to ensure that the appropriate emergency response is in place. There are no reasons associated with the security of the appeal proposals that suggest that subject to the imposition of appropriate planning conditions planning permission should be refused on security grounds.



## **Safety**

- 1.82. The construction and operation of high pressure gas transmission pipelines and their associated installations in the UK are heavily regulated to ensure the highest safety standards possible. PRIs, such as that proposed, are deemed to be part of the main pipeline by the Pipeline Safety Regulations 1996 and must, therefore, be designed and constructed in strict compliance with these Regulations. The Regulations are complied with by design and operating installations in accordance with the Institution of Gas Engineers and Managers technical document IGE/TD/13 (CD 41). The Pipeline Safety Regulations are concerned with the engineering design of pipelines and their associated installations to ensure that they are designed and constructed of appropriate materials that can withstand the range of operating conditions to which they might be subjected.
- 1.83. The issue of safety was addressed by the joint Planning Inspectors' Report into the Corse appeal in 2007 (IR8.74 – 8.94). The Secretaries of State agreed that the Appellant had undertaken the required statutory actions to allow it to design, install and operate the proposed installation in line with the Pipeline Safety Regulations.
- 1.84. Under the terms of the Pipeline Safety Regulations 1996 (CD 40) National Grid must notify the Health & Safety Executive (HSE) in advance of any new cross-country pipeline which is to be constructed as part of the National Transmission System. This consultation was carried out as part of the proposed Felindre to Tirley pipeline, which was granted consent by the Secretary of State for Energy and Climate Change in 2006 and is now complete except for this PRI. The HSE was satisfied that the 94 barg pipeline was constructed in accordance with the relevant safety guidance. The HSE raises no objection to the proposed PRI at Tirley (Doc 8).

## **2. THE CASE FOR TEWKESBURY BOROUGH COUNCIL**

**The material points are:**

### **The Proposal and the Appeal Site**

- 2.1. The appeal proposal is for the construction of a national gas pressure reduction installation on land to the east of Flat Farm, Tirley. This is agreed to be industrial development (2: 160.4) including buildings up to four metres tall: an instrument building, two boiler house buildings with twelve 8.5m high flue stacks, a generator building, a landscaping scheme including bunding of up to five metres in height, and a lighting scheme. This is proposed to be inserted in what is agreed to be unspoilt countryside (2: 151) within the landscape character type "unwooded vale". This landscape type is "an open landscape" with "generally few areas of woodland" (CD51 non tech pg 6).

- 2.2. The proposal “will involve the introduction of a form and scale of industrial development not currently associated with the local landscape” (CD51 non tech pg 7), according to the ESA. NG (Mr Reid) has acknowledged that there is nothing of a similar character currently in the landscape (2:160.13).
- 2.3. The reason for refusal on the part of the Council (T8) was based on the adverse impact of the appeal proposal on the character and appearance of the countryside, contrary to policies within the development plan. The Council's case is that although there is a need for a PRI, such need cannot outweigh the planning harm at the appeal site, as there is a less harmful site in planning terms, namely Site 16.
- 2.4. It is submitted that the appeal site is discernibly flat in its topography. The name 'Flat Farm', it is submitted, is apt. NG (Mr Reid) asserted that it is “far from flat” (2:152). The Inspector is asked to form his own view as to the nature of the proposed host site for the installation and the likely impact on the landscape at both potential locations.
- 2.5. Mr Reid did accept that the appeal site is in a currently unlit area (2:160.21), and that when the lighting at the PRI is on it would “certainly be perceptible” (2:160.24). The Non-technical summary to the ESA says that the lighting would potentially result in visual impacts on local receptors (CD51 pg7). Mr Reid initially disagreed with this (2:161), but then accepted such potential (2:162).
- 2.6. It is submitted that the plumes of water vapour would also be a feature that visually draws attention to the proposed development. Mr Reid accepted that there would be occasions when one would see water vapour (2:163.3). Mr Radmall's evidence was that at temperatures of below 5 degrees C there would be a potential for such plumes. Mr Stonehewer's evidence was that even at 23 degrees C in June there would be a “slight haze” (NG3, AKS15 photos), derived from 36 boilers, each larger than a domestic boiler (2:163.15).
- 2.7. The overall conclusion of Mr Reid is that the impact of the appeal proposal on landscape character would be “slight adverse” (NG8.5.4.10). He accepted that “slight adverse impact” was one way of saying “slight harm” (2:198.5), and accepted that at certain points in time there would be degrees of harm (2:199), but still maintained “I don't think it will actually harm the appearance” (2:198.7). Mr Smith and Mr Radmall disagree with Mr Reid.
- 2.8. It should be noted that the “slight adverse” categorisation relies on the proposed mitigation measures taking effect over time. The results of the Appellant's landscape and visual impact assessment show that of the twelve potential residential receptors, two would suffer “large adverse” impacts at the construction stage, and ten in total would suffer adverse impacts of some degree at this stage (NG8 pg 52 table 10.1). One footpath out of six would suffer “large adverse impact” at construction and in the winter at the year of opening.

- 2.9. The term "Large adverse impact" is defined by NG (NG9 Appendix B, pg7). That definition includes the words "very damaging to the landscape", "visually intrusive and would disrupt fine and valued views of the area", "likely to degrade, diminish or even destroy the integrity of a range of characteristic features and elements of their setting", and "cannot be adequately mitigated for". This should be borne in mind when assessing compliance with the development plan.
- 2.10. Mr Radmall, whose evidence supported Forest of Dean District Council's successful resistance of the Corse appeal proposal, gave landscape evidence on behalf of the Council (T4). He told the Inquiry that the local landscape consists of unspoilt countryside and that the proposed development is an industrial installation exceeding the scale of all existing development in the area. Further, the bunding proposed in mitigation does not resemble any natural form currently at the site and would itself appear incongruous until softened by vegetation. Finally there is a risk that the proposed planting scheme on which the site is reliant would not achieve the degree of screening suggested by the Appellant.
- 2.11. He adduced wireframe images of the appeal proposal from a number of viewpoints. These are contained at his T5 (a) document, and demonstrate that the flues are likely to be the most visible element of the development, with the bunding and other structures visible in some views. The Appellant's montages show the PRI in a summer landscape, and it should be borne in mind that in autumn and winter vegetation wouldn't be as covered and foliage would not be as thick. Mrs Mills' photograph (Doc16) taken in winter demonstrates the extent to which hedgerows can become much more sparse in winter, and this affects their capacity to screen. Further, the green colour of the flues would not blend into a winter landscape but would rather stand out against trees and hedgerows which at that time of year are no longer green.
- 2.12. Mr Radmall noted that the Zone of Visual Influence ("ZVI") defined by the Appellant under-estimates the potential extent of the area over which the PRI may be visible. An example of this is his viewpoint 3 at T5 (a), a point 2.25km from the appeal site. Mr Reid accepted that in the direction towards that viewpoint 3, his ZVI (NG9A, Figure 19) only extends some 400m (2:183).
- 2.13. The ZVI should therefore have included a point some 5.5 times further away, and were this degree of error replicated throughout the ZVI, then the Appellants' ZVI would be around thirty times too small (5.5x5.5). Whilst such an enormous ZVI is not contended for, there can be no confidence that the ZVI as currently shown is at all exhaustive. Mr Reid contended that "ZVIs will not tell you everywhere that you might potentially see it from" (2:179). But this is exactly what a ZVI is supposed to tell you, under the definition provided in NG9B pg8.
- 2.14. Taking into account the local receptors, the open character and the extent to which mitigation is possible, Mr Radmall concluded that the area is of moderate to high visual sensitivity.

- 2.15. He concluded that the scale and character of the proposed development is fundamentally inconsistent with the aim of protecting the character of the countryside for its own sake, and that the previous Inspectors' assessment that the PRI would be "an alien, intrusive and harmful industrial feature in the rural landscape" (IR8.111) remains applicable to the current proposal. How is such a feature to satisfy the development plan?

### **The Proper Planning Approach**

- 2.16. It is uncontroversial and agreed that the starting point is s. 38(6) Planning and Compulsory Purchase Act 2004, which requires that the appeal be determined in accordance with the development plan unless material considerations indicate otherwise (3:150).
- 2.17. It is accepted by Mr Powell on behalf of NG, as it was at Corse, that there is no development plan policy that deals specifically with a development of this type (3:152).
- 2.18. One key policy is policy NHE.1 of the GSP, which states as follows: "The countryside's character, appearance and non-renewable and natural resources will be protected from harmful development unless the social and economic needs of the area or wider environmental objectives outweigh such harm."
- 2.19. It is accepted by Mr Smith, giving planning evidence for the Council (T1), that the first question under this policy is whether the appeal proposal is "harmful development". If not, this policy will not prohibit the proposal. The Council is quite candid about that. However, if it is harmful development, one must go on to consider whether "such harm" is outweighed. It is submitted that to consider this development not to be harmful would be a bold conclusion, and an incorrect one.
- 2.20. Mr Powell himself accepts that "it is inevitable that some harm will be caused to the character of the countryside" (NG11.5.6 and 3:157). The Council contends that the causation of such harm by the development renders the appeal proposal "harmful development" under Policy NHE.1. Accordingly one then must go on to assess such harm against need under the second part of the policy. However, Mr Powell for NG does not accept that harmful just means harmful (3:168), but rather asserts that one does not conduct the balancing exercise in the second half of the policy unless there is sufficient harm to warrant a refusal. It is submitted that this difference in approach is the principal difference between the two planning witnesses.
- 2.21. The Council's response to this is that it puts the cart before the horse. The question of whether a refusal is warranted is the ultimate question that is taken once all material considerations have been considered. The policy does not describe "harmful development" in those terms, nor does it require "significant" harm or set any threshold in particular. The reference to "such harm" in the second half of the policy indicates that where there is harm, it must be considered in the balancing exercise. Here, there is harm. Mr Powell says that this is development that causes harm, but that it is not

- harmful development (3: 169). The Council disagrees that that is possible or correct.
- 2.22. Mr Powell accepts that if one gets as far as the balancing exercise in the second half of GSP policy NHE.1, one must assess need before one can strike the balance (3: 171). If the existence of alternative sites is capable of affecting the weight to be accorded to need at a particular site, plainly the merits of any identified alternative site must be considered before a conclusion can be reached on the acceptability of the appeal proposal under policy NHE.1.
- 2.23. If such an alternative site is less harmful in planning terms, then the case on local need cannot outweigh the harm at the appeal site, as there is simply no site-specific local need in this situation.
- 2.24. GSP policy S.6 states that: "In providing for development the following aspects of the environment which contribute to local character and distinctiveness should be safeguarded and wherever possible enhanced: a. the quality of the landscape."
- 2.25. In the Council's submission, it is not possible to say that this proposal causes some harm to the character and appearance of the countryside (NG11.3.17), but that it simultaneously safeguards or even enhances the quality of the landscape. It is the Council's submission that the proposal is in clear conflict with policy S.6.
- 2.26. GSP policy S.7 requires that: "the quality of the County's environment should be maintained and enhanced by the following: a. high standards of design."
- 2.27. The Council's position is that the environment is not maintained and enhanced by the design of the instant scheme. The designed bunding, whilst an improvement on the Corse scheme, is itself a source of impact, and for that reason this policy is contravened.
- 2.28. Policy LND4 of the TBLP states in relation to rural areas that "regard will be given to the need to protect the character and appearance of the rural landscape." Again, the causation of harm can plainly not be equated to protection. Mr Powell accepts (3: 78) that on the limited basis of considering policy LND4 in isolation, if there is some harm to the character of the countryside, the proposal does not protect that character.
- 2.29. The Council points to the Landscape Character Impact Criteria contained originally in the appendices to the ES Addendum. That material is contained in NG9 B pg6. "Slight adverse impact" is defined so as to include the bullet point: "Cannot be completely mitigated for because of the nature of the proposal itself or the character of the landscape in which the development would sit". This is the assessment NG arrived at in its Environmental Assessment of the appeal proposal, and it is submitted that it indicates that the proposal is not in accordance with a policy that requires protection of the rural landscape.

- 2.30. The Council therefore considers that the appeal proposal is contrary to policy, and is only to be allowed if the Appellant has made out its case on need at this site to such an extent that the contravention of protective policies is outweighed, either under NHE.1 in terms of local need, or in general with need as a material consideration i.e. national need. The Council asserts that the Appellant cannot make out its case on need given the existence of a better site. This was essentially the outcome of the Corse Inquiry.

### **The Corse PRI Decision**

- 2.31. This appeal is to be determined in the light of the decision to dismiss an appeal by NG against the refusal by the Forest of Dean District Council of permission for similar PRI development at Corse, less than half a kilometre from the current appeal site. The appeal proposal essentially provides the same installation as the dismissed proposal at Corse, save for the earth bunding and planting mitigation measures.
- 2.32. The Council accepts the Appellant's case that the proposed PRI is needed, and accepts the conclusion of the previous Inspectors that such a PRI must be located within the 10km radius of the current Tirley AGI. The PRI may be located anywhere in this area "without significant detriment to the overall performance of the proposed installation."(IR8.49)
- 2.33. Given the need for the PRI development, the Council accepts the force of the previous Inspectors' conclusion that if the Corse site had been the only possible site for the PRI, that site would almost certainly have been approved. (IR8.116) However, there is not merely one feasible site, and given that the need for the PRI is not site-specific (IR8.115), the mere need for a PRI is not capable of equating to a need for a PRI on the appeal site.
- 2.34. Need was considered to be an important material consideration at the Corse inquiry, and is acknowledged as being so in relation to the present appeal. However, as noted by Mr Powell for NG (NG11.5.73), both the Secretaries of State and the previous Inspectors indicated that the consideration of alternative sites was capable of affecting the weight to be given to the case on need. There is no reason why it should not be so in this appeal. It follows as a matter of logic that one must consider any evidence on alternative sites before one can determine the weight to be given to need. Accordingly any policy test that requires any assessment of need, including NHE.1 in this case, necessarily requires any evidence on alternative sites to have been considered.
- 2.35. The previous Inspectors identified two possible alternative sites which would each "be likely to have less harmful environmental impact than development as proposed at the appeal site." (IR8.115) The evidence on alternative sites in the context of this Inquiry is the evidence as to siting the PRI not at the appeal site but at Site 16.
- 2.36. In asking the Inspector to consider this evidence, the Council is merely asking that the Inspector do what the previous Inspectors did prior to

concluding that there were two sites which were likely to have less environmental impact than the then appeal proposal. In this case the Inspector is invited to come to the similar conclusion that there is one site at which a PRI is likely to have a lesser impact and therefore be more acceptable in planning terms. It is clear that this may be done despite not having a fully worked up application scheme in relation to the alternative site; indeed, there is a far greater level of detail on Site 16 at this Inquiry than there was on the two alternatives deemed to be preferable on the last occasion.

- 2.37. The same logic would follow that if the alternative site is preferable, the case on need in relation to the appeal proposal is undermined, and the appeal cannot succeed.

### **The Law on Considering Alternative Sites**

- 2.38. The previous Inspectors clearly saw it to be such an obvious part of their reasoning on alleged need to consider the merits of alternative sites that they did not engage in a detailed analysis of the legal basis for considering alternative sites in the context of that case. It may well be considered similarly obvious this time around given that (a) the Secretaries of State have asked specifically to hear about alternative sites, and (b) a detailed site selection process has been undertaken which encompassed many alternative sites.
- 2.39. It is submitted that the consideration of alternative sites for a PRI has an entirely robust legal foundation, if it is thought necessary to re-open this question. In any given case, alternative sites are either a material consideration or not. It is well-established that whether a consideration is a material planning consideration is a matter of law, whilst the weight to be given to any such consideration is not a matter of law but a matter for the decision-maker in his planning judgment (see *Tesco Stores Limited v Secretary of State for the Environment* [1995] 1 WLR 759 per Lord Hoffman). "The law has always made a clear distinction between the question of whether something is a material consideration and the weight which it should be given. The former is a question of law and the latter is a question of planning judgment, which is entirely a matter for the planning authority." Thus in any given case a decision-maker is either obliged to take into account alternatives, or obliged not to.
- 2.40. In *Greater London Council v Secretary of State for the Environment* [1986] JPL 193 (T10), one ground of challenge to a decision to grant planning permission was that the Secretary of State allegedly failed to take into account a material consideration by not examining other comparable sites. In the Court of Appeal, Oliver LJ held that there were some cases in which a comparable site had to be taken into account as a material consideration.
- 2.41. The learned Judge opined that comparability is appropriate generally to cases having the following characteristics:
- *First of all, the presence of a clear public convenience, or advantage, in the proposal under consideration;*

- *secondly, the existence of inevitable adverse effects or disadvantages to the public or to some section of the public in the proposal;*
  - *thirdly, the existence of an alternative site for the same project which would not have those effects, or would not have them to the same extent; and*
  - *fourthly, a situation in which there can only be one permission granted for such development, or at least only a very limited number of permissions.*
- 2.42. Addressing those four characteristics in turn, first the Council concedes that there is a clear public advantage in the appeal proposal, in the sense that it provides a PRI which is needed. Secondly, there are inevitable adverse effects. The Appellant concedes that there will be inevitable harm that will not be able to be entirely mitigated. The fourth characteristic is present, namely that there will only be one further permission granted for a PRI, and only one within the 10 km radius already established.
- 2.43. There plainly exists an alternative site for the same project. The only question that remains is whether that site, Site 16, does not have adverse effects to the same extent as the appeal site. The Council asserts that it does not have adverse effects to the same extent. If this is right, the guidelines in the GLC case are all present, and there is a robust legal case for refusing planning permission at the appeal site. Indeed, the Council's position is an archetypal example of meeting those guidelines.

#### **Site 16**

- 2.44. It is the comparison between the appeal site and Site 16 on which the Council relies to undermine the Appellant's need argument. The Council's case thus stands or falls on that comparison.
- 2.45. This is not the first occasion on which these two sites have been compared. One of the clear messages to emerge from the Corse decision was that a much more robust site selection process was required. The Appellant's SSR (CD 52) resulted, and is accepted by the Council as having followed an appropriate methodology. Obviously the Council disagrees as to the final weighing of factors and ultimate conclusion drawn. However, several of the conclusions given are important and telling, particularly in relation to Site 16.
- 2.46. Site 16 was one of the sites that made it through to the third stage of the process. It is dealt with in the SSR (CD52) from page 27, and the following conclusions are drawn in relation to it at the end of 2.8.1:
- *"the combination of landform and planting offer opportunities for integration such that implications associated with the presence of a PRI could be localised and effectively mitigated."*
  - *"It is located within a marked fold in the landform which would serve to screen much of any facility. Combined with planting on the fringing high ground there would be an effective screen from potential viewpoints from distant property to the east and south east of Mitre Farm and Dunshill."*



- *"Downend Coppice closes views of the field from A438 and the only property in relatively close proximity to the Candidate Site, Downend Farm."*
- 2.47. Then at 2.8.3 under Environmental Implications, it is concluded that:
- *"there would be a high degree of enclosure" and "impacts on landscape character and local visual context would not be significant": and*
  - *"there would be no potentially significant views of a PRI located on this Candidate Site from farmsteads, houses or local roads. With appropriate landscaping, incorporating bunding and planting, potential impacts related to potential distant views from high ground to the east and south east could be effectively mitigated."*
- 2.48. At 2.9.1 (pg31) under Environmental considerations it is stated that:
- *"The nearest property to Site 16 is located some 500m to the north and separated from the site by a substantial block of woodland"; and*
  - *"There are no views of the site from local roads".*
- 2.49. The Council entirely adopts these findings of the Appellant's own studies, and notes that Mr Reid stated in cross examination in relation to the Site Selection Report that "I stick with the findings"(2:214). Although Mr Reid appears to be striking a slightly different balance now from that in the Site Selection Report, it is submitted that no proper basis has been advanced for altering those conclusions, which derive from a process that the Appellant is at pains to describe as "robust".
- 2.50. Mr Radmall has produced wireframe images of a potential PRI at Site 16 from five viewpoints. These are contained in his T5 (b) document. It is submitted that these show the inherent strengths of Site 16 as a site, in particular its capacity for natural screening. It is concluded that the topography of Site 16 provides markedly better screening potential than that at the appeal site, and also that the existing blocks of woodland, of which there are more than in the vicinity of the appeal site, further contribute to this natural screening effect. Consequently there is less need to rely on artificial bunding or new planting to provide screening. Mr Radmall further comments on the lack of residential receptors near Site 16. Whilst there are some footpaths in the vicinity, the wireframes indicate that impact on these will be negligible.
- 2.51. The most recent indicative layout of a potential PRI at Site 16 (AKS13) indicates extensive planting to the west of the site to screen views from the A438. Mr Reid was asked about the SSR finding that there were no significant views from local roads and he conceded that not all of the western planting shown would in fact be necessary(2:217).
- 2.52. Mr Reid accepted in cross examination that:
- Site 16 is "markedly more undulating." (2:203)

- The Site 16 PRI is hidden from the footpath in Mr Radmall's T5(b) view 1 (2:206), and in view 5 is screened from that footpath by the landscape (2:207); and
  - there are far fewer properties that might be affected in the vicinity of Site 16 than the appeal site (2:209.2). There are seven properties within 500m of the appeal site, but only one within the same distance of Site 16 (2:209.7).
- 2.53. There is no mention in the SSR of any concern over impacts to users of footpaths in the vicinity, and it is submitted that this is consistent with Mr Radmall's wireframe images.
- 2.54. The conclusion of the SSR based on a comparison only of the site specific impacts was that:
- *"the location of a PRI on Candidate Sites 6 and 16 would not be quite as prominent in the local landscape as Candidate Sites 2 [the appeal site] and 3. They would accordingly involve lesser impacts on local landscape character and the visual context of the areas local to those sites."*
- 2.55. The Council again endorses this finding that Site 16 would not be as prominent and would involve lesser impacts, and argues that this is the key finding that should determine the appeal in its favour. The only live issue then becomes whether the "other factors", that is, off-site impacts, are of sufficient magnitude to enable a conclusion to be reached that the appeal site is nonetheless the better site. The Council's evidence is that they are not.

### **The 'Other Factors'**

- 2.56. There are three principal factors to be addressed here:
- (i) the additional pipeline;
  - (ii) the additional costs of that pipeline; and
  - (iii) the extension of the Tirley AGI.

#### *The additional pipeline*

- 2.57. The Site 16 option would require some 12 km of extra pipeline be laid, but such a figure is misleading, as it is in effect two sets of pipe for a distance of half of that stated, i.e. around 6 km. Such distance is well within the 10 km radius within which the previous Inspectors found a PRI could be situated "without significant detriment to the overall performance of the proposed installation."(IR8.49)
- 2.58. The SSR noted that "Temporary impacts connected with pipeline connections required for candidate sites 2, 6 and 16 would not have a residual environmental effect"(CD52 pg32). Mr Radmall considers that the assimilation of such new pipeline routes would occur rapidly (NG2.9.34), and hence he does not find this to be an issue of significant importance.

*Additional costs of the pipeline*

- 2.59. NG have put forward figures indicating that the Site 16 Option would cost some £34.3m more than the appeal proposal on a capitalised "Net Present Value" basis(NG2.9.34). Accordingly, this figure takes into account all future expenditure differences.
- 2.60. Despite the view initially being expressed by Ackner J in *J Murphy & Sons v Secretary of State for the Environment* [1973] 1 WLR 560 that the cost of developing a particular site was not a material consideration, the contrary view was taken in *Sovmots Investments Ltd v Secretary of State for the Environment* [1977] 1 QB 411 in which Forbes J held that a planning authority must be able to consider the likelihood of a proposed development being carried into effect.
- 2.61. The latter position has prevailed, and in *Sosmo Trust v Secretary of State for the Environment and Camden LBC* [1983] JPL 806 (T10) Woolf J reviewed the authorities before stressing that the true question was not whether a particular project was financially viable, but what would be the planning consequences if it were not viable.
- 2.62. Applying that principle to the instant case, the fact that £34.3m will be incurred by National Grid in extra costs is not in itself the planning consideration. But if this extra cost renders the Site 16 project unviable and as a result NG would not undertake such a scheme that would be capable of being a material consideration that may point heavily in favour of the scheme that is viable and would be undertaken, given the need for a PRI.
- 2.63. Mr Stonehewer accepted (1:136), as did the previous Inspectors (IR8.27), that to "do nothing" is not an option. Both main parties accept that a PRI is needed, and that one will therefore be built somewhere. He accepted that if Site 16 was the only available site, the construction of a PRI on that site would not be prevented by the extra costs (1:138). Thus it cannot be said that the consequence of the cost differential is that a PRI would not come forward.
- 2.64. It might be said that another consequence of the increased costs is that consumers will ultimately pay a higher price for their energy. This logic is accepted, but such logic applies in pretty well any case in which a commercial organisation is applying for permission in respect of a preferred site. Increased costs are passed on to customers.
- 2.65. If it is felt that the increased costs of the scheme are to be given serious consideration in the planning balance, the weight to be accorded to them must surely be negligible. Mr Stonehewer volunteered that there are around 20 million consumers capable of being affected (1:155.12). Given that the £34.3m is a one-off representation of the cost, this constitutes £1.70 per consumer spread over the entirety of the lifetime of this infrastructure. That is mere pennies per year. Mr Stonehewer accepted that such an amount is significantly less than price changes caused by fluctuations in exchange rates and inflation(1:155.22) and accordingly is

not worthy of any real weight.

- 2.66. This compares with the comparatively great price changes which can occur in the wholesale markets caused by any actual or perceived lack of energy security as evidenced by the Gas Balancing Alerts of January 2010 which caused prices to double to 60p per therm (NG2.7.12).
- 2.67. Another method for assessing the materiality of £34.3m is in the context of expenditure of over £1 billion thus far by NG alone in relation to the NTS infrastructure project (NG2.6.15).
- 2.68. Whereas one reason for the rejection of the Wormington option was cost, this was plainly not the only issue, and the cost differential was substantially larger in any event.

#### *Extension of the Tirley AGI*

- 2.69. It was accepted by Mr Reid that the AGI structures are “not large scale features” (2:155) and that “you wouldn't describe it as a prominent local feature” (2:156). Indeed, the previous Inspectors' considered that it had “limited landscaping but it is not a prominent local feature” (IR1.11). The Council does not accept that the increase of the area of the AGI by some 50% would have any significant landscape impact.
- 2.70. Mr Radmall considers that there is “no comparison” (5.39) between the scale of the AGI and PRI and considers that one can drive past the AGI without noticing it (5.38). It is submitted that Mr Reid's montage at NG9A figure 18 represents by far the worst impact that the AGI brings to bear, and that this is insignificant. Although it is not known whether there were unsatisfied landscaping requirements in respect of the AGI, what is clear is that the indicative layout for an enlarged AGI as part of a Site 16 scheme would include landscaping that is more extensive than what exists at present, and would if anything provide an opportunity to upgrade landscaping at the site to current standards capable of enforcement.
- 2.71. The lack of significance of this factor is illustrated by the assessment of it in the Appellant's site selection report, which states as follows:
- *With appropriate mitigation, detrimental impacts related to extension of the existing Tirley AGI would not have a significant residual effect on local landscape character and the visual context of the area (CD52. pg 32).*

#### *Transporting material*

- 2.72. Insofar as it is said that the quantity of material to be transported away from Site 16 is a disadvantage, it is not clear why transporting 55,000 cubic metres of earth away from Site 16 should be materially more harmful than importing 50,000 cubic metres to the appeal site (NG8.6.1.9).

#### **Safety**

- 2.73. The Council does not raise safety as an issue. It does not say that safety concerns would constitute a tenable ground for refusal at the appeal site, and Mr McCollum accepts (2:34) that it would not be a tenable ground for

refusal at Site 16.

### **Malvern District Council**

- 2.74. Mr Rudge, authorised to speak by a councillor at Malvern District Council (Doc 18) appeared to be the only party, other than the Appellant, present at the Inquiry who opposed the Council's stance on Site 16. Mr Rudge confirmed that he was content for the Inspector to proceed on the basis of the landscape experts' evidence, and did not profess to be such an expert. He accepted that Mr Radmall's reference to assessing whether Site 16 was more acceptable equated with whether it caused "less harm". It is submitted that this must be right. It has been established by the previous Inspectors that if a given site is the only feasible site, permission would be granted at that site. Accordingly, the question in relation to any alternative site is whether or not it is more acceptable.
- 2.75. As was also established by the previous Inspectors, if a site is identified which is likely to cause less harm, then that has the capacity to affect the case on need and thus the planning balance.

### **The Gas Act Duty**

- 2.76. The Secretaries of State have indicated that they wish to hear evidence on a number of issues. One such issue encompasses the duties under which National Grid acts, and one such duty is that under Section 9(1) of the Gas Act 1986. This provision imposes on National Grid a duty to develop and maintain an efficient and economical pipeline system.
- 2.77. Mr Stonehewer accepts that this duty is either complied with or it is breached (1:44). The possibility of an efficient and economical pipeline system not being able to be developed and maintained if permission is not granted for a particular installation is accepted as a material planning consideration. However, it is not accepted that a decision-maker should try to 'maximise' the extent to which NG complies with this duty, for one principal reason, namely that it is not possible to 'maximise' compliance – it is possible either to comply or to breach the duty.
- 2.78. It is argued by NG that a PRI is needed to ensure that the pipeline system is efficient and economical. It is not argued that a PRI at Site 16 would constitute a breach of statutory duty. Accordingly for the purposes of comparing the appeal site with Site 16 the existence of the Section 9 Gas Act duty is a red herring.

### **Need vs. Urgency**

- 2.79. The Council accepts the need for the construction of a PRI to connect to the existing Tirley node. However, the Council has a degree of difficulty in accepting, unqualified, an assertion that a PRI is "urgent". The reason for that is that in order to assess something as "urgent", one has to have a sense of the consequences that will occur by a certain point in time if it were not to occur.

- 2.80. NG has not attempted to pinpoint a moment in time by which a PRI must be constructed in order to avoid specified consequences. When invited to do so, Mr Stonehewer indicated merely that over the period 2012 to 2015 the nation's reliance on imports would increase.
- 2.81. The PRI was not sufficiently urgent to generate a further planning application following the Corse refusal until more than a year after the relevant decision of the Secretaries of State. Nor was it sufficiently urgent to warrant multiple applications being made in respect of a handful of preferred sites in order to guarantee that a PRI was delivered somewhere feasible by, say, winter 2011. This was despite NG having argued in early 2007 that the PRI was urgent.
- 2.82. It was NG's right to take whatever time it thought fit to prepare this application, and similarly to decide how many applications to put in, and in respect of which site. It is not the LPA's function to criticise these decisions. All the LPA seeks to achieve by drawing attention to such decisions is to demonstrate that, should it be considered that Site 16 is likely to be a less harmful location for the PRI, it is not justifiable to allow the appeal regardless of this fact on the grounds that there is not sufficient time to bring Site 16 to the stage of permission being granted.
- 2.83. In a letter exhibited by NG at NG3.14, BG Energy Holdings Ltd acknowledges that there will be no new PRI by this winter, but makes it clear that it hopes one will be in place by 2011. Mr Stonehewer accepts that if work started now, the PRI could be operational by winter 2011 (1:159).
- 2.84. It is submitted that a PRI at Site 16 would be deliverable by winter 2012, and no evidence is put forward that there is some "critical date" prior to that point, or indeed at all, prior to which a PRI must be operational. The relative merits of the appeal site and Site 16 should decide this appeal, and not any notion that a PRI is so urgent that the planning balance is rendered irrelevant.

### **Conclusion**

- 2.85. If there is convincing evidence that the appeal site is indeed clearly the better site in landscape terms such that there is a genuine need argument in relation to the appeal site, then it should be recommended that the appeal be allowed. In any other circumstances it is submitted that it should be recommended that the appeal be dismissed on the ground that it is likely that an alternative site, Site 16, would be less harmful in landscape terms.
- 2.86. In the submission of the Council, the Appellant's SSR was correct to conclude that Site 16 is the better site per se, but that it was incorrect in allowing minor off-site factors to disturb that conclusion. It is therefore respectfully submitted that the appeal should be dismissed.

### 3. THE CASE FOR NATIONAL GRID GAS PLC

The material points are:

#### Introduction

- 3.1. The submissions are made under headings respecting the issues identified on behalf of the Secretary of State in the letter from PINS dated 30 March 2010.
- 3.2. It should, however, be noted that the case for Tewkesbury Borough Council ("TBC") has been put on a very narrow basis. A very detailed appraisal of the scheme, alternative sites and planning issues was given in the officer's report to Committee which recommended approval (CD50). The members disagreed giving a single reason for refusal:  
  
*"By virtue of its scale, height and appearance the development would have an adverse impact upon the character and appearance of the countryside and would be contrary to Policy NHE.1 of the Gloucestershire Structure Plan Second Review and Policy LND4 of the Tewkesbury Borough Local Plan to 2011 (March 2006), which seek to protect the open countryside from development which would adversely impact upon the visual appearance of the landscape".*
- 3.3. Para. 5.38 of the SOCG (CD 49) records that "the Council's objection to the proposal relates only to its perceived impact upon the character and appearance of the open countryside". Thus, the Council does not claim that the proposal would have any adverse effect upon residential amenity (4:131-2).
- 3.4. Mr Smith accepted that the development should be assessed as a whole, including the proposed landscaping (4:107 and 4:134). It emerged during Mr Radmall's cross-examination that the Council accepts that the proposed landscaping meets the requirements set by the 2007 Inspectors for the Flat Farm site in IR8.59 (5:106 to 107). Accordingly, Mr Radmall confirmed that the alleged harm upon which the Council relies relates solely to the flue stacks, lighting and plumes, giving a perception of an industrial feature in the landscape (5:86 to 87). The Council has not claimed that the proposed buildings up to 4m in height, the pipes or fencing would have a significant impact from any receptor.
- 3.5. Mr Smith and Mr Radmall confirmed that the Council take the view that the appeal site is better than the Corse site in that e.g. the development would be set at a lower level, within a larger site allowing for adequate landscaping and set back from the B4211 and B4213 (see e.g. 4:115, 127-8, 132-3 and 5:96-101). Consequently, Mr Smith added that a different planning balance might be struck on this occasion between need and perceived impact, as compared with the Corse appeal, which could result in the grant of planning permission (4:117).

- 3.6. Given the narrow objections pursued by the Council this is not in fact a case where the Appellant needed to deal with alternative sites, although the topic has been covered with great care and in detail. Furthermore, the Council has identified only one site which it claims would be preferable (no other alternatives have been identified by any other party). The Appellant submits that that site would not produce any better solution to the need for the PRI. CAPRI also suggested in closing, that the PRI could be located in the bowl at the bottom of Site 16, but this suggestion has already been considered and rejected by Mr Stonehewer (NG2 .9.24).
- 3.7. These submissions concentrate on the issues between the parties which have been discussed at the Inquiry. A wide measure of agreement is recorded in the SOCG and not repeated here. Similarly, these submissions do not summarise all of the positive case advanced in the proofs of the Appellant's witnesses. However, a good overview is to be found in the proof of Lyn Powell (NG11).

**(i) Development Plan Policies**

- 3.8. It is agreed that the statutory development plan includes the GSP and TBLP. Para. 6.1 of the SOCG also refers to RPG10. Undoubtedly regional spatial strategies have been revoked by the Secretary of State. The announcements from DCLG have not been entirely clear about RPGs, which had been treated as RSS's under section 1 of the 2004 Act. Whatever the technical position, no one has suggested in this Inquiry that the outcome of this appeal depends on RPG10 and the Appellant suggests that no weight be attached to it in any event.

*Structure Plan (CD18)*

- 3.9. Mr Smith confirmed that the proposal does not conflict with either Policy S3 or S4 (4:211-212). Policy S4 provides that "development within the open countryside will be strictly controlled", the objectives being to protect the countryside for its own sake. However, in the Corse appeal both the Inspectors and the Secretaries of State decided that the proposed PRI development needs to be located in the countryside and there is no conflict with Policy S4 (IR8.110 and DL17 and see also 5:80-81). They also decided that the form of control applicable to a PRI would derive from more specific countryside policies.
- 3.10. The Council agrees that only the first limb of S6 is relevant (4:213 and SOCG 6.12) to the effect that "the quality of the landscape" should be safeguarded and, wherever possible enhanced". Of course, it is not suggested that a proposal should be rejected unless the landscape is improved. The Council's case is based upon its claim that its quality would be adversely affected.
- 3.11. In so far as relevant Policy S7 requires that development proposals should maintain the quality of the environment by "high standards of design". The Council's claim that the proposed design would be so poor as to breach S7 related solely to the proposed earth modelling, which is said to be unnatural and out of character (Mr Smith at 4:214). In fact, that point has



evaporated because Mr Radmall has accepted that the proposed mounding does not suffer from the defects of the Corse Scheme, but instead complies with the Inspectors' suggestions as to what would be appropriate for Flat Farm (IR8.59) (Mr Radmall at 5:105-6). The proposed land modelling is not in itself harmful, as was the case at the Corse appeal, and so the proposal accords with S7.

- 3.12. NHE1 states that "the countryside's character, appearance and non-renewal and natural resources will be protected from harmful development unless the social and economic needs of the area or wider environmental objectives outweigh such "harm"." There is an issue as to whether the appeal proposal constitutes harmful development which would justify a refusal. If, contrary to NG's submission, it would, then the Council accepts that the balance referred to in NHE1 needs to be struck. In that event, the Secretaries of State (and the Inspectors) have decided that the national need case put forward falls within the "needs" described in NHE1 (see IR8.113).

*Local Plan (CD20)*

- 3.13. Policy LND4 is the only local plan policy where a conflict is claimed. The policy states that "regard will be given to the need to protect the character and appearance of the rural landscape". Helpfully, the reasoned justification identifies the issue as being whether a proposal would be "unacceptably intrusive".

*Harm and intrusion*

- 3.14. At some stages in the evidence the Council's witnesses appeared to suggest that any degree of harm would mean that the proposal constituted "harmful development" and would therefore have to be refused as being in breach of the development plan unless that harm is outweighed by need. The object of that argument appeared to be that need could not outweigh such harm unless the suitability of alternative sites was also considered, so that merely because an alternative is said to be better than the appeal proposal the Tirley site should be rejected. That interpretation would subvert the established principles on when it is appropriate for alternative sites to be considered (see below).
- 3.15. Fortunately that issue has also disappeared. In cross-examination Mr Smith confirmed that the correct approach is to ask whether, as a matter of degree, a proposal would be unacceptably intrusive or result in significant impact so as to justify a ground for refusal. Strong and clear planning reasons are needed to justify a refusal; unless the impact is sufficient to warrant such a refusal then planning permission should be granted (4:137-8; 139-140; 197). That is also the approach which Mr Powell took in para. 5.19 of his proof (NG11).
- 3.16. If the Secretaries of State agree with NG that the proposal would not cause significant or unacceptable harm in this location, taking into account the proposed mitigation and closure of the Tirley AGI, then there is no conflict with the development plan policies and no requirement for need to be

balanced against impact. If, however, the view is taken that the harm would be of sufficient magnitude to justify a refusal, then that balancing exercise has to be carried out and NG submits that the “important and urgent” national need for the PRI outweighs any identified harm. Either way, it is submitted that the proposal accords with the development plan.

3.17. It is also relevant that the Council accepts that this necessary development will have some impact wherever it is located in the countryside (4:214).

## **(ii) Need for the Proposed PRI**

### *National Policies*

3.18. National Policies in 2007 were summarised in IR1.27, 1.28, 1.29, 8.17 and 8.18. National Policy repeatedly emphasizes: the dwindling supplies of gas from UKCS; the fact of the UK having become a net importer of gas; and the need for additional connections for piped gas and LNG from a range of sources (Energy White Paper 2003 – CD27).

3.19. The Secretary of State’s Statement of Need in May 2006 (CD29) provided more detailed guidance, particularly for planning decisions. In summary:

- (i) New gas supply infrastructure is needed to increase the capacity to import, store and transport gas efficiently;
- (ii) Securing reliability of energy supplies is essential to meet the needs of all energy consumers;
- (iii) Adequate infrastructure is essential to avoid gas price increases when supplies are interrupted and to promote competition so as to reduce prices for consumers;
- (iv) The provision of energy infrastructure is part of a national delivery system providing an essential national service. All localities share in those crucial national benefits.
- (v) The Statement referred specifically to the expansion of the UK’s import capacity through the two Milford Haven LNG terminals.

3.20. The Energy White Paper in 2007 (CD30) gives the following policy goals:-

- cutting UK CO<sub>2</sub> emissions by 60% by 2050, with real progress by 2020;
- maintaining the reliability of energy supplies;
- promoting competitive markets;
- ensuring that every home is adequately *and affordably* heated

3.21. The White Paper states that LNG will play an increasingly important role in the gas supply mix. LNG can also enable an importing country to have more diverse gas supplies and import routes so as to increase security of supply and competition. Para 4.48 of the White Paper highlights the Milford Haven terminals as diversifying the sources of gas used to supply the UK.

3.22. Both the Council and NG agree that the Draft National Planning Statements issued by DECC (December 2009) are material considerations (CD49.7.20). Mr Smith confirmed the relevance of paras. 10 and 27-30 of the Draft Overarching NPS for Energy (EN-1) (CD23) are relevant. In summary:

- During the transition to a low carbon economy the UK must have access to reliable supplies of gas. The UK must improve its capacity both to import and to store gas by “enabling new infrastructure to come forward” with “strategic reinforcement” of the UK’s gas transmission networks (para. 2.1.15);
- The UK is highly dependent on natural gas e.g. in 2008 over 40% of electricity was generated using gas (para. 3.9.1);
- Gas must be imported from increasingly diverse sources so that consumers have access to the most competitive supplies and the supply risk is spread (para 3.9.3);
- There must also be sufficient gas supplies to meet peak demand, which is a much more stretching requirement than meeting annual demand (paras. 3.9.3 and 3.9.7);
- The gas market participants may aim to have some redundancy in their supply arrangements above *the minimum amount to meet peaks*, to manage the risk that other capacity may not be available. Therefore, new gas infrastructure will be needed in the next decade *taking into account the expected fall in demand for gas* under the Low Carbon Transition Plan (para. 3.9.3);
- There must be sufficient supply capacity to provide access to the most competitive gas supplies. Because price relativities vary over time, this also implies some further “redundancy” in gas supply infrastructure; market participants may see distinct value in having access to gas imports by pipeline and by LNG as well as gas from storage (para. 3.9.7);
- Market participants will also have to manage the risks caused by the “large uncertainties” around the evolution of Britain’s demand for gas in both annual and peak times (para. 3.9.7).
- To maintain security of supply it is important that the necessary further investment is made in a timely fashion (para. 3.9.5);
- As well as new gas storage facilities, new import infrastructure is required including import pipelines, reception facilities and LNG import facilities (para. 3.9.6).

3.23. Clearly, in this context “redundancy” is not referring to infrastructure for which there is no need. On the contrary it refers to the need to have a degree of unused import and related infrastructure capacity so that the UK market can take advantage of opportunities to import gas by different routes at different times in order to obtain supplies more competitively.

- 3.24. It makes no sense for the UK to have two LNG terminals at Milford Haven which are unable to send out their full capacity into the NTS, both now and in the future. At the moment these terminals cannot send out more than 70 Mcmd, whereas they should be able to react to the market by sending out up to 88 Mcmd, a shortfall of 20% from their design capacity. That represents a reduction in the buying or competitive power of that import point wherever the gas is distributed in the NTS subsequently. In the absence of the Tirley PRI the LNG terminals are unable to attain their full potential. That is a waste of a scarce import resource and contrary to basic principles of sustainability.

*The need determined in the 2007 decision letter*

- 3.25. Both the Inspectors and the Secretaries of State endorsed the following points:
- (i) There is an important and urgent national need to transport LNG from Milford Haven to England and South Wales, so as to meet the contractual requirement of 88 Mcmd at the point of entry to the NTS (IR8.24 and 8.113 and DL20); and
  - (ii) to that end a PRI has to be constructed connecting with the NTS at Tirley or a node to the east (IR8.35; 8.44 and 8.116 and DL20); and
  - (iii) connecting the new pipeline at Wormington is not preferable to a connection at Tirley because (a) the existing feeders between Tirley and Wormington (No. 2 and No. 23) would be under utilised and (b) the cost of an additional 29 km of pipeline, including recurring operating costs (IR8.41; 8.42; 8.44 and DL21). Accordingly a PRI is needed which is connected to the NTS at Tirley; and
  - (iv) A PRI could be located up to 5 km from Tirley (using a 900 mm connection) and up to 10 km (using a 1200 mm pipe). But in order to reduce the extent of any pressure drop between the PRI and Tirley, which would make the system less efficient and therefore more expensive for consumers, it would be best to locate the PRI as close as possible to Tirley (IR8.46; 8.50 and 8.114 and DL24).

*Council's position on need*

- 3.26. The Council suggests that the need is not "site specific" (1:48). In saying that it is merely taking into account the 10 km radius which has been adopted for the area of search as a result of the 2007 decision. However, there are important constraints within that area of search including the need to comply with safety distances for pipelines and for accessibility to the site. Land in environmentally sensitive locations has to be excluded. Ultimately, the Council has arrived at the position in the officer's report and at the Inquiry, that the only site which could be considered as a contender to the appeal site is Site 16. By definition we are dealing with a need which is difficult to accommodate and is "site specific" to a high degree.
- 3.27. Furthermore, the Council overlooks IR8.50 (as well as 8.46 to 8.49) and IR8.14 and DL24. There is a requirement, in the context of National Grid's

Section 9 duty, to find a site as close as possible to Tirley for reasons of efficiency. That adds substantial weight to the need for the PRI to be located at Tirley. An alternative such as the enlarged Corse appeal site recommended at IR8.72 would also be close to the Tirley node, but the Council has rejected that alternative. The need for the PRI to be located at Tirley is a specific need and no other site has been identified which would satisfy that requirement.

- 3.28. The Council accepts the need established in the 2007 decision of the Secretaries of State. It accepts that the importance of that need has not diminished since 2007 and that it remains urgent (4:118, 140, 141, 143-144, 147, 155-156). It has been decided that a 1200 mm, 94 barg pipeline should not be constructed between Tirley and Wormington, so much so that the Secretaries of State have also decided that if there were no alternative to the 2007 Corse appeal site then that would almost certainly have been a conclusive argument in favour of granting permission there "despite its adverse environmental impact" (IR8.116 and DL36).
- 3.29. Thus, paras. 8.2 and 8.3 of the SOCG agree that:-
- (i) To ensure an adequate connection to the NTS to some of the LNG terminals a 1200 mm diameter pipe has been installed from Milford Haven to Tirley AGI to be operated at 94 barg.
  - (ii) The pipe work from Tirley to Wormington comprises only 900 mm and 600 mm pipes, which although they have a useful life of another 40 years can only operate at 75 barg.
  - (iii) The PRI is needed at Tirley so that the section before Tirley can be operated at 94 barg. Without that PRI the Milford Haven to Tirley pipe would be constrained so that it could not operate in excess of 75 barg and therefore the pipeline would perform under capacity (see also 4:153-156).
- 3.30. The Council accepts that the existing infrastructure (including the Milford Haven to Tirley pipe should not be under utilised (4:156). It also accepts that the objectives of national policy include increasing import capacity as well as gas storage and to provide strategic reinforcement for the NTS (4:166-167). The Council accepts the policy requirements sent out in CD23 pages 29-30 (4:185).

#### *CAPRI*

- 3.31. CAPRI now accepts the Secretaries of State's conclusion ruling out the "Wormington option" (1:54), although they had argued the contrary in 2007.
- 3.32. CAPRI's case is now that circumstances have changed since 2007 so that there is no need for the Milford Haven to Tirley pipe to operate at pressures in excess of 75 barg, and, on that ground alone, no need for a PRI at Tirley. The effect of its assertion is that the LNG terminal would not be able to send the full capacity it has contracted to use at the entry point to the NTS, both now and for the indefinite future. The implication of

CAPRI's assertion is that the Milford Haven to Tirley pipe need not have been built so as to accommodate pressures in excess of 75 barg.

- 3.33. This is a bold case to make. In the 2007 decision the Secretaries of State have already concluded that the existing NTS system is inadequate and needs to be improved because the "do nothing" option is not an option if National Grid is to meet its contractual and statutory licence obligations (DL20 and IR8.44 and 8.114). At the Corse inquiry the Inspectors were provided with detailed information on the pre and post Milford Haven operation of the NTS involving feeders 2, 23 and 28 from Milford Haven to Wormington. One of these documents was NG17 (NG46 at this Inquiry). That document was tested at the 2007 inquiry. A number of alternatives which would have deleted a PRI at Tirley were also examined to show why the identified need would not be satisfied or would be far too costly. Some of the material provided by NG is summarised at IR8.29 to 8.31. The Inspectors considered those alternatives and rejected them (IR8.33 – 8.35).
- 3.34. CAPRI's case in 2007 also included a proposal from Dr. Furness which would alter the arrangements at Treadow and delete a PRI at Corse (at Tirley). That was rejected by the Inspectors as breaking Code safety requirements (IR8.33 – 8.34). The Inspectors referred to CAPRI's case which was based on Dr. Furness' proof (IR3.69).
- 3.35. At this Inquiry CAPRI did not pursue that point, but Dr. Furness did (eg. 4:51). He did so knowing full well that it had been rejected by the Inspectors by reference design and safety codes. He was asked to explain why he had put forward (and was still putting forward) an unsafe design. His only answer was that this option was no more than an "off the cuff remark" (4:52 – 53). In that way Dr. Furness demonstrated his lack of expertise to deal with the engineering and design safety issues raised by the present type of project, a point acknowledged in the HSE's letter of 25th April 2007 (NG26). It was astonishing that he should raise the same "option" again at this Inquiry without addressing the safety objections to his own proposal. It does not seem that members of the public were aware of this flaw in his arguments.
- 3.36. Given the clear conclusions of the Inspectors and Secretaries of State in 2007 it might have been expected that if CAPRI was going to challenge the case on need it would call evidence. It did not do so, so its assertions could not be tested. It did not even make clear in its Statement of Case what its points were, despite requests to do so. All CAPRI has done is to put a few questions in cross-examination based on highly selective extracts from documents published in 2009 and 2010 (eg. C12, C13, C14 and C15). The quotations largely focused on annual demand.
- 3.37. So far as winter demand was concerned, CAPRI relies upon the ability of the UK system to manage the 2009/10 winter without additional gas flowing from Milford Haven. The points did not really grapple with the substance of the papers from DECC and National Grid. During the last winter we did not experience a 1 in 20 winter peak day demand, the parameter used to define the capacity which National Grid has to provide

under its licence conditions (NG2. 3.13-3.15 and 7.10). The anticipated peak day demand was 510 Mcmd in 2010 and is predicted to rise to 530 Mcmd by 2020. The highest peak day demand in January 2010 was only 465 Mcmd.

- 3.38. In any event, meeting that peak day demand is only one requirement. CAPRI's case ignored the need expressed in Government policy for import infrastructure to be increased to increase security of supply and the ability of the UK to compete more effectively over gas supplies to reduce prices for consumers. The cross-examination of Mr Stonehewer in Day 1 did not seek to show that Government policy on the need for more gas import infrastructure (including LNG) had changed since 2007 or how the deletion of the Tirley PRI (with the consequence that the pipeline from Milford Haven will not be able to operate at full capacity) would comply with Government policy. Mr Stonehewer's answer on Day 1 showed that the passages put to him from the extracted documents had not looked at the matter correctly in that context.
- 3.39. Ofgem has indicated the national importance of the pipeline operating at full capacity (NG34 – letter dated 13th July 2010). When the pipeline is completed so as to operate at 94 barg it will supply up to 20% of the UK's demand for gas. It takes the view that the PRI at Tirley "forms part of the much larger project to connect the new LNG terminals at Milford Haven to National Grid's National Transmission System." "The completion of the Milford Haven projects will be a big step in helping to secure Britain's gas security of supply into the future." Ofgem is also concerned that further delay in completing the project will not only affect gas entry imports at Milford Haven but also higher costs for consumers.
- 3.40. CAPRI has placed much reliance on DECC's Gas Security of Supply document dated April 2010 (C12 – full version at NG16). NG believes that this document assumes the MH to be operating at full capacity by 2020. That document had followed a consultant's report to DECC by Pöyry (March 2010) which was published on 15th July 2010. On that date the SoS stated in Parliament (NG33 p37) that although the picture for outlook of gas security was "broadly benign", the outlook was not risk-free;
- (i) Demand levels for gas are important, whereas the GB gas market is robust to a wide range of shocks provided that gas demand falling over time (largely driven by the promotion of energy efficiency), in circumstances where UK or EU gas demand is higher than expected the GB gas market becomes more vulnerable.
  - (ii) While the risks of voluntary interruptions and of gas supply shortages are low, they are not negligible; there are potential circumstances in the not too distant future where voluntary interruptions would be required.
  - (iii) Even when voluntary gas supply interruptions are not required, the wholesale gas price in GB could reach very high levels (Pöyry identify circumstances where wholesale gas supply prices could rise from 90p to 220p per therm).

- (iv) Ofgem's work on 'Project Discovery' indicated that there were scenarios where the security of GB's gas supply could be severely tested.
  - (v) In the interests of GB gas consumers these risks are managed as far as feasible. This reinforces the national need for additional gas supply infrastructure.
- 3.41. It is therefore clear that the previous policies on need for more infrastructure remain applicable and that CAPRI's interpretation of certain limited extracts from National Grid and DECC documents does not show that extra capacity on the Milford Haven to Tirley route has become unnecessary.
- 3.42. Indeed, Mr Stonehewer told the Inquiry that the infrastructure capacity figures in CAPRI's extracts assume a capacity at the LNG entry point of 88 Mcmd which cannot be achieved without the Tirley PRI (1:111 and 121). There has been no challenge to Mr Stonehewer's statement that the Government's security of supply analysis assumes Milford Haven LNG being able to supply 88 Mcmd to the NTS (1:111). At the end of the day CAPRI have called no evidence to show that can be achieved without a PRI connected to Tirley despite the clear acceptance of that need in 2007.

*Other matters on need*

- 3.43. The inquiry has received NG47 which demonstrates that reliance on present or increased gas storage capacity is not a substitute for LNG importation or making full use of the Milford Haven capacity.
- 3.44. NG46 (NG17 at the Corse inquiry) shows how the off-take of gas in South Wales is greater in winter than in summer. It follows that less gas is available to be sent further into England via Tirley in the winter. That was well understood in the 2007 IR and DL. That does not undermine the need case. The need for the Tirley PRI is an all year round need. Without the Tirley PRI, once the South Wales off-takes are satisfied (including power generators at Pembroke and Newport), the amount of gas that can be sent to England via Tirley is reduced by 18 Mcmd, both in winter and in summer (i.e. all the year round) if the PRI is not installed. But in any event, the position has to be considered overall. If the PRI is not provided, the evidence remains that the amount of gas that can enter the NTS entry point at Milford Haven will be reduced by 18 Mcmd and capped at 70Mcmd.

**(iii) Duties of National Grid under the Gas Act 1986**

- 3.45. National Grid is a regulated utility which has to comply with a duty under Section 9 "to develop and maintain an efficient and economical pipeline system for the conveyance of gas". Compliance with the duty is monitored and enforced by Ofgem.
- 3.46. It is established that Section 9 represents a constraint on the selection of sites for a PRI which is relevant to the credibility of any alternative scheme (IR 8.36 and DL 21 and in Smith at 4:157). NG must not incur wasteful expenditure. Additional costs have to be justifiable. The Wormington option is a good example. In 2007 it was rejected by the SOSs as being



too costly because of an additional £57m of expenditure required (IR 8.38, 8.42, 8.43, 8.44 and 8.114 and DL21). It was not said that the additional cost could be discounted because it was relatively small in comparison to total scheme costs to NG of about £1bn. Cost analysis needs to be applied on a consistent basis throughout a scheme, particularly a major infrastructure project. The additional costs of Site 16 compared to the appeal site (£34m, of which £26.6m is capital – see NG2. 9.34) are of a similar scale to Wormington. They are substantial.

- 3.47. The upshot of the 2007 DL is that if the only realistic site for a PRI would have been the then appeal site it would, almost certainly have been conclusive that planning permission be granted for that proposal (DL36) and the SOSs did not find that the Wormington option should be selected instead. It is therefore clear that the decision in 2007 did not regard the expenditure of £57m on the Wormington option as being justifiable to overcome the detriment identified for the Corse appeal site.
- 3.48. Mr Smith accepted at one point that the effect of extra costs on consumers in terms of the prices they have to pay for energy is a relevant consideration (4: 157). However, earlier on in his proof (T1. 7.5) he had thought that the benefit was simply a saving of money for a private company (4:148-159). It became apparent that the members of the Council had not understood that point and had failed properly to take this factor into account.
- 3.49. Mr Smith also accepted that the objective of keeping the PRI as close to Tirley as possible is to reduce the pressure drop in the system as much as possible and avoid inefficiency (IR 8.46, 8.49-8.50 and 8.114 and DL24 and 36; 4: 162-3).

**(iv) Whether there were any other technical constraints affecting the appeal site, what other sites were considered and why were they rejected**

- 3.50. The technical constraints were identified in 2007. First the PRI must be connected to the Tirley node. Second, it can be no further than 5 or 10km away from the Tirley node depending upon whether a 900mm or a 1200mm diameter connection is made. Third, the PRI should be as close as possible to Tirley for reasons of efficiency (IR 8.45-8.50 and 8.114; DL 20-21).
- 3.51. In addition other constraints have been explained in some detail in the Site Selection Report (CD52), such as the need to comply with building proximity distances in selecting pipe connecting routes, safety risk considerations and the need for adequate accessibility to the PRI site.
- 3.52. Alternative locations were considered throughout the 10km radius from the Tirley AGI. At each stage local authorities and CAPRI were consulted. No criticisms were made as to the steps taken by NG in Stages 1 and 2. The Council did not criticise the identification of Representative Locations in Stage 3, but CAPRI did. National Grid was asked to reconsider six or so sites in addition to the preferred sites. They did so in conjunction with the Local Authority and CAPRI. It is to be noted that CAPRI did take part at

that stage even though in September 2008 it had suggested that the exercise had been pre-determined, that NG had not been consulting with them properly, and had threatened to withdraw from the process. Cost considerations were not examined before Stage 3.

- 3.53. The Council has confirmed that it makes no criticism of the site selection process. Like the Borough Planning Officer in his report (para 5.21 – 5.2.17 of CD50) Mr Smith accepted that the site selection process has been thorough and robust and that no criticisms are made of it (4: 113 – 115).
- 3.54. CAPRI has merely criticised Stage 3 of the process, the point at which Representative Locations were selected for each of the 23 Candidate Areas, on the basis that the basis for selection has not been explained. The point was an academic one at best because CAPRI has not suggested that National Grid failed to identify a better representative location, let alone identify one itself. Indeed, although the Council members prefer Site 16 to the appeal site, CAPRI has not been prepared to support that preference. In any event there has been a misunderstanding. Appendix D to CD52 described the Stage 3 process. There are data sheets for each Candidate Area and Representative Location detailing any constraints or characteristics of the Candidate Area relevant to the selection process, followed by a description of qualities for selecting the relevant Representative Location (3: 72 – 76).
- 3.55. In the Corse Inquiry NG was criticised because only 1% of the 10 km radius from Tirley had been investigated (IR 8.69). In the present case the whole of that area has been effectively and adequately examined by a robust search. There were no criticisms at all of stages 1 and 2 which excluded 83% of the study area (2.2.20 of NG8). The only criticism comes from CAPRI of the selection of Representative Locations within the remaining 17% and that proceeded as a misunderstanding of the material presented.
- 3.56. Ultimately NG's selection preferred the appeal site to Site 16. Much has been made of pages 31-32 of the SSR (CD52), in particular the statement that a PRI on Site 16 would not be quite as prominent as at the appeal site and would involve less impacts on local landscape character. There have been attempts to suggest that CD52 reveals a marked preference for Site 16 viewed in terms of local impacts and that the other factors are insufficient to outweigh that judgment. Mr Reid said that that was a misreading of the document, the differences were slight and there was not much to choose between the sites in terms of local impacts (2: 218 to 221).
- 3.57. To be fair to Mr Reid, the Borough Planning Officer read CD52 in the same way (para 5.2.7 of CD50):
- "The submitted SSR actually accepts that the visual and landscape impact associated with Site 16 itself would be of a slightly lower order than with the proposed application site...."*

- 3.58. He then went on to assess the effects of an additional 6km connecting pipeline to Tirley with “significant additional environmental impacts, both temporary and permanent”, such as the removal of mature hedgerows and trees and the expansion rather than the removal of the Tirley AGI.
- 3.59. In summary, the Appellant’s case is that the impact of the proposal on the appeal site, however compared to Site 16, is not sufficient to warrant a refusal or a search for alternative sites. However, Site 16 would not offer any material advantages over the appeal site, even as regards local impacts.

**(v) Whether there are any other technically feasible sites for the proposal which would be more appropriate in planning terms.**

- 3.60. The only site which has been put forward for examination is Site 16. The Campaign to Protect Rural England (CPRE) has suggested the additional field to the west of that site, but it is apparent that development there would be more prominent (Mr Reid at 3:77-79). Mr Radmall was not prepared to support that alternative (5:68 and 133). The merits of that site are dealt with in the following section. Before turning to that the appropriate approach for determining whether alternative sites should be considered, and if so, how, needs to be examined.
- 3.61. The legal principles from a number of cases were brought together by the Court of Appeal in *Secretary of State v Edwards* 1994 1 PLR 62 (NG55):
- (i) Land may be developed in any way which is acceptable for planning purposes. The fact that other land exists upon which the development would be more acceptable does not justify refusal of permission on the application site.
  - (ii) Where there are clear planning objections to a proposal then it may be relevant to consider whether there is a more appropriate alternative site elsewhere, particularly where the development is bound to have significant adverse effects and the major argument in support of the proposal is based upon need.
- 3.62. In the present case NG submits that the harm identified in respect of the appeal site does not amount to a clear planning objection and therefore there is no requirement for alternative sites to be considered. Mr Smith agreed that such alternatives need only be considered if there are clear planning objections (4:195 – 196). He added that if the impact is not of sufficient magnitude as to warrant a refusal then there is no need for alternatives to be sought (4:196 and 202). He thought that was in line with PPS1 para. 19 (4:204 and T1.5.4). Mr Radmall’s approach was not materially different (5:82 – 83).
- 3.63. In particular, Mr Smith accepted:
- (i) The mere existence of an alternative site which is said to be better than the appeal site is not a reason for refusal unless the appeal proposal would cause sufficient harm (4:206 – 208).

- (ii) Even where alternative sites are a material consideration the developer is not required to find a site which would be the best site in an area of search, or to establish that there is no better site (4: 201 – 202).
  - (iii) On a case such as the present where it is accepted that the site selection process has been thorough and robust and covering a sufficiently broad area, it would be inappropriate for the appeal to be refused on a speculative suggestion that there might be a better site which has not yet been identified (4: 199 – 201). Mr Radmall also agreed with that point (5: 121 – 122).
- 3.64. The only alternative site to be considered is Site 16. Mr Smith revealed that the Council did not consult Malvern Hills District Council about that location as a site for a PRI (4: 188 – 189). Mr Rudge explained the concerns of Malvern Hills District Council regarding Site 16 (Doc 18). His Council does not object in principle to the appeal proposal.
- 3.65. In summary, it has been agreed by the Council that the circumstances of the Corse appeal were very different:
- (i) the Corse PRI was rejected as having significant harmful effects for the users of the B roads and through the inappropriate landscaping caused by the smallness of the site area;
  - (ii) the inquiry had sufficient information to enable the Inspectors to judge that the site at Flat Farm or an enlarged Corse site would be less harmful;
  - (iii) the site selection process had only examined 1% of the relevant area of search.
- 3.66. The circumstances of the present appeal are very different. The appeal site itself was recommended for consideration in the 2007 decision. The selection process has been sufficient, indeed thorough, and only one other candidate remains to be considered.
- 3.67. NG submits that Site 16 would not be more appropriate in planning terms; it would not be materially better than the appeal site as regards the effect on the countryside and landscape. It is not located as close as possible to Tirley and would introduce inefficiency in the supply of gas; it would require a 6km long pipe route; and it would require the compound of the AGI to be extended by 60%, whereas the appeal proposal would remove the AGI and restore the land to countryside.
- 3.68. The extra cost of £34m for Site 16 cannot be justified given the degree of the effects which the appeal proposal would have and/or the lack of any material or sufficient planning advantage in Site 16 over the appeal site. Contrary to the Council's suggestion costs can be relevant in planning decisions in a variety of different ways.

**(vi) The landscape and visual impact of the appeal proposal and Site 16**

- 3.69. A number of matters have been agreed between Mr Reid and Mr Radmall: the range of viewpoints for assessment (5: 49); the NG photomontages and

sections and the TBC wireframe diagrams are reasonable representations of the location and scale of the proposed development (NG 24), that the TBC diagrams do not show how the development would appear. Although Mr Radmall has chosen to present his diagrams at the year of opening only, as a worst case, he agrees that it is appropriate also to consider impact 10 years later (5:59 – 60). He also accepts that olive green would be a typical colour for this type of development in this location (5:46).

- 3.70. Regarding the criticism that the photomontages are shown in summer views, Mr Radmall accepts that it is a common technique to plant thick belts of trees which can provide adequate screening in winter (combination of branches and twigs or even deciduous trees which retain leaves beyond the autumn – per Mr Turner) – (T4.46–47). In the present case it is proposed to plant tree belts in appropriate locations with a depth of between 20 and 40 m (5:47). That proposal has been carefully considered by the Borough Landscape Officer and judged to provide adequate screening in winter as well as summer. The only qualification to that last point concerns the rate at which the trees will grow (5:47 – 48).
- 3.71. Even so, Mr Radmall accepts that he has not raised his concern with the Borough Landscape Officer (to question why the latter was satisfied) and he also accepts that “if the objective set by the landscape scheme is achieved through the Landscape Management Plan then effective screening would be achieved in winter” (5:48 – 49).

#### *Zone of Visible Influence (ZVI)*

- 3.72. Mr Radmall has suggested that Mr Reid’s ZVI should have been more widely drawn. That was based solely upon Mr Radmall’s viewpoint 3. But, he accepts that (5: 60-63) the boundary of the ZVI will depend upon the definition used and that definitions vary; the identification of the ZVI is simply an initial tool to assist in identifying the significant or key receptors; the issue over the ZVI has only resulted in one additional viewpoint; there would be no significant impact from the PRI at viewpoint 3; and it is not suggested that there are any other viewpoints which are materially affected by the development.

#### *Mr Radmall’s Approach*

- 3.73. Mr Radmall accepts that he has not carried out an impact analysis. Instead, he has only carried out an analysis of landscape and visual sensitivity in order to assess the capacity of the Flat Farm site to accommodate the appeal proposal and to make a comparison with the capacity of Site 16 (T4.1.14 and 5:126-7). He accepts that in contrast, both the ES and Mr Reid’s proof are based upon a full impact analysis. Mr Radmall accepts all the impacts given in the ES, except for those after the opening year because of the issue of tree growth rates.
- 3.74. Mr Radmall has identified characteristics which either increase or decrease the sensitivity of a landscape (T4.2.22 and 2.23). He considers that both the appeal site and Site 16 are in a landscape of “moderate” sensitivity. He would say that on that score there is nothing to choose between them.

The Appellant disagrees.

- 3.75. Even on Mr Radmall's evidence in the Flat Farm area there are large scale farm buildings (large both in terms of area and height such as Corse Hill Farm "very visible" from Corse Hill Wood) (5:116). Those buildings detract from the character of the area and have not been landscaped (5:117-8). Buildings are not present in any of the viewpoints for Site 16 and a PRI would involve the introduction of built structures for the first time (5:88-9).
- 3.76. Mr Reid makes the point that Site 16 lies in open countryside which is less spoilt than the appeal site. Mr Radmall sees no difference. It is submitted that Mr Reid is correct.
- 3.77. It can be seen from Mr Radmall's proof (T4) that the real reasons why he prefers Site 16 to the appeal site are essentially based upon two matters – visual sensitivity and the extent to which Site 16 needs and/or can accommodate landscaping. He takes the view that Site 16 is of lower visual sensitivity and therefore has a moderate to high capacity to accept change (T4.6.26) and that Site 16 is better screened and/or can accommodate landscaping more readily (T4.6.27–6.44).

#### *Landscaping*

- 3.78. As noted already this has turned out not to be an issue for the appeal site. Mr Radmall accepts:
- (i) The criticisms made by the Inspectors of the Corse proposal, eg. steeply sloping bunds with an engineered appearance on a site which was too small, and close to the B4211, do not apply in the present case (5:103).
  - (ii) The Inspectors envisaged that landscaping on the appeal site would involve "sinuous and flowing mounds of a more natural form" (IR8:59 and 5:105).
  - (iii) The proposed earth modeling complies with that requirement and is appropriate for the appeal site (5:106). The Council do not wish any improvements or modifications; the correct principles have been applied (5:107).
- 3.79. That view accords with the analysis by the Planning Officer in the report to Committee (CD50 .5.3.12, 5.3.13, 5.3.14, 5.3.17 and 5:109 – 113). Ultimately Mr Radmall said that he was not questioning the acceptability of the management plan or the scheme as regards its intrinsic merits (5:113).
- 3.80. As regards the landscaping of Site 16, it is apparent that Mr Radmall's viewpoints mainly concentrate on long distance views and his wireframes do not distinguish between screening by existing landform as opposed to vegetation. In cross- examination it also became clear that although he accepts NG23 Fig. 9 as a reasonable basis for appraising Site 16 (5:65), he has not really considered the implications such as the area of the site, its narrow width (less than 200 m), the extent of the rise in slope (5 – 8 m)

and the need to cut a 1.4 hectare compound into that slope (see 5:134 – 136). Although he tried to suggest that bunding might not be required in certain locations his proof had accepted the point more readily (see eg. T4.6.38).

- 3.81. NG submits that it is plain that substantial bunding will be needed on the western, southern and eastern sides in order to protect the amenities of users of the surrounding footpath network. For example, it is agreed that walkers approaching from the north have a clear view of the entire site in close proximity (5:136), whereas walkers on the eastern boundary of the appeal site are looking on the same level across a much flatter site.

*Visual sensitivity*

- 3.82. This is really the key issue relied upon by Mr Radmall. He suggests that it is significant that there are more receptors around the appeal site than at Site 16. However, that view overlooks a number of points.
- 3.83. Firstly, Mr Radmall is relying upon residential receptors because that is relevant to a landscape/visual appraisal. So it is, but he does not claim that there are any more residential receptors at the appeal site than at the Corse site and he accepts that impact on residential receptors was not a concern in that appeal for either the Inspectors or the SoSs. (5:78)
- 3.84. Secondly, Mr Radmall has failed to adequately assess the effect on the receptors, particularly the users of footpaths. He agrees that there would be no impact in the case of the appeal site on users of the Whitmore Way or any other footpath apart from the link between the B4211 and B4213 on the eastern side of the appeal site. In relation to that path, the Inspectors at the 2007 appeal thought that it was not well used (IR8.72) and Mr Reid and Mr Radmall have given evidence to the same effect. The link does not seem to form part of any network.
- 3.85. The position at Site 16 is that the site is embedded within a network of footpaths from which views can be obtained on at least three sides of the site. From the north and north-west development on the site cut into the slope would be prominent and the site is too tight to enable earth modelling to be carried out in a natural way. There is also evidence that the footpaths are used to a greater extent than at the appeal site which is not surprising given the network of which they form a part and the wholly unspoilt character of the countryside.
- 3.86. Thirdly, Mr Radmall has given insufficient weight to the effect of the AGI upon views from Lime Street and the opportunity to restore the land to open countryside as opposed to the need to extend the compound by 60%.
- 3.87. Lastly, he has placed considerable reliance upon concerns as to the likely success of the proposed tree planting and failed to give sufficient weight to the detailed management plan.

*The proposed tree planting and the Management Plan*

- 3.88. Mr Radmall's position is weak on this important issue. He accepts that he

does not have experience of tree growth in this area and yet he has not consulted Tewkesbury Borough Council's officers to obtain the necessary information. He is not really in a position to give an expert view on the matter as compared with the Borough Landscape Officer.

- 3.89. On the other hand Mr Turner does have considerable local experience. But his evidence does not support the case for refusal:
- (i) he takes the view that if trees are established, the growth of up to 400 mm a year can be achieved, rather than the 300 mm optimal figure agreed with the Council;
  - (ii) whether trees are established successfully depends upon the Management Plan. He accepts that such a plan is capable of achieving proper results in this case. He accepted the same point "reluctantly" in the 2007 inquiry;
  - (iii) for this Inquiry Mr Turner had considered the December 2008 version of the Section 106 Obligation and not the one before the Inquiry. He had an opportunity to criticise it in his proof and did not take it.
  - (iv) He accepts that his evidence in this Inquiry is largely a re-run of his evidence at the Corse appeal. The Inspectors in 2007 thought that Mr Turner's concerns could be dealt with by condition (e.g. as to soil compaction) and by the Management Plan.
- 3.90. The Inquiry also has the transcript of Mr Turner's evidence in 2007 from which it is clear that he is not a landscape designer and has not been involved in the sort of scheme which is before this inquiry. In 2007 he relied upon the same two examples of failed tree planting which, plainly, were explicable by reference to the poor management techniques applied compared to the detailed plan proposed here.

#### *Summary on landscaping*

- 3.91. The Inspector is asked to conclude that the carefully designed proposals for the appeal site result in a development which is acceptable in its own terms. Alternatively, the only other site worthy of consideration would not be materially better. Lastly, the national need clearly outweighs any harm identified by the local authority and by objectors.

#### **(vii) Safety and Security Issues**

- 3.92. NG relies on the established standards set by HSE in its document Reducing Risks Protecting People, R2P2, both for individual and societal risk. It is important to stress that those criteria take into account the difference between passive and voluntary risk. They were drawn up to set tolerability levels, paying attention to that distinction. Those levels of tolerability were applied in 2007 and the Corse proposal was found to be acceptable by a margin of 10-15 times lower than the definition of 'tolerable' risk (IR 8.94). By contrast, the present proposal is safer by a factor of 5.4 (NG4.5.11 and 5.7.43).



- 3.93. IR 8.92 also deals with societal risk. The same benchmark was applied as the one put forward at this Inquiry, based upon R2P2 and the 'F-N curve' (NG5. 7.46), to which NG has referred. It was explained in more detail at the 2007 inquiry (IR 3.75-80). In summary, the NG numerical analysis has not been challenged. Professor Sibson has sought to suggest that certain matters affecting the uncertainty of one or two elements of the risk analysis (NG6.4) have not been quantified statistically. And he is correct on that point. A statistical analysis has not been carried out, but the reason for that has been given; that like the HSE and other regulatory bodies in Europe, NG has applied a judgemental approach, the cautious best estimate approach which builds in conservatism to deal with that statistical issue or that area of uncertainty. The HSE is satisfied with this approach, as it is one that it also adopts.
- 3.94. Dr Furness was in similar territory and the HSE has said that it has spent a considerable amount of time dealing with his queries (NG26). This is an issue as to whether his approach to purely numerical analysis should be preferred to the safety risk judgement of the statutory body. NG says that there is no reason to prefer the views that he proffers and the advice given by the HSE should be followed and accepted.
- 3.95. With regard to security, NG has endeavoured to provide as much information as it could before the Inquiry, and it held briefings for CAPRI outside the Inquiry, as the Inspector advised. It followed the same procedure at the Corse Inquiry and the approach NG took was endorsed by the Inspectors specifically, and also by the SoSs. (NG11.6.34). The matter was left that there was no basis for refusal of planning permission so long as NG were to follow the recommendations of the Centre for the Protection of National Infrastructure (CPNI) in the way the PRI was built. The sort of site specific design issues that CPNI might raise at the detailed stage would not have land use planning implications.

#### **(viii) Conditions**

- 3.96. Planning conditions have been agreed with the Council and are set out in NG53. The question of the reduction of the height of the site (or the base of the buildings) is a matter that can be addressed by the Inspector, as he thinks fit, under the Wheatcroft principle.

#### **(ix) Section 106 Obligation**

- 3.97. Two individual signed copies of the Section 106 Obligation have been submitted to the Inquiry (NG35). The Obligation covers landscaping and the Landscape Management Plan, as well as re-instatement of the Tirley AGI site.
- 3.98. There is no justification for the Section 106 Obligation to cover adoption of diversion of the Newhall Brook at Chaceley as that Parish Council requests because a SUDS for the facility is to be provided, ensured by a planning condition (NG12 pg77).

### **(x) Other material considerations**

- 3.99. These have been covered mainly by Mr Powell (NG11.6). NG responded to Mr Hill in NG14 and NG49, but much of the debate with him has concerned a misunderstanding as to whether the South Wales offtakes were known about before. But clearly these were known about at the Corse Inquiry.
- 3.100. Flooding issues were raised by Tirley Parish Council and Mr Hill, amongst others, who feared that during flood conditions most roads would be blocked thereby preventing emergency vehicles accessing the site. The likelihood of an incident at the PRI that requires the attendance of NG personnel or the emergency services is very low and the likelihood of that coinciding with a period of flooding is extremely low indeed. However, NG has its own helicopters and, if need be, can draw on the resources of the emergency services and the military.
- 3.101. The ES and ESA (CD53 and CD51) considered potentially significant impacts relating to archaeology, ecology, flood risk, noise and air quality and have demonstrated that the environment and sensitive receptors would be unaffected or that these can be protected by appropriate planning conditions.

## **4. THE CASE FOR THE CAMPAIGN AGAINST THE PRESSURE REDUCTION INSTALLATION (CAPRI)**

**The material points are:**

### **Introduction**

- 4.1. CAPRI is a group of residents local to the area within which NG propose to construct the PRI, which is the subject of this appeal. CAPRI objects to this proposed development. The proposal has engendered considerable public interest and concern over a number of years. CAPRI was represented at the 2007 public inquiry and has followed the subsequent developments closely. It is now over 3 since the last inquiry and over 2½ years since the SoSs dismissed NG's appeal. These timescales are themselves anathema to any perceived urgent national need. NG's actions in the meantime have not been consistent with any such need. The reason is that any perceived need in 2007 has been off-set by subsequent developments such that the current need, not for the pipeline, but merely for the difference between the capacity of the currently operational pipeline and its potentially greater capacity that would be enabled by the construction of the proposed PRI, is not evident.
- 4.2. Not only has the need for the proposed PRI not been the subject of any current national policy proposal (which would be expected for a truly urgently needed project of national importance), but up-to-date and rigorous stress testing by DECC suggests adequate resilience of the gas supply system without it. Thus the need case is substantially weaker than it was in 2007. Further the new site selection process undertaken pursuant to the requirements of the 2007 inquiry is flawed and should not

be relied upon to demonstrate that there is no more suitable site for the accommodation of a PRI should a need be proven.

4.3. Furthermore the difficulties of the assimilation of this industrial PRI in the local sensitive countryside have not reduced and the planting proposals are subject to adverse climatic and soil conditions that make reliance upon the alleged success of the landscaping proposals difficult. NG's track record on landscaping is not good, but the problem is not essentially one of the implementation of the Landscape Management Plan, but of the inherently likely failure rate and its impact upon the success of the perceived screening and the timescales involved.

4.4. Thus CAPRI's case will be presented under the following headings:

Need for the proposed development;

Site selection process for alternative sites;

Landscape and visual intrusion;

Conflict with planning policy; and,

Security.

#### **Need for the proposed development**

4.5. CAPRI does not accept that there is now in 2010 either a national or an urgent need for the PRI proposal or that the National Transmission System (NTS) is inadequate. There is now more than sufficient import capacity for LNG. Neither is there any need in terms of NG's statutory or Licence requirements, nor any operational necessity to construct the PRI.

4.6. CAPRI does not accept that projected demand and supply estimates justify the development and challenges assertions of inadequate capacity and infrastructure.

4.7. It is important to recognise that need issues have moved on since the matters that informed the 2007 Inspectors' Report and SoSs' Decision Letter and CAPRI has examined the current position through cross-examination and reference to up-to-date Government documents and demand/supply forecasts.

4.8. At the outset it is important to distinguish between the commercial interests of the Milford Haven ('MH') operators and the national interests of the UK: they are not necessarily the same thing. NG is required to provide capacity if asked to do so by Shippers, subject to the 'efficient and economical' test (s.9, Gas Act 1986). It is required to operate that capacity in an 'efficient and economical' manner; but where there is a satisfactory resilience of capacity, simply adding to it at the behest of the Shippers could make the system less economic and less efficient. As Mr Stonehewer (AKS) accepted in XX (1:77.24), it would be futile to provide capacity that was not needed.

*Annual Supply Overcapacity*

- 4.9. The relevant figures would seem to be (AKS XX 1:76 onwards): total annual gas demand: 100 bcmy as shown on NG3.2 (AKS02) and described by Mr Stonehewer as “fairly constant” (para3.9), but estimated by DECC to fall to 65 bcmy in 2020 as the Government’s lower carbon targets are met (see C13/NG15 Chart 5.3). Increased efficiency, higher prices and the recession are ensuring that this reduction is being brought about, and renewable energy and new nuclear power are envisaged to sustain this to and beyond 2020. The Coalition Government has recently re-iterated its commitment to even more demanding targets for carbon reduction.
- 4.10. The annual LNG import demand in 2009 is 12 bcmy rising by 2019 to 26 bcmy. The MH potential pipeline capacity is 88 Mcmd (NG2. 6.4) or 32.2 bcmy, i.e. significantly more than the annual total LNG demand (12 bcmy) and, in addition to this, there is very significant additional import capacity at Isle of Grain (20.5 bcmy), Gasport at Teeside (4 bcmy) etc amounting to considerable further capacity. Thus there is significant over-capacity on an annual basis which would help not only to contribute to the winter peak day 1 in 20 year demand, but also to provide capacity in the event of peak day disruption.
- 4.11. The material issue of need is the 18 Mcmd in 2010 (AKS XX 1:29.3). The potential existing restricted annual input capacity to the MH pipeline (i.e. without the 20% addition to full capacity) would be 70 Mcmd, which is 25.55 bcmy i.e. 25% of total current overall gas demand. But the actual annual supply of the MH pipeline in 2010 is broadly between 10 to 20% (i.e. 30 to 60 Mcmd gas send out - see C37 for 2010 figures). This demonstrates substantial reserve capacity to help meet unforeseen failures, as in fact happened in winter 2010, when the MH facilities helped to offset the failure of the Norwegian supply during a severe winter.
- 4.12. As the Energy Statement of Need (16th May 2006) (CD29) made clear, at para18, new import projects could increase import capacity by 100 bcmy by 2010 i.e. equivalent to the current total demand for gas. Moreover domestic UKCS production will still be significant in 2020 (i.e. 20% or 34 bcmy: see AKS02). The 2007 Energy White Paper (CD30) promoted the MH terminals in the interests of diversity, but they are now already in danger of providing a disproportionate amount leading to the problem of over-dependence (see C12/NG16.1.20, Gas Security of Supply) with a potential full capacity contribution of nearly 33% (i.e. 32.12 bcmy).

*Falling Annual/Rising Peak Demand Balance*

- 4.13. DECC’s most recent Government projections (C12/NG16, p1.7, April 2010, Gas Security of Supply, DECC) show that UK annual gas demand will fall through to 2020. Furthermore there will be a “considerable surplus of import capacity in the UK” (C14/NG17.4.1, TYS 2009 and also see 4.6.2 re the global surplus). NG accepts that “import capacity far exceeds import requirements” (NG19: Consultation Document - Development of Energy Scenarios (TBE 2010), para3.3). See also the import requirement v de-

rated import capacity chart at Fig 6, pg17.

- 4.14. The NG seminar slide "Awash with gas?" (C32/NG30) is also evidence of this perception. The information on the Grain facility (pg2), and the peak winter 07/08 day (419 Mcmd) and how it was met (pg3), serve to reinforce the robustness of the historic position but, of course, the forecasts are now well out of date (the document only deals with the position at January 2008).
- 4.15. But we do now have independent and authoritative up-to-date reliable government-endorsed figures. These are set out in the 'policy statement' from DECC entitled Gas Security of Supply and dated April 2010 (C12/NG16). For the impartial definitive position for the purposes of this Inquiry there is no need to look further. Some references (AKS XX, 1:105 onwards) are:
- (i) E2/3/4 – Government commitment to decarbonisation – a low carbon system reducing dependence on fossil fuels – but gas still has a central role particularly in wind intermittency;
  - (ii) E7 - ample sources of gas reserves creating scale and diversity;
  - (iii) E11 – "Existing mechanisms are working well";
  - (iv) E12 – our infrastructure is now capable of importing around 125% of annual gross demand – "*this allows the UK to ... increase gas flow in response to high demand*"; storage capacity has been increased over the last decade by around 25% (to 4.3 bcm) – "*this enables the UK to store more gas, which can be used to meet peak demand*".
  - (v) E13 – retail gas prices have tended to be the lowest in the EU15;
  - (vi) E16 – 22 commercial gas storage projects are planned, which could quadruple GB's gas storage capacity by around 2020;
  - (vii) E17 – the UK's gas market has been tested by extreme circumstances this winter, prolonged cold spells led to *unprecedented levels of demand at the same time as a major external supplier in Norway experienced technical difficulties. Nonetheless, supplies continued to meet demand and the system demonstrated its resilience*;
  - (viii) E19 – heading "*Risks to gas security are very low up to 2020 and beyond*" – "High annual demand projections can be met up to 2020 and beyond, by existing import capacity and projected supply from indigenous resources. 2020 peak demand can also be met by capacity that exists or is under construction. After 2020, planned infrastructure would provide sufficient capacity to supply the highest peak demand scenarios, even if only a minority of the planned projects succeeded in coming to market";
  - (ix) E20 – the Government tests the resilience of the system with periodic risk assessments – the most recent assessment tested a number of scenarios. This assessment concluded that the UK gas system is highly resilient;

- (x) E21 – DECC’s analysis goes further, by considering the probability of risk events occurring; it finds that the probability is very low, and that our gas market is resilient.
- 4.16. These statements demonstrate DECC policy that both annual and peak demands can be met; that the system has been stress tested and has been found to be highly resilient.
- 4.17. There is further detail at para2.21 re import capacity; para2.31 re 1 in 20 year peak day demand; and paras3.5 to 3.9 re the experience of the winter 2009/10. After the “coldest winter” since 1978/79, it states that improvements over the past few years have “increased the resilience of the system substantially. The UK’s security of supply position has been significantly more favourable in 2009/10 than it was in 2005/6, despite very difficult circumstances”. Demand for gas surpassed the previous record, peaking at 465 Mcmd, coinciding with the Norwegian disruptions, but with the Gas Balancing Alerts (GBAs), which provided the incentive for additional supplies to come forward and for gas demand to fall, the tightness was short-lived (4-8 January 2010 – lifted each day).
- 4.18. If that is the justification for the PRI, those 4 days in a 1 in 30 year winter would not justify the construction of this PRI at this location, with its effect on the landscape and the countryside here.
- 4.19. These factors all informed the Government’s view that the system is highly resilient even at the exceptionally high winter peak. The long term assessment is that “there is ample capacity within the system to supply our gas needs up to 2020 and beyond” (para4.3); that “potential peak deliverability from capacity currently exceeds estimated peak demand by around 40%” and that “analysis by NG in consultation with DECC shows that even if we were to lose the largest infrastructure facilities, there would still be enough capacity to meet peak demand” (para4.4). In further sensitivity tests it was concluded that “capacity is still expected to exceed even the highest peak demand scenario until 2024 and beyond” (para4.7).
- 4.20. Under the heading ‘Assessing the resilience of the system’, the results of the stress tests are set out at para4.8. “Although these scenarios are extreme, and highly unlikely to arise, the analysis suggested that the gas market is robust to them ... None of these scenarios would result in shortages of gas that would necessitate involuntary interruptions to industrial consumers”. It is repeated that “the UK gas market is highly resilient and will continue to remain so for the foreseeable future” (para5.1) and this is in the context of meeting the highest winter peak demand as well as annual demand (all scenarios include ‘severe winter’ – Table 4c).
- 4.21. The Government’s (DECC’s) conclusion is that “the UK has a robust and resilient gas market which functions well under stress. Analysis of evidence concludes that it will remain so for the foreseeable future” (para6.2).

- 4.22. The system is designed for a 1 in 20 winter day demand which for winter 2009/10 was 510 Mcmd (NG2. 7.10), but that worst winter for over 30 years gave rise to a record peak demand day of only 465 Mcmd. While the design capacity may rise to 530 Mcmd by 2020 (NG2.3.15), and peak demand may rise through the use of CCGT power stations to compensate for wind intermittency, the fact remains that the up-to-date (April 2010) DECC Statement, has clearly concluded that the UK system is robust and highly resilient (C12/NG16). Moreover there is no indication that capacity that has never been available (e.g. the 18 Mcmd potential of the MH pipeline has been included in the figures (1:120.3) – Mr Stonehewer did not draw attention to any such reference).
- 4.23. The DECC conclusions are clear, definitive, independent and up to date. They demonstrate that there is no need, let alone an urgent need, for the proposed PRI. The appeal project is not identified in any current Government policy as either needed or contributing to an urgent national need. NG ( 1:127.4) was unable to point to any such national Government policy statement. Furthermore Mr Stonehewer described the PRI as “critical” to the delivery of gas supply in the UK (NG2 .4.14), but failed to support this in XX when asked to justify it: he explained that this merely meant that “its part of the infrastructure required to allow the MH terminals to operate at full capacity” (1:76.22). Furthermore, there is no DECC or NG policy document that identifies a national need to provide the full capacity on the MH pipeline and Mr Stonehewer was unable to identify one (1:126.15 to 1:128.12; and 1:120.12).
- 4.24. Moreover it is singularly notable that, for the purposes of this Inquiry, NG did not draw attention to the most up to date DECC ‘policy statement’ – Gas Security of Supply, April 2010 - and it was left to CAPRI to produce this (C12/NG16), together with extracts from other more recent policy documents. Although the full versions now bear NG numbers, they were not introduced by NG to the Inquiry and not referred to in NG’s need proof (NG2).
- 4.25. Indeed NG primarily relied upon, and frequently recited, the 2007 inquiry findings. Of course this is insufficient, not only because need is peculiarly a function of the present, but also because the 2007 need that was identified was inextricably bound up with the whole pipeline project, which was then being proposed as it had not been constructed. Mr Stonehewer accepted this in XX (at 1:95).

### *2007 Inquiry*

- 4.26. The SoSs found that “there is an important national need (IR 8.24), and urgency (IR 8.113), to transport LNG from the LNG terminals at MH to England (IR 8.44). The IR conclusions were (at 8.24) that “it is clear that there is an important national need to transport LNG from MH to England and (at para8.44) that “there is an important national need to transport LNG from Milford Haven to England” and the subsequent conclusions followed on from that. The PRI was treated as part of the overall pipeline project (1:96.3) and not as simply the extra 18 Mcmd capacity. As a

result, although the appeal proposal was merely for a PRI, the conclusions on need were plainly influenced by the overall pipeline project.

- 4.27. It was a reasonable finding that the pipeline to carry gas from MH to England carried an urgent national need, but to suggest that the PRI was equally important is fanciful. There was and is no urgent national need, for a PRI alone, considered separately from the pipeline ( 1:95.8). Furthermore to suggest that there is now an urgent and national need for a PRI is not borne out in the latest DECC policy statement (C12/NG 16) and is belied by the singular lack of urgency in pursuing the proposal (it would be a further 6 years from the 2007 inquiry to the earliest potential PRI completion date). Furthermore any project properly described as being the subject of an urgent national need, and well behind schedule, would be expected to be referred to in the DECC policy statement along with other planned infrastructure. NG could not point to any such reference (1:127.4).

*Statutory/licensing/contractual obligations*

- 4.28. In the same way as undue reliance has been placed on the 2007 inquiry observations on need, so too the importance of the contractual/statutory/licensing obligations has been overstated. Apart from Section 9 of the Gas Act 1986, none of the primary source documents has been produced, and it became apparent (AKS XX 1:97-98) that there is no absolute legally enforceable contractual or licensing obligation to up rate the pipeline to full capacity. Furthermore there has been no such claim, or complaint, directed at NG over the last few years or at all (1:98.8). Indeed NG (AKS XX 1:99.8) agreed not only that if there were no need for the PRI then it would not be consistent with the Section 9 duty to provide one (being neither 'efficient' nor 'economical'), but also that the need for the extra 18 Mcmd capacity had to be shown to be material (1:96.12).
- 4.29. The ultimate remedy it would seem is simply that the unrequired capacity is reimbursed at the auction price (a small and neutral price to pay for something that was not necessary) (AKS XX 1:98.20 – 1:187.12 & 1:188.3). This may or may not result in a miniscule increase in prices, but the point is that NG has mistakenly contracted for something they did not have and which is not needed, and is now seeking to take the planning process for granted. In these circumstances there would seem to be little or no actual loss at all, over and above the true or real position.
- 4.30. It would be odd if the situation were otherwise as (i) the auction could not presuppose the grant of planning permission – although the approach of NG to this appeal has been close to presupposing such an overriding need based upon the auction process, and (ii) NG was seemingly contracting to deliver something that it was not in its power to deliver, so on any view there must be safeguarding terms to protect it from a reasonable failure to deliver. Anyway the operators have not taken any action against NG for breach of duty, obligation, licence or contract (AKS XX 1:98.13). Accordingly there is no reason why the planning system should feel compelled by these theoretical matters to permit an otherwise



inappropriate proposal.

- 4.31. In any event the section 9 duty absolves NG from any requirement to carry out inefficient and uneconomical works.
- 4.32. Accordingly these matters should not serve to protect an unnecessary proposal. The full potential capacity of 88 Mcmd/950GWhd has never been delivered or deliverable and is not built into the stress testing that has determined that the peak position is robust and highly resilient. Indeed the statement from Qatargas (C36) demonstrates the market view that the British LNG market is saturated and oversupplied.
- 4.33. Furthermore the peak winter 1in 20 supply is not only robust and highly resilient according to DECC (C12/NG16), but this is reinforced in the DECC/Ofgem report – Energy Markets Outlook (EMO): December 2009 (C13/NG15). In relation to import capacity, this notes (at p5.6.4) that total import capacity now has a deliverability sufficient to meet demand on a typical winter's day alone – even in the absence of gas supplies from storage and UKCS. Chart 5.9 (pg 66) shows current and potential deliverability and Chart 5.10 (pg 67) shows peak daily winter gas demand and supply capacity. P5.6.6 notes the requirement for a buffer of spare capacity and para5.6.7 concludes:
- “Analysis by NG, in consultation with DECC, ... suggests that in the event of disruption of the largest gas supply infrastructure, the remaining infrastructure has the capacity to deliver the necessary volume of gas to satisfy total gas demand ... during a period of 60 days of exceptionally high gas demand in a 1 in 20 winter”.*
- 4.34. This was in the context of Ofgem's Project Discovery which assesses whether current market arrangements are capable of delivering secure and sustainable energy supplies over the next 10-15 years: see para2.1.4). These conclusions are entirely consistent with (C12/NG16) Gas Security of Supply. But they are also both more authoritative and independent than the untested NG view set out in NG47 (section 4) which purported to deal with storage projects. In this context it is also worth referring to section 5.7 on storage in DECC/Ofgem: EMO, Dec 2009 (C13/NG15).
- 4.35. It is of interest that Ofgem is a signatory to this document as it steadfastly refuses to comment on the merits of individual planning cases. Indeed in XX Mr Stonehewer repeated that there was no point in even asking Ofgem for a view and that NG had not done so and would not do so as part of normal practice (see 1:78.14 & 1:132.14 & 1:186.7). But a few days later NG put in a letter from Ofgem (NG34) dated on the opening day of this Inquiry that it solicited (but without the soliciting letter). However, on a close reading this does not express a view on the merits of the proposal.
- 4.36. The need case is not made out. There is no national or urgent national need. None is identified in any statement of Government policy and the latest figures and policy statement published by DECC demonstrate by reference to the harsh 2009/10 winter that the supply system remains robust and highly resilient. The four daily gas alerts did their job and the

worst winter for 30 years passed without a problem even though there was a concurrent major supply failure from Norway. Further it would be absurd to suggest that the proposed PRI should be built just to meet an exceptional worst case on just four days. The harmful effects on the countryside would not be justified by such an insubstantial need. Moreover the MH send out figures (C37) and the evidence of summer peak flows, which the Inspector drew attention to, (NG46.1.3.6) would suggest otherwise.

- 4.37. Overall, the recent explicit need assessments carried out by DECC, namely EMO, Dec 2009, (C13/NG15) and particularly Gas Security of Supply, April 2010 (C12/NG16) belie any current or foreseeable national need (let alone urgent) case for the PRI proposal.

#### **Site selection process and alternative sites**

- 4.38. CAPRI does not accept that the site selection process is sufficiently robust to justify the selection of the appeal site through that process. It has not been satisfactorily demonstrated through that process that the appeal site is the best location or there is not another site that would have significant advantages, particularly in environmental terms, over the appeal site. Moreover, the balance between environmental harm, commercial cost, engineering factors and other matters is essentially a subjective one and one that NG has used to justify its original plans. This is a matter that is also inter-related with the issue of need to the extent that the significant harm inherent in a PRI proposal may be justified only by a strong and urgent need, if not a nationally urgent need.
- 4.39. Other unconstrained sites plainly exist and some would be potentially better alternatives in environmental terms, but then only on the assumption that the strength of the current need justifies such a location. The selection of Representative Locations is a flawed, unexplained and undocumented process that essentially invalidates the exercise. For example, the choice of the location of NG Site 16 is odd when the site that has been assessed is plainly not a good one and there is a much superior site (as advocated by CPRE) within Candidate Area 16. But this has not been formally assessed through the site selection process. Given that even NG Site 16 was assessed to be potentially superior in environmental terms to the appeal site, the optimum CPRE Site 16 might well have shifted the whole balance had it been part of the equation.
- 4.40. CAPRI views this as an obvious example of where the methodology of the site selection process was flawed rendering its conclusions unjustified and unreliable. As the assessment of Site 16 is one obvious example of this failing, it cannot be concluded that there are not other more favourable sites that have been allowed to escape closer examination. As Mr Reid stated more than once (3:46), it is not the responsibility of other parties to select the sites for examination. It is for NG to demonstrate to the SoSs that the exercise they have carried out in pursuance of the requirement of the 2007 inquiry process is thorough and robust.

- 4.41. The first point to make is that the Site Selection Report was not an independent report and neither was it validated by independent consultants. It was an in-house NG report. This is surprising given the history of the failed 2007 appeal and the clear criticism of the 2007 site selection and landscaping proposals. Yet the same people, whose judgement had been impugned by the SoSs and Inspectors, were asked to carry out and supervise the selection of the new appeal site. This is the root of much local scepticism about this process.
- 4.42. Mr Powell for NG summarised the 2007 findings in this way:
- "However, there were two "fundamental problems with the development of the site, namely its location and size" (IR 8.54) reflected also in the conclusion that the proposed 3m high bund would have a negligible effect; the proposed bunds would not be the "sinuous and flowing mounds of a more natural landform" to be expected in such a location; the flues would remain in view as an "alien, intrusive and harmful industrial feature in the rural landscape" (IR 8.58); and the overall quality of the landscaping proposed would be poor and the size of the appeal site was "wholly inadequate" to accommodate the proposal so as to respect the local landscape character (IR 8.59). The quality of landscaping in particular, therefore, fell far short of what should be expected from this statutory undertaker for this PRI development in a sensitive rural landscape."*  
(NG11.3.9)
- 4.43. These were serious criticisms and the first scepticism is that those who got it so wrong were given the job of further site selection without any independent scrutiny.
- 4.44. The site selection process is set out in the Site Selection Report (SSR) (CD52). Stage 1 (SSR Fig 4) and Stage 2 (SSR Fig5) led to a composite map of unconstrained areas (SSR Fig 6) and these were taken on to Stage 3. The Site Selection Report (SSR) deals with this Stage 3 process at para 1.7 (pg5). This concerned the evaluation of the areas not excluded by Stages 1 and 2. These areas were designated with numbers 1 to 23 as shown on Figure 7, and called 'Candidate Areas'.
- 4.45. These Candidate Areas were then compared in a rather odd manner: "Comparison of the Candidate Areas was undertaken by nominating 'Representative Locations' within the Candidate Areas and evaluation of the likely environmental, engineering /operational and cost implications of potentially siting a PRI in each of the Representative Locations" (CD52.1.7). Thus the identification of the criteria for the choice of the Representative Locations was very important as was the detail of the judgments made.
- 4.46. Para1.7 states that "It is important to stress that these areas were established with a view to enable a balanced evaluation of the comparative merits of the Candidate Areas to be completed". However there was no documented evaluation at all and so it is impossible to justify the integrity of this important 'balanced judgment' - see Mr Reid's evasive answers to

this question beginning at 3:13.24 and over subsequent pages; the point was put again at 3:17.3; the answer was finally given at 3:17.24 and 3:18.1, that this assessment has not been provided as to the subjective judgments made (3:18.4).

- 4.47. Moreover the nature of the evaluation is odd indeed: as para1.7 states quite clearly of the Representative Locations, "They do not constitute a pool of potential optimum PRI sites". Thus obviously the idea was not to identify a pool of the best sites for comparison purposes through the identification of the Representative Locations. NG was not looking for the best sites: see 3:10.25 – "we weren't looking for the optimum site in any one area"; 3:12.2 - the Representative Locations "do not constitute a pool of potential optimum PRI sites"; 3:12.22 – "the remit within the job is not to find the optimal environmental site". Indeed it seems that the Representative Locations exercise was not a site selection exercise at all: "it represented locations that it was felt had merit. We weren't choosing the site at the time. It was a means of comparing locations" (3:20.16).
- 4.48. How then were the best sites identified? They were not ever done so. That was not the nature of the exercise (see references in para 4.47 above). This is odd since one would have thought that the objective, following the 2007 decision, was to find the best of the potential alternative locations for comparison purposes so that the optimum site could be identified and taken forward. However this exercise was simply not carried out. This is the second scepticism. CD52 .1.7 simply states that "the aim was to ensure that the chosen location (the Representative Locations) would represent an appropriate balance between local environmental sensitivities such as existing planting and visibility of the area and accessibility". Whatever this means, and it is not clear what it does mean (see 3:21), it is quite apparent that it was not an exercise to find the best or even any site (see 3:20.16 – "we weren't choosing the site at the time".).
- 4.49. In order to find the best site for the PRI, or at least a range of potential sites, in accordance with the 2007 decision, it would have been necessary to carry out some further assessment to identify the potential optimum PRI sites. This was never done. Indeed the objective was not to find the best or optimum sites (CD52 .1.7 and 3:12.22). It follows therefore that there was not much merit in assessing the Representative Locations against each other if that, as it was, was the extent of the site selection exercise. But the Representative Locations were assessed against each other in a manner that led directly to the ostensible preference for the appeal site. The comparison of the Representative Locations is documented at CD52 Appendix D and Table D1.
- 4.50. The problem with this is that inferior sites within the Candidate Areas could be chosen for comparison purposes. For example, NG Site 16 was selected and cut into the rising ground rather than sensitively locating a site in the bowl at the bottom of the fold (as advocated by CPRE) which would allow the site to be more easily hidden from view at the bottom of the bowl and between established woodland. The merits of this will have been observed

on the site visit (The CPRE Site 16 was discussed with Mr Reid (at 3:18 – 3:20) as the field to the north-west of the NG site 16 as shown on NG9, Fig 23 by reference to the ridge along the red line of the NG Site 16 north-western boundary (see 3:19.14) – the transcript references to ‘west’ of the watercourse should of course read ‘east’ of the watercourse and west of the track as shown on NG9 Figure 23).

- 4.51. So NG was not choosing a site through the Representative Locations process (3:20.16); there was no focusing on the best sites (3:21); there were no documented judgments or assessments of the identification of the Representative Locations (3:22.25); and no detailed explanations were provided (3:23.5). Furthermore there was no documented evidence assessing the relative merits of various locations according to ‘the three key parameters’, namely environmental, engineering and accessibility (3:23-25). This illustrates the serious inadequacy of the SSR methodology.
- 4.52. Nevertheless, the SSR ‘findings’ in favour of Sites 2 and 3 were made known and it was then decided that six of the previously identified sites (Nos 4.5.6.7 &16) “should be further tested along with Candidate Areas 2 and 3” (CD52. 1.7.4).
- 4.53. But NG had reached their conclusions in early August 2008 (3:27.7). What neither the SSR nor NG’s proofs of evidence mention is that, and this is the third scepticism, NG had already made its decision and published it before the 18th August 2008 in ‘Fact Sheet 7’ (C16). This made plain that SSR Stage 3 “had narrowed the number of potential sites for the new PRI to two” (inside left page, bottom right), namely Sites 2 and 3. That is, the Stage 3 process had been completed and NG had concluded that there were only the two potential sites. Not only that, but as at 18th August 2008 this document was circulated to CAPRI and others, stating that the forthcoming public consultations were being carried out “to establish whether the community has a preference for either site” (inside right page, middle first column). Thus NG’s intention was to offer a choice between the two favoured sites (Sites 2 & 3) and no more. There is no mention of any other site. The obvious conclusion is that NG had completed its work and done enough to establish its view of the merits of its favoured sites and that nothing else needed to be done.
- 4.54. Nevertheless the SSR omits this inconvenient truth and seamlessly suggests that the Stage 3 findings were taken forward for further evaluation as though part of a pre-planned and continuous process. (CD52 .1.7.3). In stating that “it was recommended that these two candidate areas should be taken forward to public consultation prior to further evaluation”, NG was unable to produce any such documented recommendation or to explain its inconsistency with Fact Sheet 7.
- 4.55. The rejection of all the sites bar 2 and 3 was made without reasons, or any documented comparative reasoned analysis. Nevertheless the SSR ‘findings’ in favour of Sites 2 and 3 were made known and it was then decided that six of the previously identified sites (Nos 4.5.6.7 &16) “should be further tested along with Candidate Areas 2 and 3” (CD52 .1.7.4).

Moreover, and this is the fourth scepticism, the proposed re-evaluation was to be carried out by the same people and on the same sites, according to similar criteria, as the previous exercise – and so it was not an open-minded process, particularly in the light of Fact Sheet 7.

- 4.56. Further, Site 16 had already been rejected in the Stage 3 process but when subsequently dismissed was said to be ‘hard to call’, which suggests that (a) the first unexplained evaluation was wrong, and (b) that had the better site within Area 16 (i.e. in the CPRE bowl rather than cut into the side of the hill) been assessed then a different decision may have been made. But at no stage did the SSR process revisit the Candidate Areas to seek to identify a pool of the best or optimum locations – this exercise was completely absent.
- 4.57. In any event, a “final Stage 3 evaluation” was carried out. This odd description also suggests that this was not pre-planned. But we see, from CD52.1.7.4 (last para) that SSR chapter 2 (pg14) describes the rest of the process. Oddly two of the six sites were immediately dismissed as having “significant detriment to the landscape character and visual context of the local area”. As this was a ‘final stage’ evaluation of sites previously considered it is odd that they should have been included at all for serious further consideration. But at the very least it suggests that even NG Site 16 was not perceived to have any such ‘significant’ landscape and visual detriment. Indeed at CD52.2.8.1 the virtues of the site are expressed – contained, integrated, screened, away from property etc. and para2.8.3 – no views, mitigated, but it is disputed that the NG Site 16 was situated in the ‘least visually prominent part of the Candidate Area’ (but this is a matter for the Inspector and the Site Visit).
- 4.58. Nonetheless Site 16 was accorded lesser impacts than other sites including the appeal site (CD52 pg31). But the final consideration of the ‘Recommended Site’ (CD52.2.9.4) was that, despite finding lesser site specific impacts for NG Site 16, this was outweighed by other factors (principally cost and AGI considerations) in a purely subjective view that was not documented at the time or the subject of any independent or external review.
- 4.59. The same people who had originally recommended Site 2 now re-recommended Site 2, and not because it was inherently a better site in terms of its intrinsic landscape character and other qualities, but because of other considerations. This is a conclusion (on the site specific merits) that Mr Reid has sought to revisit in his evidence now to suggest parity of immediate impact. Furthermore, throughout there has been no technical objection to Site 16 (1:134.6)
- 4.60. Those views were all based upon the Representative Locations and not comparison of the best sites. CD52.1.7 states that the Representative Locations “do not constitute a pool of potential optimum PRI sites”. Mr Reid stated in XX (3:12.22) that their remit was not to find the optimum or best sites. Certainly at no stage in the subsequent SSR process was the Candidate Areas or Representative Locations revisited with a view to identifying the best or optimum sites. This is a serious flaw. As Mr Reid

repeated (3:46.3 & 8) it is not for the objectors or other parties to find the sites, but it is for NG to carry out the exercise to the satisfaction of the Inspector and SoSs. The SSR should be rejected on this basis.

- 4.61. Finding a pool of the best or optimum sites for comparison with the appeal site is an important preliminary stage in the site selection process. Placing a major industrial installation in the countryside is bound to have a significantly detrimental impact upon the local landscape, so it is important that a proper assessment of alternative sites is carried out in order to ascertain (a) whether those effects can be satisfactorily accommodated at all (as they were not on the 2007 appeal site), (b) especially when balanced against the strength of any need arguments, and (c) whether there are available alternative sites where those effects might be significantly reduced or accommodated in a more acceptable manner.
- 4.62. It is CAPRI's submission that this process has not been properly carried out, and that a balanced judgment cannot be made on the submitted material.

### **Landscape and Visual Intrusion**

- 4.63. CAPRI, through Mr Turner (C21 and 24 and 6:18 onwards) has given evidence of the sensitivity of the appeal site in landscape and visual terms together with the corresponding policy context. The proposed PRI would cause significant visual harm to the rural landscape on account of the industrial scale, character and incongruous appearance of the development. This harm would be aggravated by:
- the location of the appeal site;
  - the industrial nature and appearance of the development;
  - the proximity of many public viewpoints, including footpaths and the local highway network;
  - the adverse impact that industrial development will have on the attractions of the area to visitors;
  - the propensity of the development to create light pollution; and
  - the inability of the proposed landscaping and planting proposals to mitigate such harm, quickly and reliably, owing to the scale and nature of the proposed development and the physical characteristics of the surrounding area including local soils and the local climate. The landscaping proposals are intrinsically inadequate, relying as they do upon the introduction of alien landscape features in the extensive bunding (up to 5m). Furthermore the landscaping proposals are unsatisfactory and are unlikely to provide any effective ameliorating impact for many years. This impact is of itself sufficient to justify dismissal of the appeal.

### **Conflict with Planning Policy**

- 4.64. By virtue of the above matters CAPRI submits that there is a conflict with planning policies which seek to protect the character and appearance of

the countryside and its landscape and visual amenity. The industrial scale and character of the proposals would be particularly intrusive and damaging to the character and appearance of the rural area. The proposals are therefore contrary to the Development Plan for the area. The Council has led on these policy issues and CAPRI has not sought to duplicate these matters.

## **Security**

- 4.65. CAPRI, mindful of the Inspector's concerns, does not wish publicly to unnecessarily illustrate these concerns. To this end CAPRI refers to the submitted documents which encapsulate those concerns and perceived weaknesses, namely CAPRI's R6 statement (C1, pg4, para(e)); Carole Magloyden's written statement to the Inquiry dated 10th May 2010; Carole Magloyden's written and oral evidence to the Inquiry (6:27.20 onwards); and CAPRI's written questions to NG which are now attached to NG43. These written questions encapsulate CAPRI's concerns. NG43 provides little comfort that these site specific matters have been specifically addressed.
- 4.66. Furthermore it is unsatisfactory that CPNI should not be consulted on the details of the site specific proposal until after the grant of planning permission. Reliance upon a generic plan is no substitute for proper detailed consideration and there seems to be no good reason why this could not be done as part of the initial design process. It is conceivable that CPNI's detailed requirements may result in modifications to the scheme that would require planning permission and affect the site in such a way that they should be considered as part of the planning application process rather than after the planning decision has been taken in principle.
- 4.67. The SoSs and the Inspectors at the Corse inquiry in (DL 30 – and IR 8.102) added the proviso that NG undertake and implement security advice of the security agencies. Until the detailed site specific advice of those agencies is known, this requirement is inchoate. The SoSs Rule 6 (12) list of issues in relation to this appeal, at item (g), asks what security issues are raised by the proposed development, and how they have been dealt with. It does not seem to CAPRI, in answer to the latter part, that these matters have yet been satisfactorily addressed, dealt with or implemented.

## **Conclusion**

- 4.68. For the above reasons CAPRI invites the Inspector to recommend dismissal of the appeal and the SoSs to do so.



## 5. THE CASE FOR OTHER INTERESTED PERSONS

### The material points are:

- 5.1. **Ms R Henderson** (Doc 12) - Chair of the Tirley Parish Council believes there are three key issues raised by the application:
- Firstly – it is contrary to planning policies on the protection of the countryside (PPS7 and Local Plan policy LND4).
  - Secondly, the proposal poses a real and serious threat to the Health and Safety of local residents and is inaccessible at times of flooding. Three (B4211, A417 and A438) of the four primary access roads to the site are routinely closed during regular flooding, and the fourth adds 30 minutes to any emergency services response time. In 2007 the only other route, via the M50, was also inundated. Climate change suggests these flooding events will become even more frequent.
  - Thirdly, the proposed PRI is simply not necessary. The site has been chosen for the economic convenience of NG because of its proximity to the existing pipeline. There is no urgent national need for the installation. In addition, NG has a history of broken planning conditions and sites which are not landscaped, of which the Tirley AGI is itself an example.
- 5.2. **Dr R Furness** (Doc 13, 4:6-62 and 7:3 2-85) acts on behalf of Tirley Parish Council on technical issues. He is a chemical engineer and an expert in fluid flow and uncertainty analysis. He is primarily concerned about the need for the installation and safety issues.

### *Need*

- 5.3. The national need is the transmission of gas according to the contract. The national need does not say there should be a PRI. This is the NG need to reduce cost. The current National policy on the Environment is to reduce greenhouse gas emissions and reduce carbon footprints. A PRI does the opposite. What is the sense in wasting energy in the pressure reduction process at Tirley only to add energy back through re-compression 29km away at Wormington? There should be a full cost analysis for independent scrutiny.
- 5.4. It has been stated that any PRI must be located close to the Tirley AGI. But the hydraulic design of the pipe work to maximise operational effectiveness is poor and an explanation as to why the AGI would disappear in the current proposal, but be expanded in the Site 16 proposal, is needed. Calculations also showed a 48" connector to be more efficient from the inlet gas distribution stand point at the AGI inlet and that a 48" pipe allowed any PRI to be located at a far greater distance from the AGI.
- 5.5. The Wormington option has been ruled out without open discussion. The previous Inspectors accepted that there has to be a PRI in or close to the

Tirley AGI. This is wrong, but in fairness they were not given the full arguments (Doc 13.3). For instance, the NG quoted a maximum demand of 63tcmd through the PRI from South Wales occurs in the winter. In the summer, when the demand in Wales is less, the flow rate could be 73tcmd and that is the true maximum loading. Crossing an AONB is not an issue as this has been done several times already. A PRI would not be needed if the pressure let down installation was moved to Wormington. The only disadvantage is cost, but the benefits, such as safety and zero emissions, are many. A full assessment should be carried out.

### *Safety issues*

- 5.6. The NTS has grown in a haphazard manner and NG's operating experience of 94 bar DN1200 pipes is sparse. Dr Furness questions the extrapolation of predictions from smaller diameter pipelines to the higher pressure conditions at Tirley PRI. The general competence within NG in efficient hydraulic design pipe work system is also questioned, for example the 1993 Palaceknowle incident was caused by a design error. Third party consultants should be used.
- 5.7. Despite a long dialogue with HSE, satisfactory responses have not always been given (Doc 13.1 and Doc 13.2). In particular, questions regarding the uncertainty of the computer models and in the worst case fireball radius distance (204m), and in the predictions from smaller, lower pressure pipes to the conditions at the inlet to the PRI have not been fully answered. There is no data for a 48inch, 94 bar pipeline. Also, in terms of risk assessment, have all the components been considered? The weakest one is the control system. At Ghislenghein in Belgium, when a smaller pipeline was ruptured by a third party, people who were standing in the safe zone when the immediate accident area was evacuated were burned when the fireball erupted. Without an uncertainty range, emergency evacuation plans cannot be adequately completed. The 5 minute response from the Warwick Central Control to an emergency is too slow. Calculations show that the gas cloud by then could be several thousand tonnes. Work in the US showed that the block valves have to be operated in seconds. What is the worst credible incident here?
- 5.8. **Professor R Sibson** (Doc 14 and 4:63-88), a statistician, also acts for Tirley PC on safety. The safety issues most likely to be of concern to residents near the site are those the impact of which extends beyond the boundaries of the PRI itself. These are characterised by NG as extremely infrequent risks. The overall level of risk associated with an adverse event is composed of the likelihood and the impact. There are serious defects in some aspects of the likelihood (failure rate) calculations carried out by NG. This leads to the suspicion that equally serious defects may lie hidden in areas not accessible to external scrutiny and thus produce figures for individual and societal risks that are a factor of 10 worse than those calculated by NG, thereby approaching or exceeding unacceptable levels.
- 5.9. A number of weaknesses can be identified in the impact assessment. NG state in NG6.4 .7.3 that it has never experienced a catastrophic failure of filter, flow meter or valve body in the operating experience of the NTS and

that this equates to an estimated failure rate of less than  $3 \times 10^{-7}$  per year (1 in 3.3m years). However, this claim is based on the network always being the current size and it is clear from the NG response to queries that not only is the UK component of the inferred failure rate a small fraction of the total set of data used, which is largely based on experience in the US and Europe, but the number of item-years of operation have been assumed to be the same as in the UK. So the 2 failures (in the US) result in a failure rate of  $7 \times 10^{-8}$  per year. An arbitrary reduction factor of 10 has then been applied to the UK estimate. The use of properly quality assured data could have overcome these questionable practices.

- 5.10. Statistical analysis (Doc 14 3.12 and Appendix A) can be used to demonstrate that the approach NG has adopted has no foundation in proper statistical practice. A proper analysis reveals that if the item – years can be taken on trust then the European and US data do provide a good level of assurance that the valves are safe components, with a prudent bound for the failure rate of  $7 \times 10^{-7}$  per item – year. But the concern is that NG has reached its similar conclusion by an entirely meaningless process, showing that those who carried out the analysis do not understand what they are doing and casting doubt on those parts of the safety case not readily exposed to the public gaze.
- 5.11. Subsequent inquiries into major accidents commonly reveal that these were caused by disorderly failure events that cannot easily be built into a quantitative risk calculation. Often multiple failures involving human rather than technological factors play a major part. The Chernobyl disaster, Channel Tunnel fire and the Potters Bar and Paddington Rail crashes are examples.
- 5.12. It is not acceptable for an organisation not to address issues of this kind in a safety case simply because they are nearly impossible to quantify and hard to deal with even qualitatively. Procedures do exist to mitigate the risk that disorderly failure will occur. For example any safety case should be subject to a challenge by a team independent of those producing it. HSE should also have a responsibility here, so it is worrying that they have apparently not yet responded to the safety case for the Tirley PRI.
- 5.13. Outcomes such as serious injury and damage to property and the environment should also have been considered in the safety case, as well as loss of life. In addition, no consideration has been given to the adequacy of local resources with regard to medical care.
- 5.14. The assumption that the rate of escape will be  $2.5\text{ms}^{-1}$  is unrealistic because individuals, particularly the elderly and very young, may not respond in this way and there may be obstacles to prevent this rate of escape. A more acceptable conservative assumption would be that individuals would not move.
- 5.15. The road traffic levels along the B4211 and B4213 used in calculating societal risk (NG6.4.4.10) are generic figures and it would have been better to use actual figures as this is a bus route. Also the individual risk at the nearest property quoted in NG6.4.82 is reasonably small only

because the likelihood of high impact events is taken to be small, not because the impact is limited. That is, only orderly events are considered. The figures in the table in NG6.4.6.2.34 suggest that anywhere within about 1km radius of the PR1 is not a good place to be.

- 5.16. **Mr G Hill**, a mechanical engineer (Docs 9-11), also believes there is no proven need for the proposed PRI. NG's contracted obligation is to take a maximum send-out of 88 Mcmd from the MH facility for onward transportation to their customers, including the NG estimated local demand from South Wales of 11 Mcmd in summer and 29 Mcmd in winter (IR8.25) and only the residue will be available for onward transportation from Tirley to Wormington. The maximum one day send-out for MH has been approximately 63.4 Mcmd on 4 March 2010 and the average daily send-out for last winter was about 30 Mcmd. The gas consumption of new power stations to be commissioned at Pembroke and Newport (est 11 Mcmd) will add to the local demand; although it is now believed these supplies could be interrupted in order to divert that gas to fulfil obligations elsewhere on the NTS.
- 5.17. There has also been substantial amalgamation of gas import capability in other locations and it is no longer the case that 20% of the Nation's gas supply must necessarily come via Tirley. The most recent cold winter demonstrated that the NTS can satisfy the national demand without the need for the Tirley PRI. Moreover, future demand is scheduled to fall to ensure the net UK carbon account for the year 2050 is at least 80% lower than the 1990 baseline. Clearly gas will have to play its part in this. The application has not demonstrated a national need (see IR 2.54).
- 5.18. The PRI would be inappropriate in the proposed location. Firstly, the industrial style development would be out of character with and detrimental to the tranquil, undeveloped, rural nature of the area. Secondly, venting of natural gas to the atmosphere would cause a loud noise which would startle horses, which are regularly ridden in the area and might additionally result in a gas cloud that could be ignited by passing traffic.
- 5.19. There are only four practically available road crossing points of the River Severn. During the regular flooding events, access to the site in an emergency would not be possible on occasions. In particular the shortest route via Junction 2 of the M50, A417 and B4213 was impassable for an extended period during the floods in 2007.
- 5.20. There is no record of significant operating experience by NG pipelines at 94 barg pressure and no detailed engineering specification has been presented. No emergency or disaster plan has been made or presented for public scrutiny in respect of the proposed development. A blast wave to the north or east from an explosion on the site would not be contained and significant structural damage would be likely to occur. The site is in an isolated position and would be unmanned. The total reliance on telemetry to monitor the operations on site is of concern. It can suffer failures or be deliberately corrupted. The event at Chislenghien, Belgium on 30 July 2004 can largely be traced to the failure of remote operatives to fully

understand the implication of the situation that was developing. It is also difficult to imagine a 'softer' location in security terms for the PRI.

- 5.21. **Mrs C Mills** (Doc 16) lives in The Folly, about 400m to the east of the site. She firstly questions the site selection process as this would always favour sites 2 & 3 because they are closest to the end of the new pipeline at Tirley AGI. Permission should have been sought for a PRI when the pipeline was first planned as this would have most likely resulted in a more favourable site. Any additional costs of siting PRI elsewhere should thus be borne by NG, rather than taking the cheapest and easiest option.
- 5.22. NG had previously (C47) described this site as less favourable than the original site at Corse because there were more residential receptors. It is reasonable to expect site selection should be based in an area with the minimum of residential and other receptors in the vicinity and NG in Doc 16- Fact Sheet 7 pg 2 acknowledges that the new PRI could be up to 10km from Tirley AGI. The Folly overlooks the site from 12 windows and the intervening hedge is deciduous and has gaps and so offers minimum screening (Doc 16 - photographs A & B), contrary to NG's claims (NG8.5.7.3)
- 5.23. As well as conflicting with national and local planning policy on environmental issues, this appeal challenges the new government's approach of letting 'local' communities decide. Nor can NG claim that there is a greater need for the development. NG's Gas Transportation Ten Year Statement 2009 and Transporting Britain's Energy 2009 both state that there will be a fall in demand during the period 2008-2018.
- 5.24. Turning to risk, the occupants of The Folly will be at risk 24/7, even whilst sleeping in their beds. This cannot be compared with the risk of an active pursuit such as a road accident (NG4.1.72). Neither can NG claim, as it does, that it has an excellent safety record (NG41.91). At the 2007 Inquiry it was forced to admit that it had a regrettable safety record (Doc 16-day 5, p57, line 11 & Sebastian Head closing submission).
- 5.25. There is also concern about access to the site and the emergency procedures proposed by NG (NG4.1.82). Information supplied by Maritime Response Ltd (Doc 16) demonstrates that the 3 main access roads to the locality (B4213, A417 and A438) were all closed for 3+ days due to the flooding in July 2007 and the B4213 and A417 were again closed for the same reason in 2008. If any emergency arose during the flood it would be impossible to access the site to prevent a catastrophe.
- 5.26. **Ms C Magloyden** (Doc 17) is a local resident and security consultant. Her main concern is the failure of NG to engage with the local community on the subject of security. Such engagement with neighbours would be entirely in line with CPNI advice. A simple risk assessment would have highlighted issues to inform project feasibility, but NG's reticence on the subject and choice of location suggests this has not occurred.
- 5.27. The Tirley PRI would be subject to a number of threats, not least that of an attack by terrorists or other dissident groups, but also as a result of an

aircraft crash for instance. The PRI would be in a vulnerable rural position, far from the emergency services (25km) and much further still from the NG response team at Warwick. Power supply in the area is also unreliable. Most of the security measures would be reliant on NG's ability to mount effective monitoring and response from a distant location, but the residual risk would remain high and unacceptable due to its location and volatility and the limited effectiveness of any countermeasures.

- 5.28. The project should be urgently reviewed, to consider alternatives to reduce the risk, including choice of a new location remote from homes and public highways and improved access to emergency services, or a decision to continue to run the pipeline at its existing pressure.
- 5.29. **Mr P Awford** (Doc 19) is an elected member of Tewkesbury Borough Council and Gloucestershire County Council. Policies NHE1 of the GSP and LND4 of the TBLP both seek to protect open, unspoilt countryside. The proposal is for an industrial complex of a size and scale that would not fit into such a setting. Local opposition to this and the previous application has resulted in record numbers of objections with 1000 letters being received, and it has been rejected unanimously by the Planning Committee. It would be difficult to imagine a more powerful expression of local democratic feeling. The new Government is also pursuing a localism agenda and there is a drive towards a green initiative that should lead to a lessening of the need for gas.
- 5.30. The recent accident close to the site, when it took police 42 mins to arrive, demonstrates the response time for emergency services to any incident at the site may be lengthy. There is also concern about the noise that venting would have on the two equestrian facilities in the neighbourhood and on horse riding in general. Property blight is also a real and important issue to those who would be affected and who may wish to move away. This proposal is barely 400m from the similar proposal dismissed on appeal in 2007 and holds no more merit for permission than that one.
- 5.31. **Mr P Burford** (Doc 20) is a Member of the Forest of Dean District Council. His Ward (Hartpury Ward) is close to the appeal site. Local residents are generally not wealthy, but have raised more than £60,000 to obtain proper representations at the two Inquiries. As a farmer he advises from personal experience that successful planting and high growth rates are unlikely to be achieved in this area. The new government has a localisation agenda and additional weight should be given to local views and, in particular, to the Local Planning Authority.
- 5.32. The sums involved in considering additional lengths of pipe for alternative sites are significant, but in terms of costs per customer per year they will be very small indeed. These are commercial considerations that NG has considered, but they are not material in planning terms. Local concerns about the two applications are supported by more than 2500 letters of objection as well as opposition from 12 Parish Councils, the District Councils, 3 MPs and the CPRE.

- 5.33. **Mr R Lloyd** (Doc 21) is the Vice Chairman of the Gloucestershire Branch of the CPRE and a MRTPI. CPRE's main objection to the proposed PRI is visual intrusion and conflict with well established planning policies. The proposed development is little different from that proposed at Corse and would result in the introduction of a major industrial complex in open country in a tranquil area with little development, contrary to national and local countryside policies.
- 5.34. The Tirley site has all the same disadvantages as the site at Corse and it would be difficult to assimilate the development into the landscape, particularly the 8.5 metres high boiler vent stacks. The landscape treatment, especially the earth bunds would have the effect of drawing attention to the development, which would be visible from two major rural roads and a number of public Rights of Way, and particularly prominent from the top of Corse Hill to the south.
- 5.35. The amended landscaping proposal at the Tirley site is an improvement on that at Corse, but the highly unsatisfactory rectangular earth bunds up to 5 metres high remain and the land available for planting is still too limited. More generous land take to enable the development and the bunds to be set within a deep screen of trees and shrubs would give all year concealment, but no amount of landscaping would ever fully mitigate the impact of what would be a significant industrial installation in a sensitive area of countryside.
- 5.36. The broad location around Site 16 has the potential to accommodate the PRI and has significant advantages over the proposed site. It could be contained within a 'bowl' in the landscape at a location which is already largely screened from the north and west by mature woodland. A better location than the indicative one shown would be in the adjacent field to the north-west at a lower elevation, where it would not be visible from public roads. Effective immediate landscape treatment could be designed here through reinforcement of existing woodland and strengthening hedgerows without any recourse to earth bunding. The nearest dwelling is over 500 metres away, largely removing any concern over public safety. The proximity of the M50 means the area is already subject to noise disturbance. There should be no significant long-term environmental damage from laying the pipes.
- 5.37. **Mr N Mullane** (Doc 22) represented Chaceley Parish Council. He maintains the proposal is directly counter to Planning Policy Statement 7: Sustainable Development in Rural Areas (PPS7) and TBLP policy LND4. This industrial complex would be massive in scale, sitting in a flat rural location and therefore would be unacceptably intrusive and only 400 metres from the original site, which has identical characteristics. NG has confirmed that it would be possible and practical to accommodate the PRI at Wormington where 24 hour security could be provided and there is no threat of flooding.
- 5.38. The Parish Council is concerned that no more 'foreign' water should be fed into the New Hall brook as a result of the run off from the PRI. Severe

flooding from the brook occurred in the village in 2007 and if this proposal is allowed the Parish Council asks that NG is required to fund the re-routing of the very short last section of the brook and provide an outfall direct to the river.

- 5.39. **Mr D Rudge** (Doc 18) is the Development Control Manager at Malvern Hills District Council. His Council has been involved in the site selection process and believes that, providing the landscaping is carried out as suggested, the visual impact of the scheme will be slight. However, no development of this scale will blend entirely. As far as alternative sites are concerned, NG is required to find an acceptable site within a 10km radius, but not necessarily the best site. And if the appeal site is acceptable there should be no need to consider Site 16 further. In any event, the Tewkesbury Borough Council Committee Report (CD50.5.2.17) states there are no alternative sites likely to have less environmental impact than the appeal site.
- 5.40. Site 16, by comparison to the appeal site, is unspoilt and intact in terms of landscape character, with fewer buildings in the vicinity. It is therefore more sensitive to development. Significant earthworks would also be required and there are added complications such as the adjacent watercourse and public Right of Way, whose amenity value would be significantly affected.
- 5.41. Dowend Coppice, which is designated as an Ancient Woodland, lies immediately to the north and no detailed assessment of any potential adverse impact of a PRI on the Woodland has been carried out. Traffic travels at high speed along the A438 and a new access roadway across an open field onto this road is shown in NG3.13. No visibility splays have been determined for the site and safe access cannot therefore be guaranteed. It is clear that Site 16 has not been assessed in the same depth as the appeal proposal and the appeal site should be considered on its own merits.

## 6. WRITTEN REPRESENTATIONS

- 6.1. The Committee Report of 2 February 2010 (CD50) sets out details of the application and stage representations. Objections were received from Forest of Dean District Council and Tirley, Corse and Staunton, Eldesfield, Chaceley, Hasfield, Forthampton, Pendock, Redmarley, Birtsmortan, Ashleworth and Castlemorton Parish Councils; CAPRI, CPRE, Joint Action Group for Upleadon Area Residents (JAGUAR), Forthampton Ramblers, Staunton & District Rambling Club; Mark Harper M.P. (Forest of Dean) and Sir Michael Spicer M.P. (West Worcestershire). Some 986 individual letters of objection and 3 letters of support were also received from members of the public. Copies of the representations can be found in part two of the Council's questionnaire (Doc 24).
- 6.2. The reasons for objection largely reflect concerns expressed by the various Parish Councils and campaign groups. These include visual intrusion on



rural landscape, inadequate landscaping measures, which would take years to mature or be unsuccessful; the need not demonstrated; dangerous emission levels; site selection procedures inadequate and based on cost and convenience, which are not material planning considerations; pipeline could continue to run at 75 barg pressure, which would negate need for PRI; pipeline at 94 barg pressure not demonstrated to be safe, and site could not be accessed in bad weather; unacceptable noise and light pollution; security risk; and PRI could be located at Wormington Gas Compressor Station.

- 6.3. The 3 letters of support included comments that there was a national need, which would outweigh landscape concerns, site better than Corse proposal and good landscaping would provide a visual screen, opportunity to remove Tirley AGI. Wormington site unlikely to be an option, given 2007 appeal decision. Support also came from Malvern Hills District Council (see Mr D Rudge 5.39-41 above) and Dumbleton Parish Council, who noted that the Wormington site was not suitable. Lawrence Robertson M.P. (Tewkesbury) also opposed an extension of the pipeline at Wormington. There was also no objection, subject to conditions, from the Gloucestershire County Council, the EA, and Natural England. HSE and the Gloucestershire Police Constabulary Counter Terrorism Security Adviser also did not object and offered standard advice and operation support respectively.
- 6.4. At the appeal stage there were some 142 written representations, including those from Pendock, Burtsmorton and Castlemorton Parish Councils (Docs 4 & 23), although a number of these are stereotype letters. They largely deal with matters outlined elsewhere in this Report. In particular, as one might expect, they repeat the common themes in the earlier letters at the application stage, namely proximity to previous site with the same visual impact of a large industrial complex in a largely undeveloped rural area and the likely ineffectiveness of the landscaping and bunds, contrary to countryside planning policies; the impact on residential amenity from the noise of venting, light pollution, emissions causing air pollution and also adding to greenhouse gas emissions, the national need for gas has declined and new pipeline can supply 16% of the 20% national need without the PRI; the safety of an unproven high pressure PRI and the risk of an accident or terrorist attack versus the proximity of residential properties and roads and the likely poor response time of emergency services, particularly during the frequent flooding of roads; highway safety, and property blight.

## **7. CONDITIONS**

- 7.1. A Schedule of Conditions was included in the SOCG and discussed at the Inquiry and an agreed and revised version with reasons was submitted (NG53).

## **8. INSPECTOR'S CONCLUSIONS**

### **Introduction**

- 8.1. The sequences of the sections in these conclusions are set out in the Contents list at the start of this Report. In order to set the scene and make the conclusions relatively self-contained I start with background matters, a short description of the proposals and an assessment of relevant policy and guidance. After that I deal with the other main considerations requested by the Secretaries of State at the start of this Report. As far as possible I shall also maintain a similar format to that of the previous Report for the proposed PRI at Corse (CD26) so that differences between the two cases can be more readily identified.
- 8.2. I consider the main topics arising, including those originally raised by the Secretaries of State can be most effectively addressed in the following principal considerations:
1. Planning Policies and the Gas Act
  2. The Need for the Proposed Installation
  3. Landscape and Visual Impact
  4. Technical Constraints and Alternative Sites
  5. Safety and Security
  6. Planning Obligations & Conditions
  7. Other Matters
  8. Overall Planning Balance & Conclusions
- 8.3. Paragraph references in square brackets at the ends of paragraphs indicate the sources of the material relied on in reaching my conclusions. Some references may be included to show that a particular argument has been considered, even though it might not merit specific mention. Inevitably, in a report of this length, it is necessary to be selective about the source paragraphs, especially where the same point is made by more than one party.

### **The Proposal**

- 8.4. NG owns and operates the natural gas transmission pipeline system (NTS) in the UK and is licensed by the Gas and Electricity Markets Authority (GEMA) to transport gas via its pipeline network (CD49 .21-2.5). NG has a contracted requirement to provide up to 950GWh/day (equivalent to 88 million cubic metres per day (Mcmd)) gas transmission capacity from the new South Hook and Dragon Liquefied Natural Gas (LNG) importation terminals at Milford Haven (MH). It is anticipated that this supply from MH will provide approximately 20% of the UK total gas demand in 10 years time.

- 8.5. Two new 1220mm diameter pipelines are now in place and are capable of transporting gas at 94 barg pressure from the new terminals to both South Wales and the rest of GB. Although now operational, the Felindre (South Wales) to Tirley pipeline cannot transport gas at these pressures. The pipe work from Tirley eastwards towards a compressor station at Wormington comprises 900mm and 600mm pipes respectively, which can only operate to a maximum of 75 barg pressure. Therefore a Pressure Reduction Installation (PRI) is required in order to reduce the ultimate 94 barg pressure of the transported gas from Milford Haven so that it can be transferred into the existing grid at Tirley.
- 8.6. A total of three new PRIs are required along the Felindre to Tirley Pipeline. Two of these have already been constructed at Cilfrew and Treadow and are now operational. The PRI subject to this appeal would allow connection from the underground pipe work at the Tirley AGI and the removal of that above ground infrastructure. It is the remaining installation required to allow the gas to flow at the maximum 94 barg design pressure along its entire route from the west to Tirley. Unless such an installation is provided NG cannot operate the new pipeline at its design pressure and the purchased capacity of 88 Mcmd cannot be transported.
- 8.7. The proposed PRI (CD49.4.2) would include an instrument building, 2 boiler house buildings with 12 No.8.5 metre high flue stacks (in 6x2 chimney stacks), a stand-by generator building, a landscaping scheme, including areas of bunding 3-5 metres high, operational and security site lighting, 2.4 metre high palisade fencing and 4 metre high pulsed electric security fencing, together with CCTV camera units. All pipe work and buildings would be painted olive green and no building would exceed 4 metres in height. Access would be from the B4213. The proposal would also permit the decommissioning of the existing Tirley AGI and the reinstatement of the site, which would be secured by a Section 106 Obligation (NG35) [1.16-1.17].

### **Site and Surroundings**

- 8.8. The appeal site (CD49.3.1-3.4) relates to land in the open countryside to the east of Flat Farm, Tirley. The site is located off the B4213 road to the south, with the B4211 running in a north-easterly direction approximately 200 metres to the west, and the buildings being set well back from these two roads (NG9.A fig 5). The site lies approximately 1.5 km to the north-west of the village of Tirley and nearly 2km to the east of the villages of Corse and Staunton. There are also 2 farm buildings and about twelve dwellings in isolated positions within about 1km or so of the site, which is visible from a number of properties, Rights of Way and roads in the area [1.18-1.22].

### **The Corse PRI Appeal**

- 8.9. The planning application and this appeal follow a previous application to the Forest of Dean District Council (FoDDC) in 2006. That proposal was for a similar installation on land adjoining the B4211 opposite the junction with the B4213 in Corse and closer to the Tirley AGI. The application was

refused for similar reasons by the District Council and this led to an appeal in April 2007.

- 8.10. The joint appeal Inspectors issued a Report APP/P1615/A/06/2029294 (CD26) in August 2007 to the Secretary of State for Communities and Local Government and the Secretary of State for Business, Enterprise and Regulatory Reform, now known as the Department for Energy and Climate Change (DECC), which recommended that the appeal be dismissed. On 20 December 2007 the Secretaries of State agreed with the Inspectors' recommendation and dismissed the appeal (CD25) [1.23-1.36].

### **Statement of Common Ground - Impacts**

- 8.11. The Council and NG agree that, subject to conditions, the proposal would not give rise to unacceptable impacts with regard to ecology, agricultural land, noise and vibration, highway safety, air quality, archaeological and heritage resources, flooding and water pollution. [1.61-1.71].

### **Environmental Statement (ES)**

- 8.12. At the previous inquiry, it was agreed that the area of search for alternative sites was inadequate, although in the event, the Inspectors found that the ES itself was adequate. In this Inquiry there is no such doubt because a more thorough Site Selection Study has been carried out (CD52), which is considered later in this Report. In addition, the initial concerns of the County Ecologist regarding the possible impact on a nearby SSSI, a badger sett and bat and bird roosting have been satisfactorily addressed in the ES Addendum (ESA). I have considered the content of the ES and the ESA and all of the environmental information for this proposal and conclude that it is adequate [1.67].

### **Planning Policies & the Gas Act**

#### *The Development Plan*

- 8.13. The Development Plan comprises the Gloucestershire Structure Plan (Second Review) (GSP) (November 1999) and the Tewkesbury Borough Local Plan to 2011 (TBLP - March 2006). There are no specific policies relating to the location of statutory undertakers infrastructure in the Plan [1.37].
- 8.14. The GSP contains a number of relevant policies, but only policy NHE1 is listed in the reasons for refusal by the Council. This policy is concerned with the protection of the countryside and states that '*the countryside character, appearance and non-renewable and natural resources will be protected from harmful development unless the social and economic needs of the area or wider environment objectives outweigh such harm.*' Policies S6 and S7 were also raised by the Council during the Inquiry. Policy S6 seeks to safeguard the quality of the landscape and policy S7 requires the quality of the County's *environment* to be maintained and enhanced by high standards of design, amongst other things. [1.38-1.51, 2.18-2.27 and 3.10-3.12].

- 8.15. The TBLP sets out the detailed land use planning policies and proposals for the area up to 2011. Its key objectives are to '*promote sustainable development, conserve and enhance the built and natural heritage of the Borough*' and to '*stimulate an approach to new development which respects local environmental conditions in the detailed siting and design, amongst other things*'. Several strategic and detailed policies are relevant (1.46-1.51), but only policy LND4 is relied upon by the Council in its refusal. This requires, when considering proposals for development in rural areas, '*regard to be given to the need to protect the character and appearance of the rural landscape.*' [2.28-2.30 and 3.13].

#### *Other Planning Policy Considerations*

- 8.16. A number of relevant draft National Policy Statements (NPS) have been issued since the last inquiry. The advice makes it clear that, even when, as is the case here, the proposal does not fall within the IPC threshold, NPSs should be taken into account when determining planning applications for new infrastructure under the normal planning process. They are therefore a material consideration in this appeal.
- 8.17. Paras 10 and 27 – 30 of the 'Draft NPS EN-1 (CD23), the Overarching NPS for Energy, say that the UK should improve its capacity both to import and to store gas by enabling new infrastructure to come forward. The Gas Market participants may aim to have some redundancy in their supply arrangements above the minimum amount to meet peaks in order to manage the risk that other capacity may not be available, and there must be sufficient supply capacity to provide access to the most competitive gas supplies, implying some further redundancy in gas supply infrastructure. There is also a need to manage the risks associated with the evolution of the demand for gas. [3.22-3.23].
- 8.18. Draft NPS EN-4 (CD24) relates specifically to gas supply infrastructure and gas and oil pipelines. Decision makers should be satisfied that gas supply facilities are as attractive, durable and adaptable as they can be, and that siting avoids AONBs and other nationally designated landscapes, except in exceptional circumstances. In non-designated areas, the character of the landscape should be taken into account and given due weight. The decision maker must be satisfied that long-term harm to the landscape is minimised, including by reasonable mitigation measures to restore the landscape [1.52-1.53].

#### *Other Government Statements on Gas Supply*

- 8.19. In addition to the SoS's statement on need in 2006 (CD29) and the 2007 Energy White Paper referred to at the Corse PRI inquiry, further national policy statements have been issued recently. Gas Security of Supply – A Policy Statement from DECC – April 2010 (NG16/C12), the most recent statement, emphasises that gas provides 50% of our primary energy needs and that the UK is committed to a 34% reduction in greenhouse gas emissions from 1990 levels by 2020. As a result, the demand for gas is expected to fall. The document sets out the Government's assessment of the security of UK gas supply to 2020 and beyond.

- 8.20. In 2009, two-thirds of the UK's net annual gas demand was met from gas produced domestically (C12.E5), but 25% of our imported gas was LNG. The UK is likely to become increasingly reliant on gas imports because of dwindling UKCS supplies. Nevertheless, the Government's latest risk assessment on the resilience of the system concluded that the UK gas system is highly resilient. However, vigilance is required in order to sustain energy security and this means maintaining a diversity of gas supply combined with a resilient domestic energy system based on the appropriate balance of regulation and market incentives (C12.E7). The Government has identified a number of potential further measures to further strengthen the security of gas supply (C12.6.4) [1.54-1.56, 3.40 and 4.12-4.21].

*Duties of National Grid under the Gas Act 1986*

- 8.21. NG is the licensed Gas Transporter for the NTS and a regulated utility which has to comply with a duty under Section 9(1) of the Gas Act 'to develop and maintain an efficient and economic pipeline system for the conveyance of gas' and 9(1A) 'to facilitate competition in the supply of gas'. Compliance with the duty is monitored and enforced by Ofgem, the administrative arm of GEMA. This legal requirement also allows NG to receive an agreed return on investment, but prevents it from recovering the costs of, and earning a return from, assets which are not necessary at the expense of the consumers. Any unnecessary assets can thus be disallowed and no return would be received. The detailed operation of the licensing system is explained in NG.2.5 [2.76-2.78 and 3.45-3.68].

**The Need for the Proposed Installation**

- 8.22. In my consideration of the need for this facility, I have followed the procedure used by the previous Inspectors by addressing the evidence on three levels, national need, the associated regional gas pipeline installation; and technical constraints on the physical siting of the PRI. I have not repeated much of the detailed technical information used by the Inspectors in their Report (IR8.19-8.44) and only comment where significant new matters have emerged or it is otherwise necessary for clarity.

*National Need*

- 8.23. NG refers to the national policies in the SoS's Statement of Need in 2006 (CD29) and the Energy White Papers in 2003 (CD27) and 2007 (CD30), which were first summarised in the 2007 Inspectors' Report (CD25) and are still relevant today. These repeatedly emphasize the dwindling supplies of gas from the UKCS; the fact of the UK becoming a net importer of gas, and the need for additional connections for piped gas and LNG from a range of sources. The MH terminals are highlighted as diversifying the sources of gas used to supply the UK and the higher imports that are needed. Adequate infrastructure is essential to avoid price increases when supplies are interrupted, and to promote competition [3.18-3.21].

- 8.24. NG and the Council agree that the draft National Policy Statements issued in 2009 and listed in 8.17 above are now a material consideration in this appeal. It is clear from these that the Government is intent on enabling new infrastructure to come forward in order to secure and maintain sufficient capacity in gas supplies and to provide access to the most competitive sources, and that this would require some spare capacity (redundancy) to be built into the infrastructure [3.22-3.23].
- 8.25. The Inspectors at the Corse inquiry and the SoSs concluded that 'there is an important and urgent national need to transport [gas derived from] LNG from MH to England [and South Wales], so as to meet the contractual requirement of 88Mcmd at the point of entry to the NTS' [3.25]. The Council accepts that there is a need for a facility, but queries whether this is 'urgent' because NG has not brought forward any evidence that there is any critical date that the Tirley PRI should be available, other than to say that the nation's reliance on imports would increase over the period 2012 to 2015. [2.79-2.84, 3.25].
- 8.26. CAPRI and other interested persons, use the EMO need assessment (NG15) and the April 2010 DECC policy statement on Gas Security of Supply (C12/NG16) to challenge both the national need and the urgency of the proposal. The annual supply demands quoted by CAPRI are useful to confirm that the demand for gas may fall (from 100 bcm/y to 65bcm/y by 2020 under one scenario, and that imports of LNG are expected to rise (12bcm/y to 26bcm/y by 2019). They also demonstrate an oversupply in capacity on an annual base, both in gas generally and LNG in particular, based on the additional capacity at the Isle of Grain and elsewhere and further capacity and storage schemes due to come on stream in future years. But there is considerable uncertainty in these figures. More importantly, this overlooks the fact that, because of the large fluctuations in demand, capacity needs to be based on daily peak demand rather than on an annual basis. [4.09-4.25].
- 8.27. The April 2010 policy statement from DECC confirms that, despite the continued fall in demand for gas arising from the UK commitment to the low carbon economy and increasing energy efficiency, gas will continue to be a central part of the UK's energy mix beyond 2020. The statement also notes that vigilance is required in order to sustain energy security and access to competitive supplies. This may mean building in redundancy or spare capacity into the system [1.54-1.56 and 3.22-3.24].
- 8.28. These latest EMO figures and policy statement published by DECC also demonstrate that even in the worst winter for 30 years in 2009/10 the supply system remained robust and highly resilient and that it is likely to remain so for the foreseeable future. The demand for gas in the 2009/10 winter peaked at 465Mcmd against the system design of 510 Mcmd for a 1 in 20 year winter in that year and a proposed capacity of 530 Mcmd in 2020. Even with a major Norwegian supply source out of action during the peak period there was no shortfall then thanks to the use of Gas Balancing Alerts (GBAs), which provided an incentive for additional supplies to come forward [4.09-4.25, 3.37 and 3.43].

- 8.29. But this should not be taken to mean that additional capacity is not needed. There is a dwindling supply of gas from the UKCS and in Transporting Britain's Energy 2009 - Development of Energy Scenarios (C15) NG forecasts that LNG imports will steadily increase. It is notable that, although the 2009/10 was claimed to be the worst since 1978, the 1 in 20 year design demand was not reached, possibly because of the recession and/or because of the way that this is calculated (NG2.5.15 and NG2.3.14). But the shortfall in gas meant that the wholesale gas prices almost doubled for a short time in January 2010. There remains, therefore, a continued need to secure and maintain diversified and competitive gas supplies. However, I believe that the relative slow growth in peak day demand means that any sense of urgency for this scheme should be measured in years rather than in months. It would not prevent an alternative site being considered, for instance. [2.79-2.84, 3.28, 3.37-3.43].

#### *Regional Gas Pipeline Installation*

- 8.30. The need for the PRI stems from NG's requirement, as the licensed Gas Transporter for the NTS, to respond to the long-term investment signals from Shippers in the 2004 capacity auction process to enable them to input 950 Gigawatt hours per day of natural gas (88Mcmd) at MH into the NTS. This resulted in the construction of the new 1200mm, 94 barg pipeline from MH to Tirley. The main purpose of the new pipeline seems to be to reinforce the NTS so that it can improve diversity and security of supply and competitiveness in the gas markets.
- 8.31. CAPRI and others point out that now the pipeline has been constructed the current need relates only to the difference between the 70Mcmd capacity of the current arrangement and the greater capacity of 88Mcmd that would be enabled by the construction of the PRI. They argue that the conclusion of the Inspectors and the SoSs at the previous inquiry related to the pipeline as a whole and the need then was bound up with the whole pipeline project, and that this is not the case in this proposal [4.26-4.32].
- 8.32. But the current operating pressure of the pipeline is restricted to about 75 barg because the existing pipelines from Tirley eastwards can only safely operate at this pressure. The introduction of a PRI close to Tirley would overcome this obstacle and allow the flow variations from MH to be controlled and the pipeline to operate at its design pressure, increasing its capacity by 18Mcmd or 20% of its contracted capacity (NG2.5). The peak flow in the pipeline occurs when the demand in South Wales is at its lowest, generally in the summer, but there is an 18 Mcmd shortfall in capacity at all times [3.44 and 5.5 and 5.16 – 5.17].
- 8.33. This shortfall amounts to 4-5% of the UK's peak demand. Without this additional capacity the NG cannot fulfil its duty to operate the pipeline in an efficient and economic manner and the full benefits of the MH terminals, with their ability to import LNG from a variety of sources, cannot be realised. The additional expenditure on installing a 94 barg pipeline would therefore be wasted. Furthermore, as the demand for imported gas increases, in circumstances more severe than last winter, this currently



unavailable capacity could not be used to help prevent an increase in the wholesale price of gas or, in extreme cases, a shortfall in gas capacity, occurring. This demonstrates the value of the facility in contributing to both the security and competitiveness of the UK gas supply. Moreover, Ofgem takes the view in NG34 that the PRI forms part of the much larger, nationally important project to connect the LNG terminals at MH to the NTS [3.37, 3.39-3-40, 4.15-4.55, 5.16-5.17 and 5.37].

- 8.34. I conclude from the above that there remains a need for additional capacity and for this facility, as part of the larger scheme to connect LNG terminal to the NTS, to contribute to the security and competitiveness of gas supplies, in line with NG's duty under the Gas Act and draft NPS EN-1.

#### *PRI Siting*

- 8.35. The SoSs and the previous Inspectors had concluded that the Wormington option to extend the 1200mm pipeline another 29km and remove the need for the Corse PRI was too costly because of the additional capital £57m expenditure required to overcome the detriment identified for the Corse appeal site, and because the existing feeder pipelines 2 and 23 would become underutilized (DL21 and IR8.41-8.44).
- 8.36. Dr Furness and CAPRI believes that the previous Inspectors were unaware that the maximum flow rate of the pipeline could occur in the summer, and Dr Furness also cited safety and reduced emissions as reasons for reassessing the Wormington option. However, the shortfall in capacity would occur in winter or summer and no other proper detailed justification is given for such a reassessment. Also neither the reduced capacity regional pipeline, nor the Wormington option, would fully utilise the existing infrastructure. Safety and emissions issues are dealt with elsewhere in this Report [3.33-3.35, 5.3-5.5].
- 8.37. The previous Inspectors also concluded that it would be possible to locate the PRI at an alternative site of up to 10km from the Tirley AGI at a capital cost of £3.6m per km (IR8.48). This would amount to about £26m for Site 16, much less than half of the Wormington option, although NG maintains that when the additional operating costs of about £0.8m (NG3.9.32) are included the additional net present value (NPV) costs of the scheme would be about £34m [3.46].
- 8.38. Nonetheless, unlike NG, the SoSs and the Inspectors did not apparently consider the costs of an alternative site of up to 10km from Tirley to be of a similar scale as the Wormington option otherwise they would have rejected such a possibility. They did agree, however, that technically, it would be best to locate the PRI and AGI sites as close together as possible in order to reduce the pressure drop through the connecting pipe work (DL23-24 and IR8.49-50, IR8.50).
- 8.39. The proposed siting in this case is only a few hundred metres from the previous appeal site and even closer to the Tirley AGI, so its location would result in very little pressure drop within the extended pipeline. There would be significantly reduced costs compared with the alternative Site 16

proposed by the Council and other objectors, or the Wormington option.

- 8.40. However, it cannot be said that NG would not meet its duty to develop and maintain an efficient and economic pipeline system under the Gas Act if the Tirley site was found to be unsuitable and Site 16 became the preferred site for the PRI on planning grounds. This is because as the Council says, it is not possible to maximise the extent that a site complies with that duty, it either complies or it does not. Also, if the appeal site were unsuitable, an alternative site such as Site 16 would then become the most economic or efficient option [2.76-2.78, 3.26-3.28 and 3.46].

#### *Need – Overall Conclusions*

- 8.41. I have concluded from the above that there remains a national need to transport gas derived from LNG from MH into England and Wales, and to fully utilize the MH terminals and the new NTS pipeline from Felindre to Tirley so that NG can meet its licensed and contractual obligations to cater for up to 88Mcmd of gas. There is no justification for reassessing the Wormington option, but re-siting the PRI at an alternative site up to 10km from the Tirley AGI would be acceptable if the Tirley site proved unsuitable in planning terms. The proposed PRI would fulfil the requirement in Draft NPS EN-1 to improve the UK's capacity to import gas by enabling sufficient spare capacity to come forward in order to ensure security of supplies and to provide access to the most competitive gas supplies. The scheme would also comply with NG's duty under the Gas Act to develop and maintain an efficient and economic pipeline system.

### **Landscape and Visual Impact**

#### *Introduction*

- 8.42. As outlined in para 8.8 and earlier in the Report the appeal site lies in the open countryside and comprises 6.6ha of land in parts of two arable fields. It is set well back and at a lower level from the B4211 and the B4213, the access road. The proposed development would be similar to the previous proposal and, as indicated in para 8.7 above, it comprises a number of buildings and other structures, including 6 pairs of flues, lighting and CCTV units, areas of bunding 3-5 metres high and security fencing. Occasionally the site would be illuminated and/or vapour plumes would be apparent from the flues. It would thus represent an industrial form and scale of development that would be an alien and intrusive feature in the rural landscape. The scheme would permit the decommissioning of the existing Tirley AGI.
- 8.43. The landscape is within the landscape type 'Unwooded Vale', but it does not have any special landscape designation. It is however, generally unspoilt countryside, with only a few farm buildings and about a dozen isolated residential properties in the vicinity. The facility would be sited in a dip in the landscape, which at least gives the advantage that it would not be readily visible on the skyline. However, the proposal depends very much on mitigation provided by the bunding and the associated landscape scheme to screen the various structures from public view [1.13-1.22, 2.1-

2.6, 5.22, 5.29, 5.34, 5.37, 5.39, and 6.4].

*Comparison with the Corse PRI Site*

- 8.44. The PRI in the previous appeal would have been positioned adjacent to the B4211 at a point opposite its junction with the B4213 and on a site too small to be able to provide effective landscaping or screening of the development with suitable bunding. The landscaping would not have been thick enough to screen the proposal and the bunds would have looked like earthworks rather than the more natural form necessary to avoid the mounds themselves becoming an intrusive feature in the landscape. The proximity to these roads would have exacerbated the difficulty of screening this industrial scale and form of development and its assimilation into the surrounding attractive rural area. Unlike the footpath crossing this site, these roads are in frequent use by motorists, cyclists and horse riders, as well as users of the Whitmore Way, which passes that site (IR8.56-8.58) [3.65-3.66].
- 8.45. The SoSs and the previous Inspectors concluded that locating the PRI on the site in this appeal is likely to have less environmental impact and that either this site or an enlarged Corse PRI site (described as sites 2 and 3 respectively in the SSR), combined with appropriate landscaping, could affect the weight accorded to the case on need. The appeal site is more than 200 metres from the two 'B' roads and it is evident, by its appearance, that the footpath that passes it is little used, so there is less likelihood of close quarter views of the facility. The site is also much larger than the previous site and this would enable it to accommodate the thicker landscaping and more natural, irregular and sinuous bunds necessary to help screen the development from users of the road and other nearby receptors, yet not look too out of place in its countryside setting [3.78-3.79, 3.83-3.84].

*Landscape and Visual Impact Assessments*

- 8.46. NG's landscape adviser provided a plan showing the Zone of Visual Influence (ZVI), which indicates that the development would be more or less visually contained by higher ground within about 1.5km on all sides, and significantly less on most. But the Council points out that there were also views of the site from higher ground about 2.25km to the north. These would be distant views below the skyline, however, and only the flue stacks would be visible and these would not be very prominent. At close quarters the site is partially screened by a small copse immediately to the north-east.
- 8.47. Immediately following the completion of the construction NG's photomontages indicate that there would be views or filtered views of the tops of the flues only of the proposed AGI from about 6-8 individual residential properties, sections of the B4211 to the west, the B4213 to the south, Tirley Knowle Road to the east, and from the public footpath, linking these two B roads, which passes through the site. There are five other public rights of way in the area but none would be significantly affected by the proposal.

- 8.48. The Council argues that the site is in unspoilt countryside of moderate sensitivity in landscape terms and moderate to high in visual impact terms. The development is an industrial installation exceeding the scale of all existing development in the area. The proposed bunding would itself appear incongruous and there is a risk that the planned landscaping scheme on which the scheme is reliant, might not be successful.
- 8.49. The Council's landscape witness used wireframe diagrams (T5(a)) to confirm the flues would be the most visible element of the development, but says the building structure would also be visible from the footpath in the short term. He claims that NG's landscape photomontages do not take account of loss of foliage from the deciduous planting in the winter. Also, the green painted flues would not blend into a winter landscape. Overall, the Council believes that the conclusion of the previous Inspectors that the '*PRI would be an alien, intrusive and harmful industrial feature in the rural landscape*' (1R8.111) remains applicable to the current proposal [2.7-2.15].
- 8.50. CAPRI and other interested persons support the Council on the sensitivity of the appeal site in landscape and visual terms and the significant visual harm to the rural landscape that it claims the PRI would cause on account of its industrial scale, character and incongruous appearance. They argue that the landscaping proposals are inadequate and rely on alien bunding up to 5m high. They accept that there are other large unscreened buildings in the area, but these are farm buildings, which would not be unexpected or out of place in a rural area [4.64-4.65, 5.29, 5.33-5.35, and 5.37].
- 8.51. The proposed landscaping scheme and the relocation of the roadside hedge are of particular concern to the Council, CAPRI and many local objectors. All fear that, because of the local soil type and climate, growth rates for the new planting would not be as good as NG claims and that the roadside hedge would be unlikely to recover from its translocation. NG's record on existing sites, including the Tirley AGI, is said to be not good when it comes to landscaping and complying with landscaping planning conditions.
- 8.52. Notwithstanding this, I believe their fears are unfounded here because in this case, the large scale landscaping scheme, which includes the AGI site, is supported by a more enforceable Section 106 Planning Obligation and the Landscape Management Plan within it has extensive 20 year maintenance and extensive watering requirements attached that should overcome any concerns in that respect. The relocation of the hedge would also include planting of new hedgerow behind the new position of the existing hedge [1.11, 2.10, 3.37-3.40, 4.64, 5.1, 5.31, and 5.35].
- 8.53. Only one residential receptor, Flat Farm Cottage, would have an on-going slight adverse impact, according to NG, because the maturing landscaping would screen the site adequately. However, even if that were so, it would occasionally also be possible to see operational lighting during any periods of maintenance after dark from many of the other receptors. In addition, in the winter months, when the boilers were working and the temperatures were below 5°C, water condensation plumes from the flues may draw

attention to the site. But although average temperatures were below 5°C for about 2 months of the year, lowest temperatures generally occur during darkness when the plume would not be visible. Daytime temperatures were likely to be below that level much less often and the formation of the plume would also be dependent on wind speed and humidity, for instance. Furthermore, there would be some benefit to the landscape and to two dwellings from the removal of the Tirley AGI. Nonetheless, overall, NG accepts that there would be a slight adverse impact on landscape character (NG8.5.7.35) [2.2-2.15, 3.69-3.75, 3.83-3.84, 5.22, and 5.39].

- 8.54. Illumination of the site would only occur, if and when, maintenance were necessary in the hours of darkness and the amended lighting scheme would make it possible to focus the lights downwards and to illuminate only the immediate area of operation. In any case, I consider that, neither this, nor the cold weather vapour plumes, would be frequent enough events for them to register as significant, detrimental features in the landscape [3.70-3.71, and 3.75].
- 8.55. The bunding is of a more natural, irregular and sinuous form than in the previous proposal and from what I have seen and heard, I consider that, as the landscaping matures, the appearance of the bunds would be softened and the impact of the PRI would be progressively reduced. It is true that the photomontages do not provide a winter view and the mature version shows the position after 10 years (NG9A), but the bunding and the 20-40m thickness of the proposed landscaping, when mature, should provide adequate screening for the structures in the winter months, other than the top of the stacks, which themselves would be obscured from most receptors in the longer term. Until then, their intended olive green colouration is not a colour that would make them particularly stand out from the surrounding fields and the copse, even in the winter.
- 8.56. In the short-term, particularly in the first winter, I find that the PRI and the bunding would be more obvious in the landscape, and harmful. But in the longer-term, as the landscaping scheme matures, I conclude that the development would gradually be assimilated into the countryside until it would be barely noticeable from public viewpoints, and that the character and appearance of the area would not be unacceptably harmed [1.23].

## **Technical Constraints and Alternative Sites**

### *The Site Selection Process*

- 8.57. Following the Secretaries of States' decision in respect of the previous appeal proposal a more thorough site options evaluation exercise has been undertaken (CD52). The identification of the proposed site for the PRI involved a detailed site selection process within a study area centred on the existing Tirley AGI and extending to potential sites within 10 km of it. The methodology for the Site Selection Study was agreed in advance by the relevant parties and was based on the adoption of a three stage process.

- Stage 1 of the site selection process involved elimination of areas where it would be inappropriate to build a PRI based on safety, national and internal environmental criteria, as well as planning constraints.
  - Stage 2 involved the identification and plotting of “Environmental Areas” comprising areas of discernibly high environmental quality.
  - Stage 3 involved the evaluation of 23 areas nominated as “Candidate Areas” in the form of plots within the Site Selection Study area which had not been excluded during the first two stages.
- 8.58. Twenty five Representative Locations were chosen within these areas and further evaluation of these, taking into account environmental and engineering and accessibility implications, eventually resulted in the identification of eight Candidate sites, which were then subject to further detailed evaluation against these criteria. The sites suggested by the previous Inspectors were initially identified by National Grid and, following further public consultation, a further six of the Candidate Sites identified by the Study were added. Having assessed the eight Candidate Sites in more detail and narrowed these down to four, the Site Selection Report (SSR) (CD52) then set out National Grid’s preferred location for the PRI at the Flat Farm, Tirley site based on environmental impact and engineering/cost grounds [1.72-1.76 and 3.52-3.59, 3.68].
- 8.59. CAPRI challenges the site selection process because it says it has been pre-determined. Firstly, the SSR is not an independent, but an in-house NG Report and the balance between environmental harm, commercial cost and engineering and other factors is an essentially subjective one and one NG has used to justify its original plans. It also believes the selection of Representative Locations is flawed and unexplained and that the best sites were never identified. NG had conceded that it was a means of comparing locations only (3: 30.16).
- 8.60. In order to find the best site for the PRI, or at least a range of potential sites in accordance with the 2007 decision, it would have been necessary to carry out some further assessment to identify the potential optimum sites, but this was never done. In the final Stage 3 evaluation, despite finding lesser site specific impacts for ‘Site 16’, these were outweighed by other factors, principally cost and the environmental impact and the retention and the extension of the AGI in a purely subjective view that was not subject to public scrutiny. Furthermore, the selection of the appeal site had already been pre-determined earlier in the process and presented to the public in a ‘consultation exercise’. It was only then that NG agreed to re-look at other candid sites, which were quickly narrowed down to sites 2, 3, 6 and 16 [4.38-4.62].
- 8.61. NG’s response to this is that the SSR answers the criticism of the previous Inspectors that only 1% of the 10km radius search area had been covered because Stages 1 and 2 alone covered 83% of the area and the Stage 3 areas were identified in consultation with the local Councils and CAPRI. CAPRI misunderstands the way that Representation Locations were chosen. Appendix D of the SSR sets out the selection process. The aim was to

represent an appropriate balance between local environmental sensitivities, such as existing planting and visibility of the area, and accessibility.

- 8.62. The decision to look again at 6 Candidate Areas was the result of the public consultation. In the end NG's selection preferred the appeal site to Site 16, but contrary to CAPRI's and the Council's reading of the SSR, the Report suggests that the differences between them are slight. The selection team then had to take account of the additional environmental impacts. The Council's Planning Officer also supported the scheme on this basis, but CAPRI offers no alternative. The costs of the options were also considered in this final Stage [1.72-1.76 and 3.50-3.59].
- 8.63. I accept that the Representative Locations were simply less sensitive areas within each Candidate Area. I also acknowledge that the public consultation exercise is open to criticism as a result of the premature publication of NG's preferred option – before a further consideration of other sites was undertaken. But at least it can be said that NG was still open to suggestions for other alternatives at this stage. However, given the apparent turn around following the public consultation, the final assessment, by its subjective nature, was bound to fuel additional suspicion that it was prejudiced. If costs were likely to be a factor, for instance, it is not clear why the much cheaper Site 6 was discounted so readily [and not questioned by the Council or CAPRI]. In answer to my questions on this (3: 114) NG's landscape adviser could only say that Site 16 was marginally less visible.
- 8.64. Once the site selection team decided that the individual sites all had low environment sensitivity, the environmental impact of the extra pipeline and the extension, rather than the removal, of the AGI then became relevant. The team judged the benefits of the removal of the AGI and the avoidance of the temporary disruption caused by the 6km pipeline to favour the adoption of Sites 2 or 3. The selection of Site 2 over the more prominent Site 3 then became inevitable. But there is no detailed analysis behind their judgement and the reasoning behind the final decision is not therefore transparent [3.56-3.58 and 4.38-4.41, 4.44-4.62].
- 8.65. Others might have taken a different view because it could be argued that the temporary environmental effects of the extra pipeline and the extended AGI should be weighed against the visual impact of the PRI at the appeal site, which is also claimed to be temporary and that, if these were shown by further analysis to be comparable, then the slightly less impact of either of these two alternative sites would have given them the advantage over the appeal scheme - and the lower visibility of Site 16 would have given it the edge. Costs would then become a critical consideration and the SSR reveals that the Site 6 and Site 16 options were more expensive, with Site 16 being twice as expensive as the appeal proposal. NG argues elsewhere that this additional cost is not justified [3.68].

*Site 16*

- 8.66. The Council and third parties suggest that Site 16 would be a more suitable site for the PRI. Locating the PRI at Site 16 would necessitate an extension to the existing Tirley AGI, and the excavation of a double pipeline corridor spread between Tirley and Site 16 (covering an approximate distance of 6 km), which the Appellant contends would have significant additional environmental impacts including the removal of hedges and trees, and costs. Locating the appeal proposal at Flat Farm allows for the removal of the existing Tirley AGI and, would not result in a need for a significant length of new pipeline.
- 8.67. Site 16 is one of the 8 sites that made it through to the third stage of the process and one of 4 that were eventually short listed. The SSR concludes that;
- *"the combination of landform and planting offer opportunities for integration such that implications associated with the presence of a PRI could be localised and effectively mitigated.*
- and comparing the final selection of 4 sites:
- *"the location of a PRI on Candidate Sites 6 and 16 would not be quite as prominent in the local landscape as Candidate Sites 2 [the appeal site] and 3. They would accordingly involve lesser impacts on local landscape character and the visual context of the areas local to those sites."* [2.44-2.49, 3.56-3.59].
- 8.68. Site 16 appeared to be favoured over Site 6 even though the cost advantages were large (£26m more for Site 16 versus only £5m more than the appeal site for Site 6). The CPRE, supported by CAPRI has suggested a slightly alternative siting for the PRI on Site 16, but the Council and NG did not agree that this was markedly better. I looked at both options for Site 16 during my site visit, but there is a watercourse separating the two and that would prevent construction in the lowest part of the site. It was thus hard to see how the CPRE preferred location could be significantly better than the one chosen. Whichever location was chosen it was clear, however, that Site 16 generally had a number of advantages over the appeal site [4.56, 5.36].
- 8.69. The key advantages of Site 16 are that the site is in a secluded valley and is more undulating, naturally screened and isolated. It offers a high degree of enclosure. There is only one property within 500m of the site (hidden from view by a wood), compared with seven for the appeal sites, and there are no views from the more distant local roads. This also has advantages in safety and noise grounds, as well as visual amenity. There are footpaths close to the site, and more evidence of their use than the one on the appeal site, but these would be largely screened by low mounds and/or planting and there is no evidence from the SSR that they would be more of an issue than the one near the appeal site. It is clear that a PRI on this site would not therefore be so prominent and would have less visual impact [2.50-2.55 and 3.83-3.87].



- 8.70. Against these advantages there is the need for the additional pipeline and extended AGI and the environmental impact and costs, together with an increased societal safety risk associated with these. However, the SSR notes that temporary impacts connected with pipeline connections for this option would not have a residual environmental impact and that, *'with appropriate mitigation, detrimental impacts related to extension of the existing Tirley AGI would not have a significant residual effect on local landscape character and the visual context of the area'* [2.56-2.58 and 2.69-2.71].
- 8.71. Nonetheless, I agree that Site 16 has not been assessed in quite the same depth as the appeal site and access from the A438 has not yet been established, for instance. The site is unspoilt and there is a further risk that Malvern District Council, in whose area Site 16 lies, might also oppose the PRI scheme, and that further delays might then occur in constructing the facility. None of these points are likely to be insurmountable, however, but the additional capital and operating costs of the Site 16 option are substantial at £26m (i.e. twice the appeal scheme) and £0.8m p.a respectively, or £34m on a capitalized NPV basis. [3.64, 3.67 and 5.39-5.49].

#### *Alternative Sites – Legal*

- 8.72. The Council cites case law in *Sosmo Trust v SoS for the Environment & Camden LBC* [1983] JPL806 to argue that the additional cost incurred by NG is not the planning consideration, but if this extra cost renders the Site 16 project unviable that would be capable of being a material consideration that might point heavily in favour of the appeal scheme, given the need for a PRI. NG has conceded that, if Site 16 was the only available site, the construction of a PRI on that site would not be prevented by the extra costs. The additional costs should also be seen in the context of the £1 billion spent so far on this NTS infrastructure project and the £1.7 per consumer costs spread over the lifetime of the infrastructure [2.59-2.68 and 5.32].
- 8.73. The Council also refers to *Tesco Stores Ltd v SoS for the Environment* [1995] 1 WLR 759 per Lord Hoffman to establish the position that whether a consideration is a material planning consideration is a matter of law, whilst the weight to be given to any such consideration is a matter for the decision maker.
- 8.74. It then says that *GLC v SoS for the Environment* [1986] JPL 193, where the SoS failed to consider other comparable sites, is directly relevant. In the Court of Appeal Oliver LJ opined that comparability is appropriate generally to cases having four characteristics:
- *a public advantage in the proposal;*
  - *the existence of inevitable adverse effects to the public;*
  - *the existence of an alternative site for the same project that would not have these effects or have them to the same extent;*

- *only one permission is to be granted.*

- 8.75. The Council concedes that there is a public advantage in the proposal in that it would provide a needed PRI. Secondly, the Appellant accepts there are adverse effects to the proposal that cannot be completely mitigated, fourthly there would only be one PRI. On the third point the Council asserts that a PRI on Site 16 would not have the same adverse effect as the appeal site and agrees that its case stands or falls on this [2.39-2.44].
- 8.76. NG refers to the Court of Appeal on *SoS v Edwards* 1994 1 PLR 62 to set out the legal principles on whether alternative sites should be considered and examined:
- (i) the fact that other land exists upon which a proposed development would be more acceptable does not justify a refusal of permission;
  - (ii) where there are clear planning objections to a proposal then it may be relevant to consider whether there is a more appropriate alternative site elsewhere – particularly where the development is bound to have significant effects and the major argument in support is based on need.
- 8.77. NG submits that in this appeal the harm identified does not amount to a clear planning objection and therefore there is no planning requirement for alternative sites to be considered. The circumstances of this case are very different to the Corse appeal. That site was rejected as having significant harmful effects because of its proximity to the 'B' roads and the Inspectors judged that either the Flat Farm site or an enlarged Corse site would be less environmentally sensitive, and that only 1% of the relevant search area has been examined.
- 8.78. In this case, the appeal site has itself been identified for consideration in the 2007 decision, the selection process has been more detailed and only one other candidate, Site 16, remains. NG believes Site 16 would not be more appropriate in planning terms, it would not be materially better as regards its impact on the countryside, it is not located as close as possible to Tirley AGI and would therefore introduce inefficiency in the supply of gas, and it would require an extra 6km pipeline and extension of the Tirley AGI rather than its removal. Costs can be relevant in planning decisions and the extra cost of £34m cannot be justified given the impact the proposal would have and the lack of any sufficient advantage in Site 16 [3.60-3.68].
- 8.79. These legal arguments are matters of law, but in my view, there would be a public advantage in the proposal because it would increase the capacity of the NTS to receive gas from LNG sources; there would be adverse effects from the proposal that cannot be completely mitigated, at least in the short-term, and there only needs to be one PRI. I also agree that Site 16 itself would have less impact on the landscape than a PRI at the appeal site. But this must be weighed against the effects, although largely short-term, of the need to retain and enlarge the AGI at Tirley and the disruption the 6km of additional pipeline would cause to the landscape.

- 8.80. I consider that on balance, Site 16 does have sufficient advantages for this option to be favoured, and that the additional cost would not make the project unviable. Yet these additional costs, including the increased £0.8m p.a. running costs, are substantial and cannot be ignored. I believe that they are a material consideration in the circumstances of this case because of NG's duty under the Gas Act and the fact that these costs would be recovered from the consumers.
- 8.81. NG's legal argument is also relevant here and I acknowledge that the fact that Site 16 would be more acceptable in terms of its visual impact would not in itself justify a refusal of planning permission. The fact is that the proposal would only have a significant visual impact on the landscape whilst the landscaping scheme was maturing. Indeed this is also true for the Site 16 option and particularly the extra pipeline and the extended AGI. Once this has matured then, although Site 16 would remain a better option in terms of its more isolated position and less need for screening, neither scheme would have an unacceptable impact on the character and appearance of the area.
- 8.82. There is a national need for the development and, by necessity, the PRI needs to be located in the countryside, and I conclude that these factors need to be weighed against its short-term visual impact to determine whether there is a planning objection to the proposal. The difference in visual impact between the two options, weighed against the substantial additional costs of the alternative Site 16 proposal, also would not justify the selection of that site over the appeal site unless the latter was found to be unacceptable in planning terms.

## **Safety and Security**

### *Compliance with Statutory Safety Regulations*

- 8.83. The construction and operation of high pressure gas transmission pipelines and their associated installations in the UK are strictly regulated to ensure the highest safety standards possible. In this appeal NG again relies on the established standards set by HSE in its document, Reducing Risks Protecting People, R2P2, both for individual and societal risk. Safety (IR8.74-8.80) and security (IR8.95-8.102) issues were dealt with in detail at the Corse inquiry and no basis for refusal of planning permission was found.
- 8.84. HSE has confirmed in a letter to PINS dated 16/6/10 (Doc8) that PRIs are deemed to be part of the Pipeline Safety Regulations 1996 (PSR). They are designed, constructed and operated in accordance with the Institution of Gas Engineers technical document IGE/TD/13. The design of the pipeline, pressure regulating installations, and other associated above ground installations has been assessed by HSE's specialist pipeline inspectors in order to determine whether it met the required codes and standards. After due consideration HSE is content that this meets the industry standards, and so far as is reasonably practicable, protects people

from health and safety risks [1.81-1.83].

- 8.85. I consider that NG has undertaken its required statutory duty with HSE to allow it to design, install and operate the installation at the proposed site in line with the PSR.

*Safety - Risk Assessment*

- 8.86. The level of risk from the installation to individuals in the nearest dwelling is 1 in 204,000 to 1 in 154,000 per year. This is a factor of 5.4 less than those found at the Corse appeal, which in itself was found acceptable by a margin of 10-15 times lower than the definition of tolerable risk. The same benchmark has also been applied to societal risk and the level of risk was found to be very low and well within that considered acceptable in government guidance. Among the design requirements for the installation is the recommended minimum safety distance to normally occupied buildings, which is 131m (NG5.6.2). The nearest occupied building is Flat Farm Cottage at 210m from the PRI [3.92].
- 8.87. In response to Professor Sibson, NG accepts that some elements of the risk analysis have not been quantified statistically, but it has applied a cautious best estimate approach to deal with uncertainty in line with best practice advocated by HSE and other regulatory bodies in Europe [3.93].
- 8.88. This may not directly answer the particular criticisms from Professor Sibson or altogether ease the concerns of residents living near the proposed site, but the modelling weaknesses he identifies generally resulted in a lower safety risk and helped, in the most part, to emphasize the safety factors built in and the cautious approach adopted. It is also important that risk assessments are carried out in a consistent manner for regulatory purposes to allow comparison of results.
- 8.89. There may well be room for improvement in the way some of the individual components of the risk analysis are dealt with in the HSE approach, but this is a matter for HSE rather than for me. The safety of the Corse site was found acceptable by the SoSs and the previous Inspectors even though there were residential properties closer to that site (IR8.84-8.94). So, without relevant new evidence to the contrary here, my conclusions are unlikely to be any different [5.8-5.15, 5.24].
- 8.90. Dr Furness has been in a long dialogue with HSE over safety concerns for several years. His main concern is also the uncertainty of the modelling and in the worst case fireball distance (204m). He and Prof Sibson used examples of incidents at Palaceknowle, Ghislenghien (Belgium) and Buncefield to illustrate how design and human errors can cause disasters.
- 8.91. The Palaceknowle incident was raised at the last inquiry and this concerned a leak from a high pressure gas pipeline crossing a road, which is not proposed here. The gas did not ignite and no deaths or injuries resulted. However, the design of pipelines crossing roads has been changed as a result (IR8.83). The Buncefield fire was the result of heavier petrol vapour igniting. Unlike petrol vapour, natural gas is lighter than air and, unless confined, would rise if there was an escape. It would not give rise to an

unconfined vapour cloud explosion like the one at Buncefield. The results of the Ghislenghien inquiry are not yet available, but this incident was a fire from a cross country pipeline damaged by a third party (NG14.29, NG40.22 and NG52).

- 8.92. Even so, it is acknowledged that these were all serious incidents and that safety is of paramount importance in an installation such as this. HSE is the independent arbiter of NG's safety case and has assessed the design of the PRI, and would inspect it both during construction and commissioning phases, as well as when it was in operation [3.94, 5.6-5.7, 5.11-5.12 and 5.20].
- 8.93. Dr Furness accuses HSE of not answering his questions fully; but he should not assume that the question has not been answered just because the answer is not what he wanted. Rather it is a difference in philosophy and engineering judgement. For instance no confidence limits for the worst case fireball radius has been given to him because HSE does not apply confidence limits to consequence predictions, but uses a cautious best estimate approach. The 204m figure is only one of the consequence distances that needs to be taken into account. For emergency evacuation planning NG takes the maximum hazard range taking account of all of the consequence distances and doubles it to provide safe evacuation and exclusion zones (NG40.19-20) [5.7].
- 8.94. A number of Dr Furness's comments in Doc 13 are a consequence of him not producing his statement before the Inquiry opened (4:32.20), and not seeing the relevant NG data, such as the revised design of the PRI or proofs of evidence, before the Inquiry began (4:57.25) (NG40.12). Others have been dealt with by the Inspectors at the previous inquiry, which he also attended, so I do not address them here (IR8.84-8.94). The NG does have operating experience of 1200mm pipelines, although not at 94 barg. But other operators in the UK have experience of 94 barg pipelines (NG40.15), and the Bacton/Zeebrugge 40 inch pipeline operates at 130 barg (Doc13.1). Predictions are used in extrapolating safety data from smaller to larger, thicker diameter pipelines, but as explained above, HSE considers that a cautious best estimate is the appropriate approach to take. The previous Inspectors and the SoSs were satisfied that there is sufficient operating experience at these pressures (IR8.88) [5.6, 5.20].
- 8.95. The worst case scenario, if the Tirley PRI control system failed and site instrumentation, including gas detection, did not pick up a leak would be a full bore rupture of the largest (1200mm) pipeline on site, the serious consequence of which, if a horizontal jet fire occurred, are shown in NG6.4.6.2.3.4.
- 8.96. The failure of the pressure control systems of the PRI and causing a full bore rupture is an extremely unlikely event. It would require the simultaneous failure of three independent levels of protection and the failure of other monitoring instrumentation, including gas detection, on site for such an event to occur, and for NG not to be aware of it. The integrity of control system design for PRIs has been intensively studied and the permissible configurations which give sufficient reliability are given in

IGE/TD/13. If the release was not full bore the release rate would be smaller and any resulting fire would be smaller. NG records show that there have been no explosions and no fatalities associated with the operation of the NTS pipeline network (NG52 and NG5.9.3).

### *Emergency Response and Flooding*

- 8.97. Dr Furness also considers that the 5 minute response time by the NG Control Centre to an incident is too long. But within that time the PRI site would be expected to be isolated by shutting block valves to limit the further release of gas to that contained on site (about 30 tonnes). The Ghislenghien incident occurred in a pipeline a considerable distance from a block valve (NG40.29).
- 8.98. Mr Hill also raises the Ghislenghien incident and is concerned about the reliance on telemetry to monitor the site and the absence of an emergency plan available for public scrutiny. But telemetry can be extremely useful in monitoring pressure and gas leaks, for instance, and CCTV cameras are also used. NG does have comprehensive emergency procedures to deal with any incidents in the NTS, including the new pipeline, which it intends to refine to include the PRI before this becomes operational. Emergency arrangements for the network are a statutory requirement and must be addressed under the PSR and tested annually. They are not made public because of the security implications (NG5.6.11 and NG14.15) [5.7 and 5.20].
- 8.99. Ms Henderson, Mr Hill and Mrs Mills and others are also concerned about access to the site in an emergency during the frequent flooding events in the River Severn catchment, which they say seem to block roads locally almost on an annual basis. Three of the four primary access roads (the B4211, A417 and A438) are all said to be routinely closed during flooding and the fourth adds 30 minutes to the emergency response time. In 2007 all the access roads were inundated for 3 days or more and in 2008, two of the roads were closed [5.1, 5.19, 5.25, 6.2, 6.4].
- 8.100. It is inevitable, when considering safety concerns such as this that some would wish to bring together the two risks, but the likelihood of the two events coinciding needs to be considered in context. Both the 2007 and 2008 floods were major events and not annual occurrences. The 2007 flood event was said to be a 1 in more than 100 year event over much of southern England and the 2008 return period was estimated to be more than 1 in 50 years. So if the roads were impassable for say 2 days in 2008 that equates to 1 day in  $(365 \times 50 \div 2)$  about 10,000 days. Even if all the roads were closed every one or two years, the odds against a major emergency at the PRI during this time can still be seen to be increased by several hundred to one. If, nevertheless, such a remote coincidence were to occur, NG could, as it did in the 2007 flood on another site, call on the services of helicopters and the military, if necessary, as well as the emergency services, to deliver the appropriate personnel to the site [3.100].

- 8.101. For these reasons I conclude that the safety risk levels for the proposed development are acceptable.

*Security*

- 8.102. Before the Inquiry I followed the approach of the previous Inspectors in asking for security issues to be first discussed between the parties in private so as to reach a common position and to prevent the disclosure of sensitive information at the Inquiry that might compromise security measures. At the previous inquiry it was concluded that there was no basis for refusal of planning permission so long as NG were to follow the recommendations of the Centre for the Protection of National Infrastructure (CPNI) in the way that the PRI was built. These security measures are applied to all key sites according to the particular requirements of each location. Any recommendations were unlikely to have land use implications. So CAPRI's concern on this seems unfounded [3.95, 4.66-4.67].
- 8.103. CAPRI and local residents, including Ms Magloyden, are concerned about what they see as lack of engagement by NG on security issues and the implications of an attack by a terrorist or dissident group, at this vulnerable rural location. I imagine that NG were reluctant to inflame public opinion further by saying too much openly about these risks and how they would be countered, although I understand NG's safety personnel were on hand at the public exhibitions held before the planning application was made. Discussions were held between NG and CAPRI outside of the Inquiry, but these were inconclusive. [4.66-4.68, 5.20, 5.26-5.28].

*Safety and Security Conclusions*

- 8.104. NG has undertaken the required statutory actions to allow it to design, install and operate the proposed installation in line with the PSR. The risk assessment for the site and for people in the locality concludes that the risk of fatality to persons living in the immediate vicinity would be a factor of 5.4 less than those found at the Corse inquiry, which in itself was found to be acceptable by a margin of 10-15 times lower than the definition of tolerable risk based on HSE guidelines. The level of societal risk was found to be very low and well within that acceptable in government guidance.
- 8.105. Security concerns are, if anything, greater nationally than during the last inquiry, but no new security issues have arisen from the main parties or from the residents on this occasion. NG operates over seven hundred PRIs and many of these must be at risk from a terrorist attack, including two on the new pipeline. There are also hundreds of other industrial sites that might be targeted. I have been given no reason to suppose that this PRI would be a particular target compared with some other key installations that by necessity are in rural locations.
- 8.106. I agree with the Inspectors at the previous inquiry (IR8.102) that, providing NG undertook and implemented security advice from the relevant agencies, security concerns should not be allowed to prevent the development of the proposed PRI. It must be acknowledged though that

terrorism would comprise an additional risk, albeit one that cannot be quantified.

### **Other Matters**

- 8.107. There was considerable local interest in the proposal as evident by the large turnout on all the days the Inquiry was held. This is a measure of the importance of the proposal to the local community. There were 142 written representations to the Planning Inspectorate at the appeal stage and 989 letters to the Council at the application stage, all but 3 of which opposed the proposed PRI. Most of the objections repeated those raised by those who appeared at the Inquiry and have been covered in my conclusions above. Those I have not addressed so far include noise, air quality, ecology, greenhouse gases and the localism agenda. Other than the last these are also covered in the SOCG and in the ES and ESA (CD51).
- 8.108. Noise is likely to be only an issue during the construction phase and during venting, at the commissioning stage and after, and both can be controlled by planning conditions. In particular a notification procedure is proposed before each infrequent, but noisy, venting operation. Such a procedure already exists for the Tirley AGI, but this has not been universally successful and some at the Inquiry claimed not to have been notified. Others were concerned for horses, which were ridden and kept in the locality and might be startled by the venting operations. Nonetheless, I see no reason why a procedure enforced by a planning condition, should not be successful in pre-warning residents and horse owners (see draft condition 24 – NG53) of venting. Some construction noise is also inevitable and this is best controlled by a noise mitigation scheme and a condition limiting the hours that construction operations can occur (see draft conditions 8 & 9 – NG53) [1.61-1.62, 3.101, 6.1-6.2].
- 8.109. Emissions from the installation would be limited to the release of natural gas from the venting operations, and water vapour, carbon dioxide and traces of nitric and nitrous oxides from the boilers used to re-heat the gas. These would be akin to that emitted from a number of large domestic condensing gas boilers. About 0.027% of the gas transported through the PRI each day would be used in these boilers (NG51). Natural gas is a cleaner fuel than coal or oil, for instance, and would contain lower emissions of noxious substances. The Borough Public Health Officer does not object to the scheme and has confirmed that there would be no undue impact on the residential amenity of the local residents in terms of air quality [1.63-1.64- 3.101, 6.2 and NG11].
- 8.110. The ESA addresses the question of ecology and concludes that no significant habitats would be lost, whilst the introduction of new planting will prove beneficial in the context of local habitats. Potential impacts would be limited to any breeding birds associated with the site. Mitigation measures for protected species and their habitats could be ensured under an appropriate Ecological Method Statement secured by a planning condition (see draft condition 17).



- 8.111. The localism agenda of the new coalition Government was raised by a number of people, including local Councillors, who believed that the opinions of local people should now carry more weight, and that the scheme should be rejected. This is a matter for the Secretaries of State, but in my view, whilst the amenities of local people should be protected, national infrastructure projects, such as this, also need to be considered in the national interest [5.23, 5.31].

### **Section 106 Obligation & Conditions**

- 8.112. A final draft Section 106 Obligation (NG35) was submitted during the Inquiry and the final document signed by both the landowner and NG was received following the Inquiry (Doc 25). The Obligation would ensure compliance with a Landscape Management Plan (LMP), including a watering regime and a 20 year maintenance period for trees, shrubs and a re-aligned hedgerow, as well as the decommissioning of the Tirley AGI and the reinstatement of the land. I consider the terms of the Obligation to be acceptable [1.11].
- 8.113. I consider there is no justification for the Obligation to provide for diversion of the Newhall Brook because the SUDS should prevent any increase in peak flows [3.9.8 and 5.38].
- 8.114. A schedule of conditions was the subject of consideration, revision and agreement at the Inquiry (NG53). The reasons for the conditions are also set out and included in the Schedule attached as an Appendix that follows my recommendations. The conditions would in my view all pass the tests in Circular 11/95 on the imposition of conditions.
- 8.115. One condition where the parties seem unclear is condition 19. This specifies floor levels to be set at least 300mm above the modelled 1 in 1000 year flood level for the site. This condition was incorporated following the advice of the EA. The required level would be 24.3m AOD, the same level as the proposed made up ground level. I consider the words 'at least' should be removed from the condition to ensure that there is no element of double counting or over design here that could result in the buildings being taller than necessary in the landscape. There is no safety risk in this requirement (1:206.3).

### **Overall Planning Balance & Conclusions**

- 8.116. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that the determination of the appeal must be made in accordance with the (development) plan unless material considerations indicate otherwise. The development plan has no specific policies dealing with the location of infrastructure such as the PRI. The SoSs and Inspectors in the previous case recognised that the PRI is a development that requires a countryside location for safety purposes, so there is no conflict with GSP policy S4,

which seeks to strictly control development in the countryside.

- 8.117. GSP policy S7 and TBLP policy LND7 require the provision of high quality design and landscape schemes, respectively. There is concern from those who oppose the project about the shape and size of the bunds and the likely success of the landscaping scheme. The proposals depend very much on the mitigation provided by the bunding and associated extensive landscaping scheme. But the bunds would be of a much more natural, irregular and sinuous form than those in the previous proposal and the landscape scheme and the 20 year Landscape Management Plan are secured by a sound Section 106 Obligation. Accordingly, I have concluded that fears about its likely success in screening the development are unfounded and that the proposal would not therefore be contrary to these policies [8.43 and 8.52, 8.55-8.56].
- 8.118. The Council asserts that the proposal is contrary to policies NHE1 and S6 of the GSP and policy LND4 of the TBLP, all which seek to protect the character and appearance of the rural landscape. The development is of an industrial form and scale and would introduce an alien and visually intrusive feature into the rural landscape. By its very nature in the short-term the proposal would thus be in conflict with these policies insofar as they relate to the protection of the open countryside from development that would adversely impact upon the visual appearance of the landscape. But in the longer-term the development would gradually be assimilated into the countryside and I have concluded that the harm would not be unacceptable [8.56].
- 8.119. GSP policy NHE.1, in particular, qualifies its aim to protect the countryside character and appearance with.... '*unless the social and economic needs of the area or wider environmental objectives outweigh such harm*'. Hence the proposed development is one where the national need for the PRI has to be balanced against any harm to the rural landscape.
- 8.120. In my conclusions elsewhere I have found that:
- there remains a continued national need to secure and maintain diversified and competitive gas supplies, although the need for individual PRI projects such as this is not especially urgent [8.29];
  - there is a need to fully utilise the Milford Haven terminals and the new NTS pipeline from Felindre to Tirley in order that NG can meet its contracted obligations, and contribute to the security and competitiveness of the gas supply in line with NG's duty under the Gas Act and draft NPS EN-1 [8.34];
  - there is no justification for reassessing the Wormington option, but re-siting the PRI at Site 16 or elsewhere up to 10km from the Tirley AGI would be acceptable, subject to planning permission, if the Tirley option proved unsuitable in planning terms [8.36-8.40].

There is, therefore, a social, economic and environmental need for the proposal in the locality.

- 8.121. The location of the PRI is not site specific and the SSR has considered a range of alternative sites within a 10km radius of Tirley. It has found four sites with low environmental sensitivity, and the appeal site to be the most suitable of these on environmental impact and engineering/costs grounds. Site 16 would have less visual impact than the appeal site, but the additional temporary impacts of the 6km longer pipeline and the need to retain and extend the Tirley AGI, together with the substantial extra capital costs, counted against it in the end. The reasoning behind this final decision is not transparent, however, because there is no documented analysis of the four options given at that stage of the assessment [8.62-8.64].
- 8.122. Notwithstanding this, in my assessment of the schemes I have concluded that the difference in planning terms between the two options, weighed against the substantial additional costs of Site 16 proposal would not justify the selection of that option over the appeal site [8.82].
- 8.123. More importantly, I have concluded earlier that the selection of an alternative site is only necessary if the appeal site itself is unsuitable in planning terms. In determining the suitability of the appeal site I have weighed the unacceptable short-term visual impact of the scheme against the need for the PRI, as required by GSP policy NHE.1. I have also taken account of draft NPS EN-4, which is a material consideration and requires the character of the landscape to be taken into account and given due weight. It further states that the decision maker must be satisfied that long-term harm to the landscape is minimised, including by reasonable mitigation measures to restore the landscape. This adds further weight to my conclusion that the short-term visual impact of the development does not outweigh the need for the scheme and that the proposal would not conflict with the Development Plan [8.17, 8.76, 8.81-8.82].
- 8.124. Safety and security are other material considerations I have taken into account. I have concluded that the proposal would comply with the statutory requirements for the design and installation of the PRI and that the safety risk levels and security arrangements for the installation are acceptable. They are neither positive nor negative factors for the decision.
- 8.125. Localism is a material consideration in this case. A number of objectors have raised concerns on the basis that in a case where adverse local impacts are set against an identified national need for a new facility, localism should indicate that greater weight should be provided to local than to national impact. This is essentially a matter for the Secretaries of State to decide. The approach taken in this report is to make clear that, whilst its conclusions are finely balanced and the amenities of local people should be protected, the needs of nationally significant infrastructure projects that serve the nation as a whole should on balance take precedence [8.111].
- 8.126. Overall, on balance, I conclude that the need for the development outweighs the short-term adverse visual impact on the landscape and that the proposal should be determined in accordance with the Development Plan.

## **Recommendations**

- 8.127. I recommend to the Secretary of State for the Communities and Local Government and to the Secretary of State for Energy and Climate Change that the appeal be allowed subject to the amended application plans (NG36) and conditions listed in the Appendix to this Report, and the Section 106 Obligation.

David Tester

INSPECTOR

## APPENDIX – SCHEDULE OF CONDITIONS AND REASONS

### Planning Conditions

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. Not less than 14 days notice in writing shall be given to the Local Planning Authority prior to the commencement of development.
3. Unless otherwise agreed in writing by the Local Planning Authority, all on-site services required to be connected to the development hereby approved shall be laid underground.
4. The proposed comprehensive landscaping scheme, including areas of all temporary and permanent bunding and earthworks, shall be carried out in full accordance with the details and timings as shown on drawing nos. H132/BH/01/05/4629/527A Rev. A; H132/BH/08/03/4629/506 Rev B; and H132/BH/01/01/3917/537 Rev A, and in accordance with the approved Landscape Management Plan document referenced: H132/BH/99/00/4629/528 Rev 3, unless otherwise agreed in writing by the Local Planning Authority.
5. Within 6 months of the cessation of the use of the development hereby approved for the purposes of the conveyance of gas, a scheme for the removal of the development and the re-instatement of the land shall be submitted to the Local Planning Authority. The removal of the development and the re-instatement of the land shall be carried out in accordance with the approved scheme.
6. The proposed lighting scheme shall be installed on the site fully in accordance with the Operational Lighting Study Report reference: H132/BF/99/00/4629/512A Rev B; and Drawing Nos. H132/BF/02/04/4629/543A Rev A, H132/BF/05/02/4629/544 Rev A and H132/BH/01/01/4629/516A Rev A, unless otherwise agreed in writing by the Local Planning Authority. The lighting shall only be illuminated when maintenance or emergency works are undertaken at the site or when the lights have been illuminated as part of the site security system.
7. Notwithstanding the submitted information, the Lighting scheme shall comply with the parameters of Environmental Zone 2 of the Institute of Lighting Engineers Guidance Notes for the Reduction of Intrusive Light, unless otherwise agreed in writing by the Local Planning Authority.
8. Unless otherwise agreed in writing by the Local Planning Authority, construction works shall only take place between the hours of:
  - 07.00 to 19.00 Mondays to Fridays
  - 08.00 to 16.00 Saturdays.
  - No construction works shall take place on Sundays or Bank Holidays.

9. A construction noise mitigation scheme shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. Construction works shall thereafter be operated in accordance with the approved scheme.
10. No development shall take place, until an updated Traffic Management Plan (TMP) has been submitted to, and approved in writing by the Local Planning Authority. The approved TMP shall be fully adhered to throughout the construction period of the development. The TMP shall provide for:
  - lorry/HGV management and routing scheme
  - Phasing scheme showing the proposed period of operation, hours of operation and numbers and weights of HGVs during each phase
  - Specific local safety issues, such as the mini-roundabout at Staunton and the avoidance of out of hours routing through Tewkesbury, to be addressed
  - A local freight quality partnership or other briefing forum to help inform the local communities about constructional activity
  - Details of a temporary traffic order to reduce the speed limit on the roads directly affect by the construction access
  - The parking of vehicles of site operatives and visitors
  - Loading and unloading of plant and materials
  - Storage of plant and materials used in constructing the development
  - All constructional traffic/commercial vehicles to leave the site sheeted, except those carrying stone in excess of 500mm diameter
  - Wheel washing facilities
  - Measures to control the emission of dust and dirt during construction
  - A scheme for recycling/disposing of waste resulting from demolition and construction works.
11. The access to the development shall be laid out and constructed in accordance with the details shown on drawing number H132/BH/01/02/4629/507 Rev B. Any entrance gates shall be set back a minimum of 20 metres from the carriageway edge and hung so as not to open outwards. The access driveway shall be surfaced in bituminous macadam or other approved materials for a minimum of 30 metres into the development site from the existing carriageway edge and the proposed access shall be the sole means of vehicular access to the development. All such access arrangements shall be similarly retained at all times thereafter, unless otherwise agreed in writing by the Local Planning Authority.
12. If the access arrangements in condition (11) are constructed between March and November, a temporary traffic management scheme providing for 3-way traffic lights and a 40mph speed restriction shall be submitted to the Local Planning Authority for its approval prior to the commencement of the works. The scheme shall be implemented in accordance with the approved details.
13. No works (other than those referred to in conditions 11 and 12) shall commence on site until measures to segregate the public footpath from the proposed access road have been provided in accordance with approved details. Such measures shall be retained for the duration of use thereafter.

14. The gradient of the proposed access road within 20 metres of the classified B4213 shall not be steeper than 1 in 20.
15. The proposed development shall not be brought into use until the car parking and manoeuvring areas have been completed in all respects in accordance with the details shown on drawing number H132/BH/01/01/4629/517A Rev A and those areas shall not thereafter be used for any purpose other than the parking and manoeuvring of vehicles.
16. No development shall take place within the application site until the Appellant, or its agent or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved in writing by the Local Planning Authority.
17. No development shall take place until an Ecological Method Statement, covering pre-construction, construction and post-construction phases has been submitted to and approved in writing by the Local Planning Authority. The Ecological Method Statement shall be compiled by a suitably qualified ecologist, and shall include appropriate mitigation measures and best practice working methods for birds, bats and badgers as well as details of an ecological enhancement scheme including details of after care management. The works shall be implemented in accordance with the approved measures of the Ecological Method Statement, unless otherwise approved in writing by the Local Planning Authority.
18. No new buildings, structures (including gates, walls and fences) or raised ground levels shall be constructed within 5 metres of the top of any bank of the adjacent watercourse, unless agreed otherwise in writing by the Local Planning Authority.
19. Floor levels should be set at 300mm above the modelled 1 in 1000 year flood level for the site.
20. Development shall not commence until full drainage details, incorporating sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development have been submitted in full and approved by the local planning authority. Any approved scheme shall be implemented in accordance with the approved details before the development is completed or occupied.
21. A scheme for the disposal of foul drainage shall be submitted to and approved in writing by the Local Planning Authority prior to development commencing and shall thereafter be implemented in accordance with the approved scheme.
22. Any facilities for the storage of oil, fuels or chemicals shall be sited on impervious bases surrounded by impervious bund walls. The volume of the bunded compound shall be at least equivalent to the capacity of the tank plus 10%. If there is multiple tankage, the compound shall be at least equivalent to the capacity of the largest tank, vessel or the combined capacity of any inter-connected tanks or vessels plus 10%. All filling points, associated pipe work, vents, gauges and sight glasses must be located within the bund or have separate secondary containment. The drainage system of the bund shall be

sealed with no discharge to any watercourse, land or underground strata. Associated pipe work shall be located above ground and protected from accidental damage. All filling points and tank/vessel overflow pipe outlets shall be detailed to discharge downwards into the bund.

23. Notwithstanding the submitted plans, details of the colour of the flue stacks, buildings, fencing, plant and ground surfacing hereby permitted shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented strictly in accordance with the approved scheme and the permitted colours shall not be changed other than in accordance with details approved in writing by the Local Planning Authority.
24. A scheme of notification of nearby residents of venting arrangements for the Pressure Reduction Installation shall be submitted to and approved in writing by the Local Planning Authority prior to the installation being brought into use. The approved scheme shall be strictly adhered to for the duration of the use of the installation.
25. Within 6 months of the completion of the development hereby approved the temporary site establishment area shall be removed and the land reinstated in accordance with details to be submitted to and approved in writing by the Local Planning Authority.



## Reasons for Conditions

1. To comply with the requirements of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.
2. To allow time for the Local Planning Authority to ensure that all pre-commencement planning conditions have been formally discharged prior to the commencement of the development.
3. To minimise the impact of the development on the rural landscape in accordance with Policy LND4 of the Tewkesbury Borough Local Plan to 2011 March 2006.
4. To ensure that the new development will be visually attractive in the interests of amenity in accordance with Policies S6 and S7 of the Gloucestershire Structure Plan Second Review and Policy LND7 of the Tewkesbury Borough Local Plan to 2011 – March 2006.
5. To ensure that the harm to the rural landscape is minimised, in accordance with Policy LND4 of the Tewkesbury Borough Local Plan to 2011 - March 2006.
6. To ensure that the light omitted from the development is not a source of undue nuisance to occupants of nearby residential properties and to minimise the visual impact on the rural landscape, in accordance with Policies EVT2 and LND4 of the Tewkesbury Borough Local Plan to 2011 - March 2006.
7. To ensure that the light omitted from the development is not a source of undue nuisance to occupants of nearby residential properties, in accordance with Policy EVT2 of the Tewkesbury Borough Local Plan to 2011 March 2006.
8. To prevent undue noise and disturbance to local residents outside of normal working hours, in accordance with Policy EVT3 of the Tewkesbury Borough Local Plan to 2011 March 2006.
9. To prevent undue noise and disturbance to local residents outside of normal working hours, in accordance with Policy EVT3 of the Tewkesbury Borough Local Plan to 2011 – March 2006.
10. In the interests of Highway safety and to protect the amenities in the area, in accordance with Policy TPT1 of the Tewkesbury Borough Local Plan to 2011 - March 2006.
11. To ensure a satisfactory means of access is provided and maintained in the interests of highway safety, in accordance with Policy TPT1 of the Tewkesbury Borough Local Plan to 2011 - March 2006.
12. To ensure a satisfactory means of access is provided and maintained in the interests of highway safety, in accordance with Policy TPT1 of the Tewkesbury Borough Local Plan to 2011 – March 2006.
13. To ensure the public footpath is maintained free from motor vehicles at all times to ensure safe pedestrian usage in the interests of highway safety, in

- accordance with Policy TPT1 of the Tewkesbury Borough Local Plan to 2011 - March 2006.
14. In the interests of highway safety, in accordance with Policy TPT1 of the Tewkesbury Borough Local Plan to 2011 - March 2006.
  15. To ensure that adequate off-road parking is provided and to enable vehicles to enter and leave the site in forward gear, in the interests of highway safety, in accordance with Policy TPT1 of the Tewkesbury Borough Local Plan to 2011 - March 2006.
  16. To facilitate an appropriate scheme of archaeological recording, in accordance with Policy NHE.6 of the Gloucestershire Structure Plan Second Review.
  17. To ensure proper provision is made to safeguard protected species and their habitats, in accordance with Policy NHE.2 of the Gloucestershire Structure Plan Second Review and Policy NCN5 of the Tewkesbury Borough Local Plan to 2011 - March 2006.
  18. To maintain access to the watercourse for maintenance or improvements and provide for overload flood flows, in accordance with Policy F.1 of the Gloucestershire Structure Plan Second Review and Policy EVT5 of the Tewkesbury Borough Local Plan to 2011 - March 2006.
  19. To protect the development from flooding, in accordance with Policy F.1 of the Gloucestershire Structure Plan Second Review and Policy EVT5 of the Tewkesbury Borough Local Plan to 2011 - March 2006.
  20. To ensure that the new development does not increase the risk of flooding to the site itself or adjacent existing developments, in accordance with Policy EVT9 of the Tewkesbury Borough Local Plan to 2011 - March 2006.
  21. To ensure adequate disposal of foul drainage in accordance with Policy P.1 of the Gloucestershire Structure Plan Second Review.
  22. To ensure that the risk from land contamination to future occupiers of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems in accordance with Policies P.1 and F.1 of the Gloucestershire Structure Plan Second Review.
  23. To limit the impact of the development on the rural landscape in accordance with Policies NHE.1 of the Gloucestershire Structure Plan Second Review and Policy LND4 of the Tewkesbury Borough Local Plan to 2011 - March 2006.
  24. To prevent unexpected disturbance to local residents by virtue of infrequent noise, in accordance with Policy EVT3 of the Tewkesbury Borough Local Plan to 2011 - March 2006.
  25. To ensure that the land is returned to open countryside to limit the impact of the development on the rural landscape, in accordance with Policies NHE.1 of the Gloucestershire Structure Plan Second Review and Policy LND4 of the Tewkesbury Borough Local Plan to 2011 - March 2006.

## APPEARANCES

### FOR TEWKESBURY BOROUGH COUNCIL:

Mr J Wills of Counsel	instructed by Tewkesbury Borough Council
He called	
Mr P Smith BA(Hons) BSc(Hons) Dip Des Blt Env MRTPI	Paul Smith Associates
Mr P Radmall MA BPhil MLI GLA	Peter Radmall Associates

### FOR NATIONAL GRID GAS plc:

Mr D Holgate QC	instructed by Hammonds LLP 2 Park Lane, Leeds LS3 1ES
He called	
Mr A Stonehewer BSc(Hons) CEng MIGEM	Gas Engineering Policy Manager National Grid Gas plc
Mr D McCollum BSc CEng MIGEM MIET MSRS	Safety Engineering Team Manager National Grid Gas plc
Mr P Reid Dip LD MLI MIEA	Technical Director Mouchel
Mr L Powell BSc(Hons) DipTP MRTPI FRSA	Senior Director RPS

### FOR CAMPAIGN AGAINST PRESSURE REDUCTION INSTALLATION "CAPRI":

Mr J Milner of Counsel	Instructed by Mr P McMurtrie Solicitor and Notary Public Walk Farm, Moorend Road, Eldersfield, Gloucester GL19 4NS
He called	
Mr W K Turner NDA (Hons) Dip Farm Man, MI Biol: N Sch	Environmental Consultant

### INTERESTED PERSONS:

Ms R Henderson	Chair – Tirley Parish Council
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Professor R Sibson MA PhD CStat (Statistician)	On behalf of Tirley Parish Council
Dr R Furness Dip ChemE PhD CEng Finst MC ISA Fellow (Engineering Consultant)	On behalf of Tirley Parish Council
Mrs C Mills	Local Resident - The Folly – Tirley
Ms C Magloyden	Local Resident and Security Consultant
Mr D Rudge MRTPI	Development Control Manager Malvern Hills District Council
Mr P Awford	Gloucestershire County Councillor Tewkesbury Borough Councillor
Mr P Burford	Forest of Dean District Councillor
Mr R Lloyd	Vice Chairman Campaign to Protect Rural England (CPRE) - Gloucestershire Branch
Mr N Mullane	Councillor – Chaceley Parish Council
Mr G Hill	17 Kipling Road Cheltenham
Mr G Burndred	Local Resident

## DOCUMENTS

### CORE DOCUMENTS

#### Government Guidance & Statutes

- CD1 PPS1: Delivering Sustainable Development (31 January 2005) and General Principles (24 February 2004)
- CD2 PPS4: Planning for Sustainable Economic Growth (29 December 2009)
- CD3 PPS7: Sustainable Development in Rural Areas (3 August 2004)
- CD4 PPS9: Biodiversity and Geological Conservation (16 August 2005)
- CD5 PPS12: Local Spatial Planning (4 June 2008)
- CD6 PPS23: Planning and Pollution Control (3 November 2004)
- CD7 PPG24: Planning and Noise (3 October 1994)
- CD8 PPS25: Development and Flood Risk (29 March 2010)
- CD9 Extracts from the commentary to the Town and Country Planning Act 1990 in the Planning Encyclopaedia
- CD10 Extracts from the Planning and Compulsory Purchase Act 2004
- CD11 Department of the Environment Circular 2/85: Planning Control over Oil and Gas Operations
- CD12 Removed
- CD13 Extracts from the Gas Act 1986
- CD14 Extracts from the Energy Act 2008

#### Regional Planning Guidance

- CD15 Extracts from Regional Planning Guidance for the South West (RPG10) (September 2001)
- CD16 Removed
- CD17 Extracts from the draft RSS for the SW 2006-2026 (2008)

#### Structure and Local Plans

- CD18 Extracts from the Gloucestershire Structure Plan (Second Review) (adopted November 1999)
- CD19 Extracts from the Gloucestershire Structure Plan (Third Alteration) (2005)
- CD20 Extracts from Tewkesbury Borough Local Plan to 2011 (adopted March 2006)
- CD21 Removed
- CD22 Malvern Hills District Local Plan (1996-2011)

#### Draft National Policy Statements

- CD23 EN-1 Draft Overarching National Policy Statement for Energy
- CD24 EN-4 Draft National Policy Statement for Gas Supply Infrastructure and Gas and Oil Pipelines

#### Corse PRI Appeal Decision

- CD25 The Secretaries of State's decision letter dated 20 December 2007 (APP/P1615/A/06/2029294)
- CD26 The Inspectors' Report dated 23 August 2007 (APP/P1615/A/06/2029294)

#### White Papers and Statement of Need etc

- CD27 Extracts from the 2003 Energy White Paper: Our Energy Future – Creating a Low Carbon Economy (pages 9 – 12)

- CD28 Extracts (Chapter 4) from the DTI Energy Review "The Energy Challenge" (July 2006)
- CD29 The Statement of Need published by the Secretary of State for Trade and Industry on 16 May 2006
- CD30 Extracts (Chapter 4) from the Energy White Paper 2007
- CD31 Extracts from HM Government "The UK Low Carbon Transition Plan – National strategy for climate and energy" (15 July 2009)
- CD32 Removed
- CD33 Removed
- CD34 Removed
- CD35 Removed
- CD36 Removed
- CD37 Removed

#### **Safety Documents**

- CD38 Reducing Risks, Protecting People - Health and Safety Executive decision making process (2001)
- CD39 Health and Safety Executive – Hazardous Installations Directorate Approach to ALARP Decisions, July 2006
- CD40 Extracts from the Pipeline Safety Regulations 1996
- CD41 IGE/TD/1: Institution of Gas Engineers & Managers, Recommendations on Transmission and Distribution Practice – Steel pipelines for high pressure gas transmission
- CD42 IGE/TD/13: Institution of Gas Engineers & Managers, Recommendations on Transmission and Distribution Practice – Pressure Regulating Installations for Transmission and Distribution Systems
- CD43 IGE/SR/25: Institution of Gas Engineers & Managers, Hazardous area classification of Natural Gas installations
- CD44 Extracts from TRANSCO Specification for engineering of pipelines and installations operating at above 7 barg (T/SP/TR/18)

#### **Landscape Documents**

- CD45 Extracts from the Landscape Institute and IEMA – Guidelines for Landscape and Visual Impact Assessment (Second Edition) 2002 (Part 7)
- CD46 Countryside Character. Volume 8. South West. The Countryside Agency.
- CD47 Gloucestershire Landscape Character Assessment. LDA Design. January 2006
- CD48 Worcestershire Landscape Character Assessment. Planning for Landscapes in Worcestershire. June 2008.

#### **Other Core Documents**

- CD49 Statement of Common Ground
- CD50 Committee Report (2 February 2010)
- CD51 Environmental Statement Addendum including Non Technical Summary (July 2009)
- CD52 Site Selection Report (27 November 2008)
- CD53 Environmental Statement

### **INQUIRY DOCUMENTS**

- Doc 1 List of Persons present at Inquiry
- Doc 2 Council's letter from interested persons (in blue folder)
- Doc 3 Daily Transcripts (8)
- Doc 4 Written appeal stage representations to PINS (in blue folder -c160)
- Doc 5 Minutes of Pre Inquiry Meeting
- Doc 6 List of Village Hall Helpers
- Doc 7 Itinerary for accompanied site visit – 22/7/10
- Doc 8 Letter from HSE dated 16/6/10
- Doc 9 Statement and Disc from Mr G Hill
- Doc 10 Response by Mr G Hill to Doc NG14
- Doc 11 Response by Mr G Hill to Inspector's questions on flooding
- Doc 12 Statements by Ms R Henderson - Chair Tirley PC
- Doc 13 Evidence by Dr Furness – in support of Tirley PC
- Doc 14 Evidence by Professor R Sibson– in support of Tirley PC
- Doc 15 Documents arising following discussions between Dr Furness, Prof S Sibson and Mr Stonehewer on 22/7/10
- Doc 16 Evidence and attachments from Mrs C Mills
- Doc 17 Evidence and attachments from Ms C Magloyden
- Doc 18 Evidence from Mr D Rudge – Malvern Hills DC
- Doc 19 Evidence from Mr P Awford
- Doc 20 Evidence from Mr P Burford
- Doc 21 Evidence from Mr R Lloyd – CPRE
- Doc 22 Evidence from Mr N Mullane
- Doc 23 Letters from Mr M Spurling, G Nidd and T Risdale, handed in at Inquiry
- Doc 24 Representations to the Council at the application stage
- Doc 25 Final Section 106 Obligation – 4 October 2010

### **TEWKESBURY BOROUGH COUNCIL DOCUMENTS**

- T1 P Smith - proof
- T2 P Smith - summary
- T3 P Smith - appendices
- T4 P Radmall - proof
- T5 P Radmall - supporting material
- T5(a) P Radmall – replacement appeal site wire frames
- T5(b) P Radmall – replacement site 16 wire frames
- T6 P Radmall - summary
- T7 Methodology for wire frames
- T8 Council opening submissions
- T9 Council closing submissions
- T10 Extracts from Journal of PEL 1983 and 1986

**NATIONAL GRID GAS plc DOCUMENTS**

NG1	Tony Stonehewer – Summary Proof
NG2	Tony Stonehewer – Proof of Evidence
NG3	Tony Stonehewer – Appendices
NG4	David McCollum – Summary Proof
NG5	David McCollum – Proof of Evidence
NG6	David McCollum – Appendices
NG7	Paul Reid – Summary Proof
NG8	Paul Reid – Proof of Evidence
NG9	Paul Reid – Appendices
NG10	Lyn Powell – Summary Proof
NG11	Lyn Powell – Proof of Evidence
NG12	Lyn Powell – Appendices
NG13	Paul Reid – Rebuttal Proof
NG14	Response by National Grid dated 2 July 2010 to representations of Mr Geoffrey Hill dated 6 May 2010
NG15	DECC: Energy Markets Outlook (December 2009) ( <i>extracts included in CAPRI evidence – C13</i> )
NG16	DECC: Gas Security of Supply – A policy statement from the Department of Energy and Climate Change (April 2010) ( <i>extracts included in CAPRI evidence – C12</i> )
NG17	National Grid: Gas Transportation Ten Year Statement 2009 ( <i>extracts included in CAPRI evidence – C14</i> )
NG18	National Grid: Transporting Britain's Energy 2009: Development of Energy Scenarios ( <i>extracts included in CAPRI evidence – C15</i> )
NG19	National Grid: TBE 2010: Development of Energy Scenarios (8 July 2010)
NG20	Final Draft s.106 Agreement
NG21	Tony Stonehewer Appendix AKS13 (A3 version)
NG22	Letter dated 21 April 2010 from National Grid to Waters Wye Associates
NG23	National Grid response to Professor Robin Sibson's written statement dated 12/07/2010
NG24	Note confirming review of methodologies adopted for the preparation of photomontages included in NG9 Appendix A and for the wireframe images included in T5



NG25	Paul Reid Appendix NG9 – folder of drawings in A1 format
NG26	Letter from the HSE to the Planning Inspectorate dated 25 April 2007
NG27	Extract from Halsbury's Laws Volume 17(2) Energy & Mining (s.172 Energy Act 2004)
NG28	Response to the Inspector's question regarding the DCF rate used by National Grid in the Net Present Value calculation
NG29	Response to the Inspector's questions regarding building heights set 300mm above the 1 in 1000 year flood level
NG30	Slides from a National Grid presentation dated 18 February 2008 "The LNG import experience and the UK Gas Network"
NG31	Response to the Inspector's question regarding Milford Haven Terminals
NG32	Response to the Inspector's question regarding gas venting
NG33	Extract from Hansard (Thursday 15 July 2010)
NG34	Letter from Ofgem to National Grid dated 13 July 2010
NG35	Completed duplicate 106 agreements individually signed dated 13 July 2010
NG36	Full set of Application Drawings as referred to in Appendix 2 of the Statement of Common Ground
NG37	Letter from Dr Furness of JDF & Associates Ltd to Brian Smethurst of National Grid Gas dated 19 July 2010
NG38	Email from Hammonds LLP (Julia Dixon) to Dr Furness dated 19 July 2010 (20.13)
NG39	Email from National Grid (Kathy Marfell) to Dr Furness (23.11)
NG40	Response from National Grid to Dr Furness' written statement of July 2010
NG41	Extracts from the Corse public inquiry transcript pages 199-216 (inclusive)
NG42	Tirley AGI and temporary PIG trap venting notifications note
NG43	Response to Inspector Tester's question on day six of the Public Inquiry regarding risk assessment and CPNI. National Grid response to CAPRI and Carole Magloyden's questions on Day two about safety and security considerations. Letter from National Grid to Tewkesbury Borough Council dated 2 <sup>nd</sup> February 2009 enclosing a note regarding security aspects. List of questions from CAPRI and Carole Magloyden regarding

	security issues
NG44	National Grid response to the points made by Dr Furness in his Appendix 3
NG45	National Grid response to questions raised by Professor Sibson when giving his statement on Day 4 of the Inquiry (16.07.2010)
NG46	Copy of NG17 from the previous Corse Inquiry
NG47	Response to the Inspector's question on Day one (Transcript pages 196-197) regarding storage projects within the UK
NG48	Addendum to NG29
NG49	Response to Mr Hill's "comments on responses contained in Document NG14"
NG50	Drawing reference H132/BH/01/05/3917/541 – Sketch Design Restoration Tirley AGI Planting and Landscape Plan
NG51	Response from National Grid to a question raised by Dr Furness on Day 7 of the Inquiry regarding the maximum amount of gas that has been used in re-heat technology at the Tirley PRI
NG52	National Grid's response to the safety question raised by Dr Furness on Day 7 of the Inquiry
NG53	List of conditions (with reasons) agreed between National Grid and Tewkesbury Borough Council
NG54	Correspondence between Mr Stonehewer and Ms Henderson regarding the risk assessment discussion of 22 July 2010
NG55	Secretary of State for the Environment v Edwards (P.G.) Court of Appeal 17 March 1994 (1995) 66 P.& C.R. 607
NG56	National Grid's Closing Submissions

	<b>CAMPAIGN AGAINST THE PRESSURE REDUCTION INSTALLATION DOCUMENTS</b>
C1	Statement of Case
C11	DTI: The Energy Challenge, July 2006
C12	DECC: Gas Security of Supply, April 2010
C13	DECC: Energy Markets' Outlook, December 2009
C14	NG: Gas Transport Ten Year Statement Dec 2009
C15	NG: Transporting Britain's Energy, 2009
C16	NG: Fact Sheet 7, August 2008
C21	Landscape Impact: Proof of Evidence (Mr Turner)
C22	Landscape Impact: Summary of Evidence (Mr Turner)
C23	Appendix WKT1: Agricultural Land Classification Appendix WKT2: Horticultural Advice Appendix WKT3: Royal Forestry Society Appendix WKT4: deliberately blank Appendix WKT5: Tree Planting Guide
C24	Supplementary Evidence - Landscape Impact Mr Turner)
C31	NG: Committed Import Projects
C32	NG: LNG Gas Presentation, 18 Feb 2008
C33	Interconnector Flow data
C34	Pembroke gas fired power station
C35	Newport gas fired power station
C36	Qatargas: Statement
C37	Milford Haven sent out, 1 Dec 2009-3 Jun 2010
C38	Milford Haven Terminals
C41	Correspondence, NG to Mr & Mrs Roper-Caldbeck: 25 April 2006
C42	Correspondence, Mr McMurtrie to OFGEM: 26 July 2008
C43	Correspondence, OFGEM to Mr McMurtrie: 1 Aug 2008
C44	Correspondence, Mr McMurtrie to NG: 5 Sept 2008
C45	Correspondence, NG to Mr McMurtrie: 22 Sept 2008
C46	E-mail, Murphy Pipelines to Forest of Dean District Council: 26 May 2006
C47	Closing submissions of CAPRI