STATUTORY INSTRUMENTS

2024 No. 1136

INFRASTRUCTURE PLANNING

The Medworth Energy from Waste Combined Heat and Power Facility (Correction) Order 2024

Made - - - -	*7th November 2024*
Coming into force - -	*8th November 2024*

The Medworth Energy from Waste Combined Heat and Power Facility Order 2024 ("the Order")(**a**), which granted development consent within the meaning of the Planning Act 2008 ("the Act")(**b**), contains correctable errors within the meaning of paragraph 1 of Schedule 4 to the Act.

In accordance with paragraph 1(5)(a) of Schedule 4 to the Act, before the end of the relevant period (as defined in paragraph 1(6)(a) of Schedule 4 to the Act), the Secretary of State received a written request from the applicant(**c**) for the correction of errors in the Order.

In accordance with paragraph 1(7) of Schedule 4 to the Act, the Secretary of State has informed Cambridgeshire County Council, Norfolk County Council, Fenland District Council and the Borough Council of King's Lynn and West Norfolk as the relevant local planning authorities(**d**), that the request has been received.

The Secretary of State, in exercise of the powers conferred by section 119, and paragraphs 1(4) and 1(8) of Schedule 4 to the Act, makes the following Order—

Citation and commencement

1.—(1) This Order may be cited as the Medworth Energy from Waste Combined Heat and Power Facility (Correction) Order 2024.

(2) This Order comes into force on 8th November 2024.

Corrections

2.—(1) The Medworth Energy from Waste Combined Heat and Power Facility Order 2024 is corrected as set out in the table in Schedule 1 (corrections) to the Order, in which—

(a) column 1 sets out where the correction is to be made;

(**a**) S.I. 2024/230

(**b**) 2008 c. 29. Paragraph 1 of Schedule 4 was amended by paragraph 70 of Schedule 13, and Part 20 of Schedule 25, to the Localism Act 2011 (c. 20) and by paragraph 4 of Schedule 8 to the Marine and Coastal Access Act 2009 (c. 23). There are other amendments to the Act which are not relevant to this Order.

(**c**) As defined in paragraph 4 of Schedule 4 to the Act.

(**d**) As defined in paragraph 4 of Schedule 4 to the Act.

(b) column 2 sets out how the correction is to be made; and

(c) column 3 sets out the text which is to be substituted, inserted or omitted.

(2) Part 4 of Schedule 11 to the Medworth Energy from Waste Combined Heat and Power Facility Order 2024 (provisions for the protection of Eastern Power Networks) is omitted and is replaced with the provisions set out in Schedule 2 to this Order.

Signed by authority of the Secretary of State for Energy Security and Net Zero

John Wheadon
Head of Energy Infrastructure Planning Delivery
Department for Energy Security and Net Zero

7th November 2024

SCHEDULES

SCHEDULE 1

Article 2(1)

CORRECTIONS

Column (1) *Where the correction is made*	*Column (2)* *How the correction is made*	*Column (3)* *Text substituted, inserted or omitted*
Introductory text, footnote 4 (on page 1)	For "paragraph 29()" substitute	"paragraph 29"
Article 2(1) (interpretation) – definition of "date of final commissioning"	For "the authorised development" substitute	"Work No. 1"
Article 2(1) – definition of "Order land"	For "which is required for or to facilitate or is incidental to the authorised development" substitute	"to be acquired or used and described in the Book of Reference "
Article 17(1) (traffic regulation measures)	After "construction", insert	"and operation"
	Omit	", temporarily"
Article 20(6) (protective works to buildings)	For "buildingor" substitute	"building or"
Article 43(2) (service of notices)	For "tcaenthis" substitute	"this"
Schedule 2 (Requirements), paragraph 2(1)	For "external appearance" substitute	", in respect of above ground development, external appearance"
Schedule 2, paragraph 2(2)	After "design principles" insert	"applicable to that work order as"
Schedule 9, paragraph 5(7)	For "article 30(7)" substitute	"article 30(4)"
Schedule 11, Part 7, paragraph 78	For ":" substitute	"—"
Schedule 12 (Interpretation) – definition of "relevant authority"	After "relevant planning authority," insert	" Ministry of Defence,"
Schedule 12 (procedure for the discharge of requirements), paragraph 2(2)	For "paragraph (4)" substitute	"sub-paragraph (4)"
Schedule 12, paragraph 2(3)	For ":" substitute	"—"

	For “relevant planning authority” substitute	“relevant authority”
Schedule 12, paragraph 2(4)(a)	For “subparagraph” substitute	“sub-paragraph”
Schedule 12, paragraph 2(4)(b)	For “relevant planning authority” substitute	“relevant authority”
Schedule 12, paragraph 2(5)	For “:” substitute	“—”
	For “relevant planning authority” substitute	“relevant authority”
Schedule 12, paragraph 2(5)(a)	For “relevant planning authority” substitute	“relevant authority”
Schedule 12, paragraph 2(5)(b)	For “relevant planning authority” substitute	“relevant authority”
Schedule 12, paragraph 3(6)	For “:” substitute	“—”
Schedule 12, paragraph 3(6)(a)	For “relevant planning authority” substitute	“relevant authority”
Schedule 12, paragraph 3(6)(b)	For “relevant planning authority” substitute	“relevant authority”
	For “sub-paragraph (a)” substitute	“paragraph (a)”
Schedule 12, paragraph 3(6)(c)	For “relevant planning authority” substitute	“relevant authority”
	For “paragraph (2)” substitute	“sub-paragraph (2)”
Schedule 12, paragraph 3(6)(d)	For “relevant planning authority” substitute	“relevant authority”
	For “sub-paragraph (c)” substitute	“paragraph (c)”
Schedule 12, paragraph 3(6)(e)	For “sub-paragraph (d)” substitute	“paragraph (d)”
Schedule 13, Table 10, row 8 (“environmental statement”), column (3) (“revision number”)	For “1” substitute	“2”
Schedule 13, Table 10, row 8 (“environmental statement”), column (4) (“date”)	For “June 2022” substitute	“June 2023”
Schedule 13, Table 10, row 9 (“environmental statement figures”), column (4) (“date”)	For “March 2023” substitute	“May 2023”

SCHEDULE 2

Article 2(2)

REPLACEMENT PROVISIONS FOR THE PROTECTION OF EASTERN POWER NETWORKS

“PART 4

FOR THE PROTECTION OF EASTERN POWER NETWORKS

Application

33. For the protection of EPN as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and EPN.

Interpretation

34. In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable EPN to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means electric lines and electrical plant (as defined in section 64(1) of the Electricity Act 1989(**a**)), belonging to or maintained by EPN;

"EPN" means Eastern Power Networks plc (company number 02366906) whose registered office is at Newington House, 237 Southwark Bridge Road, London SE1 6NP;

"functions" includes powers and duties;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land;

"plan" or "plans" include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed; and

"specified works" means any of the authorised development which—

(a) will or may be situated within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under sub-paragraph 39(2) or otherwise; or

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under sub-paragraph 39(2) or otherwise.

On street apparatus

35. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and EPN are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus in restricted streets and public rights of way

36. Regardless of the temporary alteration, diversion or restriction of use of any street or public right of way under the powers of article 13 (temporary prohibition or restriction of use of streets and public rights of way), EPN is at liberty at all times to take all necessary access across any such restricted, altered or diverted street or public right of way and to execute and do all such works and things in, upon or under any such street or public right of way as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the restriction, alteration or diversion was in that street or public right of way.

Protective works to buildings

37. The undertaker, in the case of the powers conferred by article 20 (protective works to buildings), must exercise those powers so as not to obstruct or render materially less convenient the access to any apparatus or the ability of EPN to perform its statutory duties.

Acquisition of land

38. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

39.—(1) If in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule and any right of EPN in that land must not be extinguished until alternative apparatus has

(**a**) 1989 c. 29.

been constructed and is in operation to the reasonable satisfaction of EPN in accordance with sub-paragraphs (2) to (6).

(2) If, for the purpose of executing any specified works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to EPN no less than 28 days' written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order EPN reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to EPN the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance and use of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, EPN must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation does not extend to the requirement for EPN to use its powers of compulsory acquisition unless it elects to do so.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between EPN and the undertaker or in default of agreement settled by arbitration in accordance with paragraph 43D (arbitration).

(5) EPN must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with paragraph 43D (arbitration), and after the grant to EPN of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to EPN that the undertaker desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by EPN, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of EPN.

Facilities and rights for alternative apparatus

40.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to EPN necessary facilities and rights in land for the construction and maintenance of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms as may be agreed between the undertaker and EPN and must be no less favourable on the whole to EPN than the facilities and rights enjoyed by it in respect of the apparatus to be removed, unless otherwise agreed by EPN, such agreement not to be unreasonably withheld or delayed.

(2) If the facilities and rights to be afforded by the undertaker and agreed with EPN under sub-paragraph (1) in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to EPN than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the matter may be referred to arbitration in accordance with paragraph 43D (arbitration) and the arbitrator must make such provision for the payment of compensation by the undertaker to EPN as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

41.—(1) Not less than 56 days before the commencement of any specified works, the undertaker must submit to EPN a plan of the works to be executed.

(2) The plan to be submitted to EPN under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the works;

(b) the level at which the works are proposed to be constructed or renewed;

(c) the manner of the construction or renewal of the works;

(d) the position of all apparatus; and

(e) by way of detailed drawings, every alteration proposed to be made to such apparatus.

(3) The undertaker must not commence any specified works until EPN has given written approval of the plan and works so submitted.

(4) Any approval of EPN given under sub-paragraph (3)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5); and

(b) must not be unreasonably withheld or delayed.

(5) EPN may require such modifications to be made to the plan as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus. EPN may also require the undertaker to enter into a separate asset protection agreement before the undertaker is able to carry out the works.

(6) Specified works must be executed in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (5) by EPN for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and EPN will be entitled to watch and inspect the execution of those works where reasonably practicable to do so and in accordance with any relevant health and safety legislation.

(7) Any requirements made by EPN under sub-paragraph (5) must be made within a period of 28 days beginning with the date on which the plan is submitted to it.

(8) If EPN in accordance with sub-paragraph (5) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 33 to 35 and 38 to 40 apply as if the removal of the apparatus had been required by the undertaker under paragraph 39(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any specified works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(10) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to EPN notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (6) in so far as is reasonably practicable in the circumstances.

(11) In sub-paragraph (10), works that are carried out "in a case of emergency" means such works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

Expenses and costs

42.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to EPN within 28 days of receipt of an itemised invoice from EPN all expenses reasonably and properly incurred or to be incurred by EPN in, or in connection with—

(a) the inspection, removal, alteration, relaying, replacing or protection of any apparatus or the construction of any alternative apparatus which may be required in consequence of the execution of any specified works;

(b) the acquisition of facilities and rights or exercise of statutory powers for any apparatus or alternative apparatus in consequence of the operation of any of these provisions;

(c) the cutting off of any apparatus from any other apparatus, or the making safe of any redundant apparatus, in consequence of the exercise of any power conferred by this Order affecting EPN's apparatus;

(d) the survey of any land, apparatus or works, the superintendence and monitoring of works and the installation or removal of any temporary works reasonably necessary in consequence of the exercise of any power conferred by this Order affecting EPN's apparatus; and

(e) any other work or thing rendered reasonably necessary in consequence of the exercise of any power conferred by this Order affecting EPN's apparatus.

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 43D (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to EPN by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to EPN in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on EPN any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

43.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any specified works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of EPN, or there is any interruption in any service provided, or in the supply of any goods, by EPN, the undertaker must—

(a) bear and pay within 28 days of receipt of an itemised invoice from EPN the cost reasonably and properly incurred by EPN in making good such damage or restoring the supply; and

(b) indemnify EPN against any other losses, expenses, demands, proceedings, damages, claims, penalty or costs properly incurred by or recovered from EPN, by reason or in consequence of any such damage or interruption or EPN becoming liable to any third party as aforesaid other than arising from any default of EPN.

(2) The fact that any act or thing may have been done by EPN on behalf of the undertaker or in accordance with a plan approved by EPN or in accordance with any requirement of EPN or under its supervision will not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1), unless EPN fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan agreed by EPN in accordance paragraph 39(4) and paragraph 41(3).

(3) Nothing in sub-paragraph (1) will impose any liability on the undertaker in respect of—

(a) any damage or interruption to the extent that it is attributable to the neglect or default of EPN, its officers, servants, contractors or agents;

(b) any part of the specified works carried out by EPN in the exercise of any functions conferred by this Order pursuant to a transfer or grant under article 8 (consent to transfer benefit of Order); or

(c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) EPN must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must be made without the consent of the undertaker and, if such consent is withheld, the undertaker will have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(5) EPN must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) EPN must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies and if reasonably requested to do so by the undertaker EPN must provide an explanation of how the claim has been minimised.

Enactments and agreements

43A. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and EPN in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Cooperation

43B.—(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or EPN requires the removal of apparatus under paragraph 39(2) or EPN makes requirements for the protection or alteration of apparatus under paragraph 41(5) the undertaker must use its best endeavours to co-ordinate the

execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of EPN's undertaking and EPN must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever EPN's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

43C. If in consequence of the exercise of the powers conferred by this Order the access to any apparatus is materially obstructed the undertaker must provide such alternative means of access to that apparatus as will enable EPN to maintain or use the apparatus no less effectively than was possible before the obstruction.

Arbitration

43D. Any difference or dispute arising between the undertaker and EPN under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and EPN, be determined by arbitration in accordance with article 46 (arbitration)."

EXPLANATORY NOTE

(This note is not part of the Order)

This Order corrects errors identified in the Medworth Energy from Waste Combined Heat and Power Facility Order 2024 (S.I. 2024/230), which granted development consent under the Planning Act 2008, following a request under paragraph 1(5)(a) of Schedule 4 to that Act.

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