

**From:** [REDACTED]  
**To:** [Cleve Hill Solar Park](#)  
**Cc:** [REDACTED]  
**Subject:** Cleve Hill Solar Park - Written Representations [CRSLLP-WORKSITE.FID280275226]  
**Date:** 25 June 2019 14:20:20  
**Attachments:** [REDACTED]

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Dear Sir or Madam

**Cleve Hill Solar Park Project (EN010085) – Written Representations**

Please find attached written representations on behalf of our client, London Array Limited, as per the approach set out in Gareth Phillips' email of 21 June 2019.

Please acknowledge receipt.

Kind regards  
Sophie

**Sophie Willis** | Associate  
for and on behalf of **Charles Russell Speechlys LLP**

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## CLEVE HILL SOLAR PARK

### WRITTEN REPRESENTATIONS ON BEHALF OF LONDON ARRAY LIMITED

CHSP-AFP032 / 20022179

#### 1 BACKGROUND

- 1.1 These representations are made by London Array Limited (**LAL**) on behalf of themselves and Orsted London Array II Limited (**Orsted**), E.ON Climate & Renewables UK London Array Limited, Masdar Energy UK Limited and Boreas (Investment) Limited (the **Participants**).
- 1.2 The Participants together own and operate the offshore London Array wind farm. They, and LAL, have the benefit of interests in land affected by the proposed Cleve Hill Solar Park and the associated draft development consent order (DCO) being promoted by Cleve Hill Solar Park Limited (CHSPL).

#### 2 THE LONDON ARRAY PROJECT

- 2.1 The London Array wind farm is located around 20km from the coast and consists of 175 wind turbines. It has been in operation generating renewable energy since October 2012 and provides enough power for nearly half a million UK homes a year (two thirds of the homes in Kent).
- 2.2 The turbines are linked to offshore substations which are connected to the shore by submarine cables. On landing, the cables run underground south to Cleve Hill and inland to two onshore substations.
- 2.3 It is vital to the ongoing function of the wind farm that no damage is done to the cables and substations associated with the wind farm and that access is available to that infrastructure at all times for maintenance.
- 2.4 In line with UK legislation, the wind farm transmission assets (from offshore substation to onshore substation with associated cables) are leased and operated by an independent offshore transmission owner, Blue Transmission London Array Limited (**BTLAL**). BTLAL lease one of the substations and other infrastructure from the Participants.
- 2.5 National Grid Electricity Transmission plc (**NG**) owns and operates the onshore electricity transmission network in England and has a lease over the second onshore substation, where electricity from the wind farm is transmitted to the grid.
- 2.6 The Participants' land interests and infrastructure and the operation of the London Array wind farm could be materially and adversely affected by the construction and/or operation of the solar farm and by the exercise by CHSPL of the powers contained in the proposed DCO. The continued operation of the wind farm and its financial viability

relies on complex agreements with multiple parties including NG and BTLAL and other landowners.

- 2.7 The Participants support the principle of renewable energy and are prepared to enter into an agreement with CHSPL in order to grant appropriate rights which are compatible with the existing agreements and to release restrictive covenants as necessary to facilitate the use of the land for solar power.
- 2.8 The careful structure, operation and financial viability of the existing land arrangements and agreements should not be jeopardised by the blunt tool of broad compulsory purchase powers. The Participants therefore object strongly to the inclusion of their land interests within the Book of Reference and ask that they be removed from the DCO.

### 3 **CABLE CORRIDOR**

- 3.1 The Participants have acquired freehold and leasehold interests for the purposes of the onshore cabling running through Cleve Hill and connecting to the substations.
- 3.2 Plot 3/05 - A freehold interest is held by the Participants in sub-soil at depths below 0.7m below ground, subject to a BTLAL lease granted by the Participants.
- 3.3 CHSPL seek to acquire all this land largely for Work No. 8 (to create and maintain a habitat management area, including earth works, access and drainage) and for Work No. 6 (access). They also seek to override the restrictive covenants which control the use of this land.
- 3.4 It is not necessary for construction and operation of the solar farm for this sub-soil interest to be acquired. Such acquisition will adversely affect the Participants' ability to operate the wind farm. Further, damage could be caused to the cables running within the sub-soil due to the operation of heavy machinery or heavy vehicles over the cables or by works to the ground. Accordingly, appropriate restrictions on the use of this land which the Participants can rely upon and enforce must be maintained.
- 3.5 Plots 3/01, 3/02 and 3/03 (the Foreshore) - The Participants have the benefit of a lease of rights dated 16 August 2010 (subject to the BTLAL sub-lease). This lease of rights enables LAL to install, inspect, repair, use, replace etc supply cables and associated rights.
- 3.6 CHSPL seek to acquire rights over this area for the purposes of Work No. 9 i.e. work to maintain the flood defence. In this area, the draft DCO also imposes restrictions which prevents any entity from building structures or carrying out activities which may obstruct the performance of the rights. It is essential that the Participants' rights as described in paragraph 3.5 can be exercised at all times.

### 4 **SUBSTATION AREA**

- 4.1 The Participants own the freehold interest in a number of plots of land in this area:

- 4.1.1 Plots 3/06, 3/07A and 3/07B – BTLAL occupy these plots pursuant to a lease dated 18 September 2013 (plot 3/07A comprises the site of the BTLAL substation);
- 4.1.2 Plot 3/07 – this comprises the site of the NG substation; and
- 4.1.3 Plot 3/08 and 3/08A.
- 4.2 CHSPL are seeking rights over this area for Work No. 5 (cable systems), 6 (access), 7 (alter and maintain existing access) and 8 (habitat management area).
- 4.3 It is deeply inappropriate for CHSPL to seek to acquire broad rights over this area through a DCO and compulsory acquisition. Works within such a sensitive area, with complex infrastructure requirements and constraints, should and must be done pursuant to a suitably detailed agreement with all necessary parties, including the Participants, BTLAL and NG.
- 4.4 As above, suitable access must be maintained at all times in a condition fit for purpose and the Participants must have sufficient legal rights to enforce this. Any change to access arrangements must be agreed with the Participants in advance.

## 5 **SOLAR PARK**

- 5.1 Land interests held by the Participants have the benefit of other rights and restrictive covenants (including rights or covenants over Plots 1/04, 1/05, 1/07, 1/08, 2/04, 3/04, 3/09, 4/02, 4/03, 4/07, 5/01, 5/02 and 5/03). Save for the relaxation of any restrictive covenants to the extent necessary to allow construction and operation of the solar farm for its lifetime, there is no need for any such rights and restrictive covenants to be interfered with or overridden.

## 6 **THE ACCESS**

- 6.1 The seeking of powers to temporarily stop up the Participants' main access route to the substation is inappropriate. A viable access route must be provided at all times to the infrastructure associated with the wind farm for the purposes of maintenance and any works to the access roads must be by agreement.

## 7 **BOOK OF REFERENCE**

- 7.1 There are numerous references in the Book of Reference to Orsted having the benefit of rights pursuant to an agreement dated 16 August 2010. Confirmation has been requested from CHSPL as to what this relates to.

## 8 **JUSTIFICATION FOR COMPULSORY ACQUISITION**

- 8.1 Under Section 122 of the Planning Act 2008, a development consent order may only authorise compulsory acquisition if the Secretary of State is satisfied that:
  - (a) the land is required for the development to which the consent relates, or is required to facilitate, or is incidental to, the development, or is replacement land given in exchange; and

- (b) there is a compelling case in the public interest for the compulsory acquisition.
- 8.2 The Participants do not consider that the compulsory acquisition of the land and rights identified above is required for the solar farm development nor necessary or proportionate. In particular, the acquisition of the Participant's interest in plot 3/05 has not been justified and is not necessary to deliver or operate the solar farm, contrary to the statutory requirement and Guidance.
- 8.3 Further, the Participants do not consider that there is a compelling case in the public interest for the compulsory acquisition. The wind farm generates renewable energy for the local area and the future generation of that energy should not be put at risk.
- 8.4 The Guidance indicates that an applicant for a DCO must be able to demonstrate to the satisfaction of the Secretary of State that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored. This is not the case. The Participants are ready, willing and able to enter into an agreement to facilitate the construction and operation of the solar farm, whilst ensuring the continued operation of the wind farm. In addition, agreements are required with BTLAL and NG as to the interface with the substations and other infrastructure.
- 8.5 Negotiations have now commenced on such agreements. The Participants have agreed with CHSPL that a joint approach should be made to the Examination for the parties to be given time to finalise those negotiations. The Participants wish to reserve their right to submit more detailed representations to the Examination on the changes required to the draft DCO should those negotiations not result in an agreement.

**Charles Russell Speechlys**

**June 2019**