

**From:** [REDACTED]  
**To:** [Cleve Hill Solar Park; Jones, Hefin](#)  
**Cc:** [REDACTED]  
**Subject:** EN010085 - Cleve Hill Solar Park - The Applicant's Deadline 3 Submission (email 6 of 7)  
**Date:** 01 August 2019 23:20:11  
**Attachments:** [REDACTED]

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Dear Hefin,

**EN010085 - Cleve Hill Solar Park - The Applicant's Deadline 3 Submission (email 6 of 7)**

Please find attached the Applicant's Deadline 3 submission.

Please do not hesitate to get in touch if you have any queries.

Kind regards,

Mike

**Michael Bird**

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# CLEVE HILL SOLAR PARK

## WRITTEN SUMMARIES OF ORAL SUBMISSIONS COMPULSORY ACQUISITION HEARING 1

August 2019  
Revision A

Document Reference: 11.1.2  
Submitted: Deadline 3

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**CLEVE HILL**  
SOLAR PARK

**WRITTEN SUMMARY OF CLEVE HILL SOLAR PARK LIMITED'S ("THE APPLICANT")  
ORAL CASE PUT AT COMPULSORY ACQUISITION HEARING ON 16 JULY 2019**

**1. INTRODUCTORY REMARKS**

- 1.1 A Compulsory Acquisition Hearing ("**CAH**") was held at 2:00pm on 16 July 2019 at the Alexander Centre, 17 Preston Street, Faversham, ME13 8NZ.
- 1.2 The CAH took the form of running through items listed in the agenda published by the Examining Authority ("**ExA**") on 8 July 2019 (the "**Agenda**"). The format of this note follows that of the Agenda. The Applicant's substantive oral submissions commenced at item 3 of the Agenda, therefore this note does not cover items 1 and 2 which was procedural and administrative in nature.

**2. AGENDA ITEM 1 – INTRODUCTION OF THE PARTICIPATING PARTIES**

- 2.1 The ExA: - David Rose (Lead Panel Member), Andrew Mahon and Helen Cassini.
- 2.2 The Applicant:
- 2.2.1 **SPEAKING ON BEHALF OF THE APPLICANT:** - Claire Brodrick and Gareth Phillips (Pinsent Masons LLP).
- 2.2.2 Present from the Applicant: - Hugh Brennan and Simon McCarthy.
- 2.2.3 The Applicant's legal advisor:- Peter Cole (Pinsent Masons LLP).
- 2.2.4 The Applicant's consultants:
- (a) Mike Bird (Arcus Consultancy Services) and
- (b) Ian Cuncliffe (Gately Hamer)
- 2.3 Gareth Phillips advised the ExA that London Array Ltd, Blue Transmission London Array Ltd and National Grid would not attend the hearing.

**3. AGENDA ITEM 3 – SUMMARY OF DCO PROVISIONS**

- 3.1 **Which Articles engage Compulsory Acquisition or Temporary Possession powers;**
- 3.2 Claire Brodrick summarised the powers of compulsory acquisition and temporary possession in the draft DCO submitted at Deadline 2 [REP2-004]. She advised that Article 16 would allow the Applicant to acquire the freehold of the land shown coloured pink on Revision B of the Land Plans [AS-003].
- 3.3 Ms Brodrick stated that Article 18 would enable the Applicant to acquire existing rights and create new rights and restrictions. Ms Brodrick advised that the power related to the land coloured blue on the Land Plans but that new rights and restrictions could also be created over land coloured pink on the Land Plans. She clarified that the blue coloured land related to rights for underground cables, rights of access, rights for habitats management areas and rights to maintain the existing flood defence.
- 3.4 Ms Brodrick advised that the plots where new rights and restrictions are being sought are listed in Schedule 5 of the draft DCO, and in the Book of Reference (revision B [AS-007]). She confirmed that the nature of the rights sought are set out in Schedule 5 of the draft DCO and Table 1 of the Statement of Reasons [APP-019].
- 3.5 Ms Brodrick stated that Article 19 enables all existing private rights and restrictions to cease to have effect if such rights or restrictions are inconsistent with the compulsory

acquisition of land or rights, or the use of temporary possession powers. She confirmed that compensation is payable for any loss, and Article 19(6) allows the undertaker to notify the holder of a right or restrictive covenant that a particular right/covenant is not going to cease, or enter into a separate agreement stating that the powers in Article 19 do not apply to that right or restriction.

- 3.6 Turning to Article 21, Ms Brodrick stated that this relates to the acquisition of subsoil interests only.
- 3.7 Ms Brodrick stated that Articles 24 and 25 relate to temporary use of land. She confirmed that Article 24 permits the undertaker to take temporary possession on 14 days' notice for the purpose of constructing the authorised development. Ms Brodrick outlined that the undertaker cannot stay in possession of land any longer than is reasonably necessary, and must vacate the land within one year after completion of that part of the authorised project for which temporary possession has been taken. She confirmed that this power applies to the land coloured pink and blue on the Land Plans, and that compensation is payable for any loss or damage.
- 3.8 Summarising Article 25, Ms Brodrick advised that this allows the undertaker to take temporary possession of land if reasonably required for the purposes of maintaining the authorised development during the period of 5 years from date of first export of electricity to the national electricity transmission system. She confirmed that the undertaker can only remain in possession for as long as reasonably necessary to carry out maintenance works, and that power applies to all of the Order land, therefore the land coloured pink and blue on the Land Plans. Compensation is payable for any loss or damage caused.
- 3.9 Noting Article 26, Ms Brodrick advised that this grants rights to acquire land, new rights and impose restrictive covenants in the land or extinguish rights of statutory undertakers, subject to the provisions of the protective provisions contained in Schedule 7 of the draft DCO.
- 3.10 Ms Brodrick stated that Article 39 relates to funding, providing that the compulsory acquisition and temporary use powers cannot be exercised until a guarantee or alternative form of security approved by the Secretary of State is in place, and can be enforced by a party who is entitled to compensation.
- 3.11 **Whether the DCO excludes the application of a compensation provision or modifies it beyond what is necessary to enable that provision to be applied;**
- 3.12 Ms Brodrick highlighted that the draft DCO does adequately provide for compensation of acquisition rights or temporary possession. She referred to the amendments to legislation in Schedule 6, which relate to the acquisition of new rights, and explained that these amendments have been included to ensure that compensation is payable for the acquisition of new rights as well as the acquisition of land. Ms Brodrick noted that the draft DCO states that provisions relating to severance do not apply to the exercise of temporary use powers, noting that this is standard for DCOs, as the Applicant does not think it appropriate to compel the Applicant to acquire the freehold to land when the land is only required temporarily and would be reinstated.
- 3.13 **The list of intended Protective Provisions; and**
- 3.14 Ms Brodrick outlined that Schedule 7 of the draft DCO includes protective provisions for electricity, gas, water and sewerage undertakers, and beyond the protective provisions already included, there is no intention to add others to the draft DCO.
4. **AGENDA ITEM 4 – STATUTORY CONDITIONS AND GENERAL PRINCIPLES**
- 4.1 **The Applicant to confirm whether the Book of Reference is up to date and complete;**

- 4.2 In response to a question from the ExA, Ms Brodrick confirmed that there would be a number of minor amendments to the next version of the Book of Reference to be submitted at Deadline 4. She confirmed that a typographical error needed to be corrected relating to interest, which had stated an interest to be owned Orsted but in fact belongs to London Array Ltd. Ms Brodrick confirmed that there had been ongoing diligent enquiries to identify ownership of unknown interests, which had been detailed in an explanation in response to the ExA's written question 1.2.3. Continuing, Ms Brodrick advised that the Applicant had now received additional information from some parties, but the Applicant was still waiting for further information to be provided. Therefore Deadline 4 was a realistic timeframe for the Applicant to chase for the additional information and update the Book of Reference accordingly. She confirmed that otherwise, the Applicant considered the Book of Reference to be complete and up to date.
- 4.3 **The Applicant to confirm that in respect of all land for which Compulsory Acquisition powers are sought the application complies with one or more of the conditions set out in PA 2008 s123;**
- 4.4 Ms Brodrick advised that the application did include a request for compulsory acquisition, and the extent is set out in section 5 of the Statement of Reasons [APP-019].
- 4.5 **The Applicant to set out briefly whether the purposes for which the compulsory acquisition powers are sought comply with section 122(2) of the Planning Act 2008;**
- 4.6 Ms Brodrick advised the purposes for compulsory acquisition powers sought are set in section 6 of the Statement of Reasons. She summarised that they relate to the acquisition of the freehold of land for the solar array, energy storage facility, habitat management areas, electrical connection and access, as set out in more detail in paragraph 6.6 of the Statement of Reasons. Ms Brodrick confirmed that the acquisition of new rights and imposition of restrictions has been sought too, for underground cables, rights of access, rights of drainage, rights of services, rights to maintain the existing flood defences and rights relating to the habitats management areas. She referred to paragraph 6.10 of Statement of Reasons for further details on this. Ms Brodrick advised that Table 1 of the Statement of Reasons and Schedule 5 of the draft DCO set out in more detail the nature of the new rights and restrictions. She confirmed that as per the requirement in section 122 of the PA 2008, the Applicant requires the land for the development or is required to facilitate, or is incidental to, the development and referred to paragraphs 7.2 and 7.8 of the Statement of Reasons for details.
- 4.7 In respect of rights sought for habitat management areas and maintenance of flood defences, Ms Brodrick referred to the Applicant's response to ExA question 1.2.5, which sets out in more detail why the Applicant considers that the rights relate to the authorised development.
- 4.8 Responding to an ExA question, Mr Phillips advised that the Applicant was content that the maintenance of the existing flood defences, the creation and maintenance of the fresh water grazing marsh habitat management area and the creation and maintenance of the lowland grassland meadow management area, and the permissive path were both development under section 55 of the Town and Country Planning Act 1990, and were associated development under the Planning Act 2008.
- 4.9 Regarding the justification of compulsory acquisition powers over the flood defence, Mr Phillips advised that the Applicant's approach originally was not to include this within the red line. However, he confirmed the Environment Agency, during consultation, had drawn attention to the draft Medway Estuary and Swale Strategy ("MEASS"), and that the Environment Agency's plan was, despite the significant electrical infrastructure on the site already, not to maintain the flood defence in the

event that the project came forward. Mr Phillips advised that to support the project, it was necessary to protect it from flooding, and so negotiations changed tack to seek powers to enable the Applicant to step into the shoes of the Environment Agency to undertake maintenance works to the flood defence. Mr Phillips advised that the Applicant then needed to establish what powers the Environment Agency has, and how they are deployed, and secondly what works the Environment Agency actually carries out on a daily basis under its own statutory powers beyond mean high water springs. Mr Phillips advised that the Applicant had held workshops with the Environment Agency and the contractors that it uses and compiled a list of maintenance works that the Environment Agency and MMO agreed would be the day to day works to maintain the flood defence.

- 4.10 Regarding the use of powers to access land, Mr Phillips advised that the Environment Agency had confirmed that this was currently undertaken on an ad hoc basis, as it would tend to write to the relevant land owner and explain the need to access the land, an approach which is rarely challenged. He added that the Environment Agency had confirmed that if emergency access was required, it would use its powers to take it, and inform landowners subsequently. Mr Phillips advised that the Environment Agency had agreed that if the Applicant were to be granted powers to undertake works, it would need access to do so. Therefore, the Applicant has sought the schedule of works agreed with the Environment Agency and the MMO, and also the new rights needed to compulsorily enter the land and carry out any works needed. Mr Phillips confirmed that in parallel the Applicant had identified the relevant landowners, and was negotiating with them, with heads of terms sent and, in some cases, agreed.
- 4.11 Turning to the ExA's question on the three hurdles the Applicant must cross, on the first, whether the works constitute development, Mr Phillips confirmed that the Applicant's position is that all works in Schedule 1 regarding maintenance are of an engineering nature, and would be undertaken under the supervision of a marine engineer. He advised that the Applicant was satisfied, in conjunction with the Environment Agency and the MMO that the works would otherwise need consent if not undertaken by the Environment Agency with its statutory powers, or if no DCO had been granted.
- 4.12 On the second hurdle, on whether the works could be associated development, Mr Phillips noted that the Applicant had explained in its response to written question 1.2.5 that the purpose of the maintenance works are to protect the project. He stated that the Applicant needs to be able to demonstrate to the ExA and any future financiers or insurers that it can protect the project if the flood defence fails. Mr Phillips advised that procuring insurance for an electricity infrastructure project in a coastal location is difficult, and insurers would want to know that the assets will be protected. On this basis, the Applicant is satisfied that the link between the powers and project sought to protect fall within the scope of associated development.
- 4.13 On the third hurdle, on the tests for compulsory purchase, Mr Phillips confirmed that the Applicant was content that these had been met given the points made on the first and second hurdles.
- 4.14 On the two habitat management areas, Mike Bird explained that the freshwater grazing marsh is an area of designated land which would lie to the east of the arable reversion habitat management area. He stated that this area of land was not within the original development boundary but was suggested by the habitat management steering group. Mr Bird advised that this was established by the Applicant in February 2018, and included representatives from the RSPB, Kent Wildlife Trust, Natural England and latterly the Environment Agency. Mr Bird stated that it had been suggested early on within meetings of the steering group to add in the area of land to the east of the arable reversion area as it would be preferable if the Applicant was able to manage the entire area so as to ensure the functionality of the arable reversion area. Mr Bird reported that through discussions at the steering group it became clear that the management of water levels and grazing pressure and other factors on this

land would influence the use of the entire areas by a particular species. In terms of physical interventions, Mr Bird reported that the key ones were maintenance of the existing water control structures and the potential need for additional water control structures. He advised that the east of the habitat management area forms a link to the Seasalter levels, and water control structures on the east side are important to levels to the east and also water control structures to the west of the freshwater marsh help to balance and manage water levels between the site. The updated Outline Landscape and Biodiversity Management Plan submitted for Deadline 3 (document reference 6.4.5.2, revision B) contains further detail on the control structures required. A guidance document published by the RSPB, Water Management Structures for Conservation containing examples of such structures has also been submitted to the examination at Deadline 3 (document reference 11.4.11).

- 4.15 Mr Phillips stated that in relation to the first hurdle, the areas may require drainage, also earth works to create habitat, and may also need creation of temporary access for construction. He confirmed that the Applicant was content that each of these elements would be enough to require planning permission.
- 4.16 On the second hurdle, Mr Phillips referred to the purpose set out by Mr Bird and the functional link to the rest of the application site. He noted that this was an element of the proposal that constitutes embedded mitigation, which the guidance allows to be associated development.
- 4.17 On the third hurdle, Mr Phillips noted that this goes to the planning balance test that the ExA and Secretary of State would need to apply. He advised that in order to bring forward the project as is, it is necessary to agree mitigation as part of the habitat management steering group. Mr Phillips stated that to achieve consent the project has to be seen as a whole, including the designed in mitigation areas. He stated that it follows on from that in terms of compulsory acquisition, if the Applicant is unable to deliver the mitigation required for the project, then the project as a whole fails, as when applying the planning balance, mitigation is needed to overcome the local impacts identified. In order to deliver the whole project, including mitigation, the Applicant will need compulsory acquisition powers over the fresh water grazing marsh habitat management area. Mr Phillips reiterated though that this is a fall back, with the aim being to agree heads of terms with all parties, which the Applicant considers achievable in terms of progress made to date. He noted that compulsory acquisition powers would be needed if agreements fall away, for example, if a party were to be declared bankrupt and the transaction set aside.
- 4.18 In response to an ExA question, Mr Phillips stated that there is much detail to be provided in due course on the detailed design. He stated that the Applicant envisages that the habitat management steering group will continue post grant of consent and construction to provide a forum to allow the scope of mitigation to adapt and evolve. Mr Phillips noted that betterment provision is also being considered, as through the steering group it has been identified that both the land identified as mitigation, and land adjacent to it within the SSSI, could be managed better to enhance it for the species it is intended to serve.
- 4.19 Mr Bird advised that there was no existing management plan in place between the owner and Natural England or other parties governing the land which would be the freshwater grazing marsh habitats management area. He confirmed that for a number of years there had been discussions regarding the management of water levels between the Environment Agency, Kent Wildlife Trust, the internal drainage board and landowners to balance competing interests on land management. Mr Bird stated that the scheme allows controls to be put in place to balance the interests in favour of biodiversity and to deliver for the mutual benefit of all parties.
- 4.20 Mr Phillips clarified that whilst the SSSI land is managed to a degree, the area between it and the solar park would be a new area of habitat land, and the Applicant requires control of the SSSI land to ensure the new habitat land functions properly. Mr

Phillips stated that the advice the Applicant has received is to ensure that both areas are managed together to bring out the best in both, and this is another reason why the powers are sought, to ensure that the new land functions as well as it could do.

- 4.21 Responding to an ExA question, Mr Phillips advised that the Applicant had agreed in the habitats management steering group that from a Habitats Regulations Assessment and environmental impact assessment perspective, it cannot claim credit for improvements to the SSSI land in calculations around onsite mitigation, only for the area immediately to the north of the substation and between the development and the SSSI land. Mr Phillips stated therefore that when Natural England advised on the size of habitat management area needed, this was in addition to SSSI land. Mr Phillips did flag however that due to the functional link between the SSSI and the habitats management area, to manage them coherently is necessary and of benefit to both.
- 4.22 Responding to a query from the ExA on how the compulsory purchase tests are satisfied, Ms Brodrick referred to the Applicant's response to written question 1.2.5, which stated that to ensure mitigation area of the arable reversion habitat management area functions properly, there needs to be management of the adjacent area, in particular in relation to water levels. Ms Brodrick stated that the powers over the SSSI area are necessary to ensure the functionality of mitigation proposed. Therefore, Ms Brodrick summarised, there is a compelling case in the public interest.
- 4.23 Mr Phillips added that if the Applicant had no compulsory acquisition powers on the SSSI land, and could not agree the acquisition of rights privately, it would be left in a position that it could deliver the new habitat land, but not able to ensure the functionality or deliver the improvements to the SSSI land which would enhance the new habitat land as best as it could have done.
- 4.24 Regarding the lowland grassland meadow habitat management area, Mr Bird explained that the area had been designated in an earlier iteration of design for the placement of panels. He stated that as the Applicant progressed through the iterative design process, and undertook consultation, it had removed panels from the design to the south east of the public right of way, and in the final iteration had removed all panels from slopes of Cleve and Graveney hills. Mr Bird stated that as part of the set back, the Applicant updated the landscaping scheme, providing screening planting in proximity to the public right of way, and also where footbridges cross ditches. Mr Bird advised that wider treatment of the slopes of Cleve Hill and Graveney Hill were subject to consultation, with concerns to ensure the area would not be an open area of land which could lead to a security issues, leading to the Applicant including a fence along Cleve Hill Road to prevent access. Mr Bird noted there as part of consideration of landscape treatments, there had been consideration of the public right of way to the south east, and consideration of the wider visibility form the south east, including from heritage assets of All Saints Church in Graveney, Sparrow Court and Graveney Court. As lowland grassland meadow is a priority habitat, and a historic land use, it was felt to be a suitable treatment so was incorporated into the outline landscape and biodiversity management plan.
- 4.25 Mr Phillips stated that the land has been included for mitigation under two limbs, firstly as priority habitat, and secondly as it goes to mitigate viewpoints from the heritage assets and the public right of way ZR488, as set response to ExA question 1.2.5.
- 4.26 In relation to all three areas of land, Mr Phillips stated that S.122(2) of the Planning Act 2008 provides that compulsory acquisition powers can be sought for land to which the development consent relates, or for land required to facilitate or, is incidental to that development. Mr Phillips outlined that all three areas do fall into both categories, being functionally linked to the development, and even if that is not considered satisfied, the land and rights are required to facilitate, or are incidental to Work No.1 and 2 as they are required to deliver mitigation.

- 4.27 Replying to an ExA question, Mr Phillips advised that the Applicant could have brought the red line in and carved the out, but the Applicant felt that to do this would lose the opportunity to mitigate some of the ecological impacts, and mitigate landscape impacts to heritage and public rights of way receptors.
- 4.28 Mr Phillips confirmed in response to an ExA question that no lowland grassland meadow was being lost but stated that whilst the lowland grassland meadow habitat management area offered an opportunity to provide an enhancement, it was also required to mitigate landscape and visual effects and therefore complied with the relevant statutory tests. He referred to the wider landscape management plan covering the entire site, which would allow fluidity for the landscape and ecological management of the site to evolve over time.
- 4.29 Mr Phillips replied to a query on the proposed permissive path stating that on the first hurdle, it could require resurfacing, so that it gives better use to cyclists and walkers or other earth works. He stated that in his view this would be development under the Town and Country Planning Act, which is a low threshold and can comprise access works. On the second hurdle, Mr Phillips stated that during the pre-application consultation the Applicant had looked extensively at the chances for public benefit and landscape and visual mitigation. He confirmed that local people had adopted the idea of a permissive path and could see the benefit of it in terms of access to the Saxon Shore Way. Mr Phillips advised that the permissive path therefore is part of a suite of mitigation for landscape and visual impacts, so it falls within the guidance test for associated development. Given that the path goes through the solar array area, Mr Phillips stated that this land satisfies the tests for compulsory acquisition, and to locate the path through the development site is proportionate and reasonable.
- 4.30 **Whether consideration has been given to all reasonable alternatives to compulsory acquisition and temporary possession;**
- 4.31 Mr Phillips advised that the Applicant believes that it has considered all reasonable alternatives. Mr Phillips stated that the Applicant has taken the site as a whole, and considered every aspect based on consultation feedback received. Mr Phillips confirmed that the Applicant had responded to consultation and removed elements of the development or create new habitat.
- 4.32 Mr Phillips highlighted that most interests in the Book of Reference related to the flood defence, as most of the site is in one freehold ownership, albeit with some rights carved out for parties associated with the Cleve Hill substation. He stated that when the Applicant had conversations with the Environment Agency and its engineers to confirm what access was needed for maintenance, it was established that access was required from either end, and may take form of a road vehicle but not much heavier plant. The Applicant had also discussed with the Environment Agency how much land on the foreshore would be needed, with the conclusion being that a 15-metre width from the toe of the flood defence would be appropriate. Mr Phillips confirmed that this was how the Applicant had settled on the site boundary. Following this, the Applicant reviewed each plot to establish land ownership and ensure that the Order land only included the land necessary for access.
- 4.1 Mr Phillips replied to a question from the ExA on optionality on the access, and also the interface between the project and the substation stating that this involves London Array Ltd (“LAL”) and Blue Transmission London Array Ltd (“BTLAL”). Mr Phillips confirmed that LAL owns the London Array offshore windfarm and leases the substation, whilst BTLAL is an independent company that owns the transmission assets which bring power from the wind farm to the substation. Mr Phillips advised that negotiations between LAL and BTLAL were very good, and the Applicant had agreed heads of terms and timescales for a suite of documents relating to the ownership, co-operation, indemnities and protective provisions between the parties regarding how the connection is physically delivered. Mr Phillips reported that the aim was to have a tripartite agreement, with the possibility of National Grid also joining, in light of the

physical interface of the works and how that affects BTLAL given the separate connection agreements between National Grid and the Applicant and the London Array parties.

- 4.2 Turning to the query on access, Mr Phillips stated that the northern access would need to go over trenches where the existing cables for London Array are situated, which is a sensitive issue. Mr Phillips stated that the southern access emerged via pre-application consultation, which revealed that Swale Borough Council had opposed a northern access similar to that proposed by the Applicant, and therefore the southern access was proposed for that scheme. As the Applicant had not at that time had any dialogue with BTLAL and LAL, it was unsure which they would opt for. Mr Phillips advised that part of the agreed Heads of Terms is around the consents for either route. He noted that a separate landowner consent would be needed for the southern route from the Attwood family but heads of terms had been agreed. The current position was that the Applicant may be able to achieve the southern access by negotiation but cannot remove the northern route until it is satisfied that the other landowners are happy, which it hoped could occur in August. In terms of second hearings, Mr Phillips requested that if the ExA is minded to have a further compulsory acquisition hearing, could it be in the latter part of the week as the Applicant hoped by then to be able to update the ExA as to the status of the various agreements and confirm which access will be used.
- 4.3 Ms Brodrick noted that some other aspects of alternatives, in terms of technologies and sites would be discussed at the Issue Specific Hearing on need on 17 July 2019.
- 4.4 **Whether the rights to be acquired, including those for temporary possession are necessary and proportionate; and**
- 4.5 Mr Phillips stated that the Applicant is of the view that the rights to be acquired are necessary and proportionate. He advised that using temporary possession powers would deliver proportionality, as it would avoid taking land permanently if the land is only required for construction or early stage works and there is no need for a long-term interest to be taken. He confirmed that for a majority of the site the land is needed permanently for the development, and referred to how the Applicant had explored the flood defence land earlier.
- 4.6 **Whether, in accordance with PA 2008 s122(3), there is a compelling case in the public interest for the Compulsory Acquisition, both in relation to the need in the public interest for the project to be carried out and in respect of the private loss to those affected.**
- 4.7 Mr Phillips confirmed that the Applicant recognised the two tests, being a planning balance for the proposal as development and the compelling case test for compulsory acquisition, and was satisfied that the Applicant had jumped both hurdles. He highlighted the national need for energy generation, which is increasing all the time, and the project goes to meeting this need.
- 4.8 Regarding a question from the ExA on applicable Human Rights Act and whether the purpose of compulsory acquisition powers is legitimate interference with such rights, Ms Brodrick advised that the Applicant had had regard to this, as set out in section 10 of the Statement of Reasons. She confirmed that the Applicant considers any interference to be for a legitimate purpose, necessary and proportionate and the benefits of scheme outweigh any private loss.
5. **AGENDA ITEM 5 – REVIEW OF THE COMPULSORY ACQUISITION SCHEDULE, CHANGES TO FUNDING, PROGRESS WITH PROTECTIVE PROVISIONS, AND ASSOCIATED MATTERS.**
- 5.1 Ms Brodrick advised that if any new affected persons were identified, the Applicant would follow a standard process from other DCO projects, and inform the ExA, so that

the ExA can advise the parties of the examination process and give the party the chance to become involved.

- 5.2 Regarding the Applicant's response to written question 1.2.7, Ms Brodrick advised that no further progress had been made with the exception of heads of terms being agreed with the Attwoods and the Seasalter Chalet Owners Association. She confirmed that a further update to Appendix A would be provided at Deadline 4.
- 5.3 In reply to an ExA question, Ms Brodrick advised that in common with other DCO projects, once a legal agreement had been signed the Applicant would still seek compulsory acquisition powers in case the agreement falls away or the landowner fails to honour the agreement. She noted that new interests may be granted prior to commencement of scheme, or interests come to light which the Applicant was not aware of prior to commencement of construction and compulsory acquisition powers may therefore be required in respect of such interests to ensure the scheme can be delivered.
- 5.4 Ms Brodrick answered an ExA question stating that as set out in the Funding Statement [APP-020] the Applicant has the necessary funds to pay any compensation within the time period granted for those powers to be exercised. She highlighted that Article 39 requires a guarantee or alternative security to be in place before the powers are exercised.
- 5.5 Ms Brodrick confirmed that there had been no blight notices, and that the Applicant was not aware of any being forthcoming.
- 5.6 Mr Phillips advised the ExA that the Applicant does not envisage protective provisions for LAL or BTLAL as their preference is to deal with all issues in the agreements. Regarding National Grid, Mr Phillips stated that he expected protective provisions to be included, and that a draft of fairly standard provisions was already provided. He noted that the Applicant was close to agreeing these provisions and also a side agreement which is typically used by National Grid concerning financial matters such as undertakings in the event of damage to apparatus. Mr Phillips confirmed that no other protective provisions were anticipated.
- 5.7 Ms Brodrick confirmed that LAL and BTLAL would have benefit from the protective provisions in Part 1 of Schedule 7 as Electricity Act licence holders. She stated that in the unlikely event of an agreement not being reached, LAL and BTLAL would have protection, so the Applicant considered that the s.127 test was satisfied.

6. **AGENDA ITEM 6. CONSIDERATION OF DUTIES UNDER THE EQUALITY ACT 2010**

- 6.1 Mr Phillips confirmed that the duties under the Equality Act do vest with the Secretary of State when determining the application, regarding the whole application, not just the compulsory acquisition element. He advised that the Applicant had made a written representation on the Equality Act duties [AS-025]. He outlined that this provides an assessment of impacts on protected characteristics under the Equality Act. Mr Phillips emphasised to depersonalise the assessment it considers protected status in terms of groups. Mr Phillips noted that the conclusion of the assessment is that a particular aspect of the development would not affect a particular group or classification. Mr Phillips advised that certain aspects of mitigation in the written representation were being carried out anyway, for example traffic mitigation, that would be of benefit to the public as a whole and also constitute specific mitigation for protected groups. Mr Phillips advised that the Applicant was aware following consultation that particular residents have specific needs but had decided not refer to them in the written representation due to this being personal data. He noted that there had been extensive consultation which such parties, which continues, and that the Applicant would provide mitigation as appropriate. He added that if others have a classification under the Equality Act they are encouraged to approach the Applicant.

**7. AGENDA ITEM 7. CROWN LAND AND INTERESTS**

7.1 Ms Brodrick confirmed that the Crown Estate has an interest in the foreshore as set out in part 4 of Book of Reference and on the Crown Land Plan [AS-005]. Ms Brodrick confirmed that the Applicant is not seeking to compulsorily acquire any Crown land, as it is not able to, so these are excluded. Ms Brodrick referred to the Applicant's response to written question 1.2.8, in relation to the status of the s.135 consent, noting that the Applicant understands that the Crown Estate requires a deed of undertaking before issuing its consent. The Applicant anticipates that the agreement will be entered into and the consent issued prior to the end of the examination.

**8. AGENDA ITEM 8. PUBLIC OPEN SPACE**

8.1 Ms Brodrick noted that in response to the ExA written question 1.2.2 the public rights of way on the site other than the Saxon Shore Way do not constitute open space, as these just provide access, and it is not standard practice under the Planning Act 2008 or the Acquisition of Land Act to consider public rights of way as public open space. She noted however that the flood defence, which includes the Saxon Shore Way, is a broad area with no delineation of the edge of the defence and the boundary of the plots to the north of the site so the Applicant has taken a broad and conservative approach and regarded it as open space. She noted that in the Statement of Reasons the Applicant states that the site, when burdened with the rights that the Applicant is seeking, will be no less advantageous to the public.

8.2 Mr Phillips added that the Applicant is confident of this conclusion because it has sought no more rights than the Environment Agency already have, so effectively the situation with or without the scheme would be the same.

8.3 Ms Brodrick confirmed that the Applicant considers that the requirements of s.132(3) are satisfied as the land when burdened with rights will be no less advantageous.

**9. AGENDA ITEM 9. REPRESENTATION FROM LONDON ARRAY LIMITED**

9.1 Mr Phillips confirmed that there was nothing further to add beyond what he had said earlier in the hearing and noting that negotiations are ongoing.

**10. AGENDA ITEM 10. REPRESENTATION FROM NATIONAL GRID PLC**

10.1 Mr Phillips confirmed that there was nothing further to add beyond what he had said earlier in the hearing and noting that negotiations are ongoing.

**11. AGENDA ITEM 11. REPRESENTATION FROM REBECCA AND SIMON ETHERIDGE**

11.1 N/A

**12. AGENDA ITEM 12. REPRESENTATION FROM VICTORIA AND TIM OSBORNE**

12.1 N/A

**13. AGENDA ITEM 13. ANY OTHER REPRESENTATIONS FROM AFFECTED PERSONS**

13.1 N/A

**14. AGENDA ITEM 14. ANY OTHER REQUESTS TO SPEAK**

14.1 None.

**15. AGENDA ITEM 15. UPDATES AND ADMINISTRATIVE MATTERS**

- 15.1 Ms Brodrick confirmed that the Compulsory Acquisition Schedule will be submitted at Deadline 4. She added that the Appendices to the Statement of Reasons would continue to be updated to give the ExA information on the status of negotiations. She added that if one of the access routes is selected then changes to the plans and Book of Reference would be required as a result.
- 15.2 Mr Phillips confirmed in reply to an ExA query that UKPN have confirmed in writing that it accepts the design principles on undergrounding the 11kV overhead line.
- 15.3 Ms Brodrick added that UKPN would have the benefit of protective provisions set out in Part 1 of Schedule 7, so would the tests set out in s127 would be satisfied.
16. **AGENDA ITEM 16. ANY OTHER BUSINESS**
- 16.1 N/A