

**From:** [REDACTED]  
**To:** [Cleve Hill Solar Park](#)  
**Subject:** Swale Borough Council's response to the Examining Authority's Further Written Questions  
**Date:** 23 August 2019 14:04:20  
**Attachments:** [REDACTED]

---

Dear Hefin,

Please find our written responses to the further written questions attached.

Graham Thomas  
Area Planning Officer  
Swale Borough Council  
Tel; 01795 417314  
[REDACTED]



This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity they are addressed. If you have received this email in error please notify [postmaster@swale.gov.uk](mailto:postmaster@swale.gov.uk)

Swale House, East Street,  
Sittingbourne, Kent ME10 3HT  
DX59900 Sittingbourne 2  
Phone: 01795 424341  
Fax: 01795 417141  
www.swale.gov.uk



National Infrastructure Planning  
Temple Quay House  
2 The Square  
Bristol, BS1 6PN

Our Ref: CHSP/ExQ2/08/2019  
Your Ref: EN010085  
Date: 23 August 2019  
Contact: Mr G Thomas

**BY EMAIL TO: [CleveHillSolarPark@planninginspectorate.gov.uk](mailto:CleveHillSolarPark@planninginspectorate.gov.uk)**

Dear Sir/Madam

**Planning Act 2008–Section 88 and The Infrastructure Planning (Examination Procedure) Rules 2010–Rule 6**

**Application by Cleve Hill Solar Park Limited for an Order Granting Development Consent for the Cleve Hill Solar Park Project**

Further to the Examining Authority's Further Written Questions published on 9 August 2019 the Borough Council is responding to the following questions as set out below.

**Question 2.1.1.**

This question is about the weight that should be placed on the natural environment section of the Planning Practice Guidance (NPPG) published on 21 July 2019 given the publication on 23 July 2019 of the summary of responses and Government response to Defra's biodiversity Mandatory Net Gain (MNG) consultation.

The Government's biodiversity MNG response is quite clear that it is not yet intended that NSIP projects are caught by these proposals, but their inclusion is not ruled out in the future. The Government's response actually states that NSIPs are "*currently*" outside the scope of the mandatory requirement in the Environment Bill, but that the Government "*will continue to work*" with industry and conservation bodies on "*exploring potential net gain approaches for these types of development*". Furthermore, it is hard to believe that it is not the Government's intention to require biodiversity Mandatory Net Gain in NSIP projects once the suggested further consultation and reflection has been carried out, if such a requirement is to be mandatory for far less significant projects.

The NPPG advice relates to biodiversity and wider environmental net gain and is current now. The new NPPG guidance does not disapply itself from NSIP projects, nor does paragraph 118 (a) of the NPPF. Notwithstanding the comments in paragraph 5 of the NPPF there is no suggestion in either of these documents that they do not apply to NSIP decision making. The Council sees no reason why biodiversity and wider environmental net gain cannot and should not be a legitimate aspiration for this NSIP project.

It is also clear that with the two sets of guidance being issued almost simultaneously there can have been no intention for them to be in conflict, or for one to supersede or override the other. They are effectively completely different and complementary Government statements.

The Council was not, and is not, suggesting that this NSIP project should be required to provide biodiversity Mandatory Net Gain under the possible provisions of the forthcoming Environment Bill. As such, our comments are not at odds with the Government's 23 July 2019 response to consultation on the proposals for biodiversity MNG. To that extent the Council considers that the Government's recent response is largely irrelevant to the matter we have raised.

The matter we raised was entirely different and related to actual published NPPG advice, which we referenced. This advice is current, very recently published, and in tune with the Council's own recently adopted Local Plan, which itself seeks a biodiversity net gain in policy DM 28 at point 6. As already stated in relation to this project, the Council's view is that the absence of a relevant NPS for solar or energy storage technology means that considerable weight must be given to this recently adopted Development Plan.

You will recall that I have already raised the fact that the Council understands that the vast majority of the applicant's predicted biodiversity net gain in Biodiversity Units in their submitted document 10.6.5 arises from the introduction of screen hedge planting. This planting is not primarily intended for its biodiversity or natural environment net gain value, and is intended to mitigate visual impact. Moreover, large stretches of this new hedging will cut across existing open views where the current lack of planting creates the sort of landscape that is recognised (and recently confirmed) as being of County level value, and where this new planting will in certain cases sever the visual relationship between heritage assets and the marshland landscape settings that they enjoy. Whether the biodiversity net gain is actually an overall benefit of the scheme when all matters are taken into account is thus far less clear.

To conclude on this point, the Council does not believe that the Government's response to the biodiversity Mandatory Net Gain consultation should carry any weight in the consideration of this project, and that it in no way detracts from the Council's reference to the reasonable policy expectation of a biodiversity and natural environment net gain from this major project.

#### **Question 2.4.10 to 2.4.13.**

The Council has negotiated with the applicant a revised version of dDCO Requirement 16 which we are now content with. This has now been submitted to the Examining Authority by the applicant on 22 August 2019 as a joint position statement.

The Council notes that the applicant has responded to the concerns we raised in paragraph 31 of our Written Representation dated 26 June 2019 regarding the burden we are to be placed under in respect of consultations on submissions in relation to certain dDCO Requirements. We have no problem in being the determining body for such submissions, but having understood the applicant's response to our Written Representation, we would still prefer that the applicant be required to consult with the relevant statutory or technical body first, before submitting an application for approval to the Council. At the moment this is simply expressed as an "*in practice*" expectation, and to that extent we are not asking for anything that a responsible developer should object to. We see no reason why the applicant or undertaker would oppose being required to consult with the relevant body prior to submitting details to the Council for approval. The applicant's response to our concerns includes an objection to simply being required to "*seek agreement*" from relevant bodies before submission to the Council. However, this is precisely why we ask that this requirement be made. The alternative scenario is that a submission might be made without the agreement or involvement of the relevant body and the Council would have to "hold the baby" (and risk a non-determination appeal) whilst the relevant body tells us they don't agree and we have to go back and forth to seek agreement. After all, we are unlikely to approve anything a relevant body objects to, and to save the matter being argued out via the Council it must be better if any possible disagreements are dealt with directly between the applicant and the applicant or undertaker. Or at least an attempt made to do so.

Very recent discussions with the applicant have revealed a willingness to accept the need for pre-submission consultation with the relevant consultation body, and I understand that the applicant may amend the dDCO to include such a requirement. The Council welcomes this likely shift in the applicant's position. Such a proposal is now incorporated with the agreed Statement of Common Ground signed by the Council.

Finally, the request in paragraph 32 of our Written Representation dated 26 June 2019 for some simplicity and clarity in relation to some of the more fundamental planning controls such as hours of work has not been encapsulated into direct plainly written Requirements, and these remain likely to be buried in complex documents (such as a CEMP) that will not be clear to members of the public or as easy to enforce e.g. by a Breach of Condition Notice. We would still prefer that such basic matters which do not require complex plans for are set out in plain language in Primary Requirements of the DCO.

The applicant's response to our concern is inconsistent. It at once compares the London Array planning permission to an outline permission (which should include straightforward conditions) and also compares the dDCO to an outline planning permission (which should NOT include the same straightforward conditions). There can be no logic in such a distinction. The Council would still prefer that such basic controls as set out in our paragraph 32 (and which were set out so for London Array) are set out plainly on the dDCO.

The Council would like to see the Examining Authority ask the applicant about the Council's concerns at the scheduled DCO Issue Specific hearing on September 10<sup>th</sup>.

#### **Question 2.7.2**

The Council has no additional issues or concerns regarding noise for this development at this point.

The Council is satisfied with the applicant's approach to noise and any mitigation measures that may be required. They propose to submit a noise assessment which should describe the noise environment at this locality and whether any mitigation measures are necessary and how and where they propose to install them. In addition, the CEMP should be sufficient to cover operational noise during construction.

The Council considers that dDCO Requirement 14 provides adequate precise, reasonable, necessary and enforceable safeguards in relation to possible noise issues.

This concludes the Council's response to these Further Written Questions.

Yours Sincerely



James Freeman  
Head of Planning