



CLEVE HILL SOLAR PARK

OTHER DEADLINE 4 SUBMISSIONS SCHEDULE OF CHANGES TO THE DDCO AT DEADLINE 4

August 2019
Revision A

Document Reference: 12.5.4
Submitted: Deadline 4

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DEADLINE 4 CHANGES

Article Schedule / (Application Version)	Stakeholder concerned	Comments from stakeholder / explanation (where necessary)	Amendment
Generally			
Throughout draft DCO	Examining Authority	At the dDCO Issue Specific Hearing, the Applicant agreed to undertake a full review of the draft DCO for the use of the word 'shall'. The ExA notes that this is contrary to drafting guidance issued by the Office of the Parliamentary Counsel which applies to statutory instruments, including DCOs. It should generally be replaced by 'must', 'is/are to', or just the present tense. Could the Applicant explain why only one of numerous potential changes has been made to the Deadline 3 dDCO?	Word "shall" has been substituted where necessary.
PART 2 Principal Powers			
Article 5 - Benefit of the Order	National Grid	Requested to be notified prior to a transfer of benefit under the DCO.	(9) Prior to any transfer or grant under this article taking effect the undertaker must give notice in writing to the Secretary of State and National Grid Electricity Transmission PLC , and if such transfer or grant relates to the exercise of powers in their area, to the MMO and the relevant planning authority.
Article 33 – Trees subject to tree preservation orders	Examining Authority	At the dDCO Issue Specific Hearing, the Applicant agreed to review Article 33(1) in relation to Tree Preservation Orders. While the agreed change has been made, the ExA notes that the new proposed wording now relates to Tree Preservation Orders made before, on or after 16 November 2018 - in other words, all Tree Preservation Orders. Could the Applicant therefore remove the wording "which was made on, before, or after 16 November 2018", as it is superfluous	The undertaker may fell or lop any tree within or overhanging land within the Order limits subject to a tree preservation order which was made on, before, or after 16 November 2018 —or cut back its roots, if it reasonably believes it to be necessary to do so in order to prevent the tree from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project.

Article 36 – Requirements, appeals etc.	Examining Authority, Applicant	<p>The Applicant notes that the Secretary of State does not have any opportunity to sign off any plans or programmes under the DCO and therefore is removed from this provision.</p>	<p>36.—(1) Sub-section (1) of section 78 of the 1990 Act applies to the development consent granted by this Order and to the requirements except that it is modified so as to read for the purposes of this Order only as follows—</p> <p>(a) — after “local planning authority” insert “or Secretary of State”</p> <p>(b) — to insert after subsection (b) insert— the following— “refuse or fails to determine an application for any consent, agreement or approval of that authority required by a requirement imposed on a grant of development consent or contained in a development consent order, or grant it subject to conditions; or”</p> <p>(c) — after Sub-section (1), insert the following— “(1) A Where the appeal under sub-section (1) relates to a decision by the Secretary of State, the appeal shall be decided by a Secretary of State who would not be responsible for determining an application for development consent with the subject matter of the Cleve Hill Solar Park Order 20[] if section 103(1) of the 2008 Act applied.”</p>
SCHEDULE 1 — Authorised Project			
PART 1 — Authorised Development			
Associated Development	Examining Authority, Applicant	<p>Added detail to provide clarity for Examining Authority on the works being undertaken as Associated Development.</p>	<p>(f) laying out and surfacing of permissive paths, including the laying and construction of drainage infrastructure, signage and information boards;</p> <p>(g) habitat creation and management, including earthworks, landscaping, means of enclosure, and the laying and construction of drainage infrastructure;</p>
PART 2 — Requirements			

Requirement 7 – Fencing and other means of enclosure	Examining Authority	Request for consistency with other similar uses such as requirement 13(5).	(2) The term “commence” as used in requirement 7(1) ...
Requirement 9 – Archaeology	Examining Authority	Request for consistency with other similar uses such as requirement 13(5).	(2) The term “commence” as used in requirement 9(1) ...
Requirement 13 – European protected species	Examining Authority	Request for consistency with other similar uses such as requirement 13(5).	(2) The term “commence” as used in requirement 13(1) ...
Requirement 13 – European protected species	Examining Authority	In answer to our previous question ExQ1.4.6 [REP2-006], the Applicant agreed to review the references to Regulations 40 and 44 in draft Requirement 13 and to determine whether these should now be to Regulations 42 and 46. What was the outcome of this review as there is no apparent change to the Deadline 3 dDCO?	(5) In this Requirement, “European Protected Species” has the same meaning as in regulations 4240 and 4446 of the Conservation of Habitats and Species Regulations 2017
Requirement 16 – Decommissioning	Environment Agency and Swale Borough Council	Amended following further discussions between the EA and the Applicant, and comments from SBC. This is subject to further discussion with the EA and SBC	See draft order.
Requirement 19 – Consultation	Swale Borough Council	Sought a requirement for pre-consultation by the undertaker prior to discharge of requirements.	Consultation <i>19. Where the relevant planning authority is required by this Order or other statute to consult with another person or body prior to discharging a requirement,</i>

			<i>the undertaker must consult with such person or body prior to making an application to discharge the requirement.</i>
SCHEDULE 4 — Public rights of way to be temporarily stopped up			
	Applicant	Typographical error.	Between the points marked D E as shown on figure 3 of the rights of way plan
SCHEDULE 7 — Protective provisions			
Part 2 – For the protection of National Grid as Electricity undertaker	National Applicant	Grid, Amended for conformity with National Grid standard protective provisions	“apparatus” means— (a) electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by National Grid;
Part 2 – For the protection of National Grid as Electricity undertaker	National Applicant	Grid, Amended for conformity with National Grid standard protective provisions	<i>“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary and/or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;</i>
Part 2 – For the protection of National Grid as Electricity undertaker	National Applicant	Grid, Amended for conformity with National Grid standard protective provisions	<i>“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of the undertaker including construct, use, repair, alter, inspect, renew or remove the apparatus;</i>

<p>Part 2 – For the protection of National Grid as Electricity undertaker</p>	<p>National Applicant Grid,</p>	<p>Amended for conformity with National Grid standard protective provisions.</p>	<p>...</p> <p><i>(2) As a condition of agreement between the parties in paragraph 6(1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between the undertaker and the promoter) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of the undertaker and/or affects the provisions of any enactment or agreement regulating the relations between the undertaker and the promoter in respect of any apparatus laid or erected in land belonging to or secured by the promoter, the promoter must as the undertaker reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between the undertaker and the promoter acting reasonably and which must be no less favourable on the whole to the undertaker unless otherwise agreed by the undertaker, and it will be the responsibility of the promoter to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.</i></p> <p><i>(3) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid as of right</i></p>
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<p>Part 2 – For the protection of National Grid as Electricity undertaker</p>	<p>National Applicant</p>	<p>Grid,</p> <p>Amended for conformity with National Grid standard protective provisions</p>	<p>Co-operation</p> <p>13—(1) Where in consequence of the proposed construction of any of the authorised development, the undertaker or National Grid requires the removal of apparatus under paragraph Error! Reference source not found. or an National Grid makes requirements for the protection or alteration of apparatus under paragraph Error! Reference source not found., National Grid the undertaker shall 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 National Grid’s undertaking and National Grid shall use its best endeavours to co-operate with the undertaker for that purpose.</p> <p>(2) For the avoidance of doubt whenever National Grid’s consent, agreement or approval to is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by National Grid the undertaker, it must not be unreasonably withheld or delayed.</p>