

Mr Gareth Leigh  
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c/o The Planning Inspectorate

By email only: CleveHillSolarPark@planninginspectorate.gov.uk

9 April 2020

**Planning Act 2008 and The Infrastructure Planning (Examination Procedure) Rules 2010**

**Application by Cleve Hill Solar Park Limited (“the Applicant”) for an Order granting Development Consent for the proposed Cleve Hill Solar Park and associated infrastructure (“the proposed Development”) - EN010085**

Dear Mr Leigh,

1. We write in response to your letter dated 3 April 2020 requesting further information from the Applicant ("Request for Further Information"). This letter and its enclosures constitute the Applicant's response to that request.

**Compulsory Acquisition - Plot 5/03 - Lowland Grassland Meadow Habitat Management Area**

Purpose of the Lowland Grassland Meadow Habitat Management Area

2. The proposed Lowland Grassland Meadow Habitat Management Area (LGM HMA) will be an area of grassland sward as described in Chapter 5 - Development Description of the Environmental Statement [APP-035]. The LGM HMA forms part of Work No 8 described in Part 1 of Schedule 1 to the dDCO [REP7-005] and shown on the Works Plan [REP7-003]. The LGM HMA will be located within plot 5/03 on the land plans [AS-003].
3. The LGM HMA is an integral part of the authorised development and the landscape and biodiversity strategy. The provision of the LGM HMA has been consulted on and taken into account by statutory consultees and stakeholders when making submissions into the Examination. The delivery of the habitat management areas, including the LGM HMA, will be a key consideration in the overall planning balance when considering the impacts and benefits of the authorised development.

4. As the Applicant stated in its response to the Examining Authority's written question 1.2.5 [REP2-006], the land proposed for the LGM HMA originally formed part of the solar park and panels were proposed to be located in this area. Following consultation feedback and iterative design as part of the EIA process, it was decided not to promote solar panels in this area. The land is now proposed to serve two key purposes: (a) it is to be managed as lowland meadow as a UK biodiversity action plan priority habitat; and (b) to mitigate landscape and visual impacts of the authorised development, including from public right of way ZR488, properties at Cleve Hill, Graveney and viewpoints around the heritage assets associated with the Graveney Church conservation area. The Applicant also explained why it considered that the works required to deliver the LGM HMA constituted development and satisfied the tests of "associated development".
5. Paragraph 262 of Chapter 7 (LVIA) of the ES [APP-037] refers to the LGM HMA as part of the mitigation measures for the authorised development. Paragraph 375 of Chapter 7 of the ES sets out the assessment of Viewpoint 8 and explains how the LGM HMA will screen and embed the authorised development within the landscape which will minimise the effect on views of the authorised development.
6. Further details as to the purpose of the LGM HMA and its role in mitigating the impacts of the authorised development were provided by Mike Bird on behalf of the Applicant at the Compulsory Acquisition Hearing on 16 July 2019. A written summary of these submissions can be found at paragraph 4.24 of the Applicant's Written Summary of oral submissions presented at Compulsory Acquisition Hearing 1 [REP3-013]. The Applicant's representatives reiterated at the Compulsory Acquisition Hearing that the LGM HMA had been included for mitigation under two limbs, firstly as priority habitat, and secondly to mitigate viewpoints from the heritage assets and the public right of way ZR488. The Applicant's representatives made it clear at the Compulsory Acquisition Hearing that whilst the LGM HMA 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 (see paragraphs 4.25 to 4.28 of the Written Summary of oral submissions presented at Compulsory Acquisition Hearing 1 [REP3-013]).
7. In response to question ExQ2.0.9 of the Examining Authority's second written questions [REP4-020], the Applicant explained that the works listed in Work No. 8 of Schedule 1 of the dDCO which relate to the habitat management areas constitute development as they may involve engineering operations that would otherwise require planning permission. Those operations may include earthworks, landscaping, means of enclosure and the laying/construction of drainage infrastructure. The Applicant reiterated its position that the works for the LGM HMA constitute associated development as the LGM HMA is being provided as mitigation.
8. Requirement 5 of Part 2 of Schedule 1 to the draft DCO states that no phase of the authorised development may commence until a written Landscape and Biodiversity Management Plan (which accords with the outline landscape and

biodiversity management plan) has been submitted to and approved by the relevant planning authority in consultation with Natural England. The approved landscape and biodiversity management plan must be implemented as approved.

9. The Outline Landscape and Biodiversity Management Plan [REP7-013] sets out the details for the delivery of the LGM HMA (including management during the operational phase of the authorised development). The measures secured in the Outline Landscape and Biodiversity Management contribute to the overall biodiversity net gain predicted as a result of the authorised development, as set out in the Biodiversity Metrics 2.0 submission [REP4-052]. If the LGM HMA were not able to be delivered, the biodiversity net gain predicted as a result of the authorised development would be reduced.
10. As currently drafted, the DCO therefore obliges the Applicant to deliver the LGM HMA otherwise the Applicant would be in breach of Requirement 5.
11. It is therefore necessary for the Applicant to be able to control and manage the LGM HMA to ensure that the mitigation can be delivered and the DCO complied with.

#### Compulsory Acquisition Tests

12. As set out in the Request for Further Information, a DCO can only include provisions authorising the compulsory acquisition of land if the Secretary of State is satisfied that the conditions set out in s122(2) and (3) of the Planning Act 2008 are met.
13. The conditions in s122(2) are that the land:
  - (a) is required for the development to which the consent relates;
  - (b) is required to facilitate or is incidental to that development; or
  - (c) is replacement land which is to be given in exchange for the order land under section 131 or 132.
14. The condition in s122(3) is that there is a compelling case in the public interest for the land to be acquired compulsorily.
15. For the reasons set out above, the Applicant considers that the LGM HMA is required for the development to which the consent relates and therefore the condition in s122(2)(a) has been met. The LGM HMA is part of the authorised development (Work No 8) and is required to mitigate the impacts of the generating stations in Work No 1 and Work No 2 of the authorised development.
16. The Applicant notes that the Secretary of State has not requested further details as to whether the works for the LGM HMA constitute "associated development" and the Applicant has therefore assumed that, should the Secretary of State be minded to grant the DCO, he is satisfied that the works proposed for the LGM HMA satisfy this test. However, in the event that the Secretary of State does not consider the works LGM HMA to constitute development, the Applicant considers

the land for the LGM HMA is still required to facilitate, or is incidental to, the generating stations in Work No 1 and Work No 2 of the authorised development as the LGM HMA mitigates the impacts of the authorised development. In this scenario, the condition set out in s122(2)(b) would be met.

17. The Applicant also submits that the land required for the LGM HMA is proportionate and no more than is reasonably required for the purposes of providing the necessary mitigation.
18. In respect of the condition in s122(3) the Applicant has set out the reasons why there is a compelling case for land to be compulsorily acquired in sections 7 and 8 of the Statement of Reasons [APP-019]. In respect of the LGM HMA specifically, there is a public interest in the Applicant being able to deliver the proposed mitigation as it is members of the public that will directly benefit from visual mitigation of the authorised development from the public right of way ZR488, properties at Cleve Hill, Graveney and viewpoints around the heritage assets associated with the Graveney Church conservation area.
19. The Applicant submits that the public benefits of the mitigation to be provided by the LGM HMA outweigh the private loss that would be suffered by the landowners and notes that the landowners have not objected to the compulsory acquisition of their land for the LGM HMA.
20. In response to paragraph 7 of the Request of Further Information, and for the reasons set out above, the Applicant considers that limiting the compulsory acquisition powers sought over plot 5/03 to Works 1 and 4 in any DCO that might be issued would not be appropriate.

#### Updated land plan and book of reference

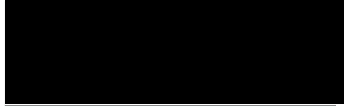
21. Without prejudice to the Applicant's position as set out above, and as requested at paragraph 8 of the Request for Further Information, an alternative version of the Land Plan and Book of Reference have been produced and are enclosed. Plot 5/03 has been divided into two plots. The Applicant is seeking compulsory acquisition powers over plot 5/03A for Work No 1 and Work No 4 (as detailed on the Works Plan [REP7-003]). In respect of plot 5/03B, the Applicant is seeking compulsory acquisition powers for Work No 8 (as detailed on the Works Plan [REP7-003]).
22. In response to paragraph 9 of the Request of Further Information, the Applicant considers that the Works Plan [REP7-003] accurately details the site boundary.

#### **Project Definition**

23. In response to paragraph 13 of the Request of Further Information, the Applicant accepts the proposed amendment to the detailed design approval requirement (Requirement 2.2 in the Applicant's draft DCO submitted as Revision I of November 2019) described in that paragraph.

I hope that our response satisfies your request. Should you have any queries please do not hesitate to contact me.

Yours sincerely,



Hugh Brennan  
Managing Director  
For and on behalf of Cleve Hill Solar Park Ltd

*Encs.*

*Book of Reference, Revision E (Clean Version)*

*Book of Reference, Revision E (Track Change Version)*

*Book of Reference Schedule of Changes*

*Land Plan, Revision C*

