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Your ref: EN010085

28 May 2020

Dear Mr Brennan

## **PLANNING ACT 2008**

### **APPLICATION FOR THE CLEVE HILL SOLAR PARK ORDER**

#### **1. Introduction**

1.1 I am directed by the Secretary of State for Business, Energy and Industrial Strategy (“the Secretary of State”) to advise you that consideration has been given to the report dated 28 February 2020 of the Examining Authority (“the ExA”) – a panel comprising David Rose (Lead Member), Andrew Mahon and Helen Cassini – which conducted an examination into the application (“the Application”) submitted on 15 November 2018 by Cleve Hill Solar Park Limited (“the Applicant”) for a Development Consent Order (“the Order”) under section 37 of the Planning Act 2008 (“the 2008 Act”) for the Cleve Hill Solar Park and associated development (“the Development”).

1.2 The Application was accepted for examination on 14 December 2018. The examination began on 30 May 2019 and was completed on 30 November 2019. A number of changes were made to the Application during the examination. The details of these changes were made available to interested parties and were examined by the ExA.

1.3 The Order, as applied for, would grant development consent for the construction, operation, maintenance and decommissioning of an electricity generating station comprising a solar farm with the option of an additional energy storage facility with a total capacity of around 350 megawatts (“MW”). The Development would be located in Kent approximately 2km from Faversham and 5km from Whitstable within the jurisdiction of Swale Borough Council. The Development would include:

- a ground-mounted solar photovoltaic (PV) generating station with a gross electrical output capacity of more than 50 megawatts (MW) comprising arrays of panels fitted to mounting structures fixed to the ground by piles, inverters, transformers, and a network of underground cables;
- the option of an energy storage facility with a gross storage capacity of more than 50MW along with a flood protection bund, transformers, switch gear, underground cables, a construction compound and landscaping;
- a substation enclosed within a flood protection bund, with a network of underground cable circuits to connect the substation to the arrays, the storage facility and an existing substation;
- a network of cable circuits, construction compounds, landscaping, earthworks, drainage, and the undergrounding of existing overhead line;
- a means of access to an existing highway;
- habitat management areas; and
- the maintenance of an existing coastal flood defence.

1.4 Published alongside this letter on the Planning Inspectorate’s National Infrastructure Planning website<sup>1</sup> is a copy of the ExA’s Report of Findings and Conclusions and Recommendation to the Secretary of State (“the ExA Report”). The ExA’s findings and conclusions are set out in Chapter 5 – 10 of the ExA Report, and the ExA’s summary of conclusions and recommendation is at Chapter 13.

## **2. Summary of the ExA’s Report and Recommendation**

2.1 The principal issues considered during the Examination on which the ExA has reached conclusions on the case for development consent are set out in the ExA Report under the following broad headings:

- energy need
- landscape and visual effects;
- biodiversity and nature conservation;
- cultural heritage;
- agricultural land;
- traffic and transport;
- noise and vibration;
- socio-economic effects;
- water environment (including flooding and coastal defence);
- safety and security (particularly in respect of the proposed battery storage element); and
- compulsory acquisition.

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<sup>1</sup> <https://infrastructure.planninginspectorate.gov.uk/projects/south-east/cleve-hill-solar-park/>

2.2 For the reasons set out in the Summary of Findings and Conclusions (Chapter 13) of the ExA Report, the ExA recommends that the Order be made, as set out in Appendix C to the ExA Report [ER 13.3].

2.3 The Secretary of State notes that the Application was amended by the Applicant during the examination to allow for:

- the consolidation of two options for the Applicant to take over from the Environment Agency the responsibility for the maintenance of existing flood defences within the boundary of the Development into a single provision contained in a deemed Marine Licence;
- the option of a standalone battery storage system was discounted in favour of a containerised Lithium-ion battery proposal; and
- the option of two access routes to the proposed development site was changed to a single route (the southern access route).

2.4 The Secretary of State further notes that the ExA accepted the changes for examination, considering that they did not result in a significant change to the proposal that was the subject of the Application.

### **3. Summary of the Secretary of State's Decision**

3.1 The Secretary of State has decided under section 114 of the 2008 Act to make, with modifications, an Order granting development consent for the proposals in the Application. This letter is a statement of reasons for the Secretary of State's decision for the purposes of section 116 of the 2008 Act and the notice and statement required by regulation 31(2)(c) and (d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("2017 Regulations").

### **4. Secretary of State's Consideration of the Application**

4.1 The Secretary of State's consideration of the ExA's Report is set out in the following paragraphs. All numbered references, unless otherwise stated, are to paragraphs of the ExA's Report.

4.2 The Secretary of State has had regard to the Local Impact Reports ("LIR") submitted by Swale Borough Council ("SBC"), Canterbury City Council ("CCC") and Kent County Council ("KCC"), environmental information as defined in Regulation 3(1) of the 2017 Regulations and to all other matters which are considered to be important and relevant to the Secretary of State's decision as required by section 105 of the 2008 Act (including relevant National Policy Statements). In making the decision, the Secretary of State has complied with all applicable legal duties and has not taken account of any matters which are not relevant to the decision.

4.3 The Secretary of State notes there were 867 relevant representations made in respect of the Application by statutory authorities, non-statutory authorities and local residents and businesses. Written Representations, responses to questions and oral submissions made during the Examination were also taken into account by the ExA. Unless indicated otherwise in

the paragraphs below, the Secretary of State agrees with the findings, conclusions and recommendations of the ExA as set out in the ExA's Report, and the reasons for the Secretary of State's decision are those given by the ExA in support of his conclusions and recommendations.

### Need for the Development

4.4 The Secretary of State notes that, while the application is a 'Nationally Significant Infrastructure Project' as defined in sections 14 and 15 of the Planning Act 2008 by virtue of being an onshore generating station with a generating capacity of greater than 50MW, there is no National Policy Statement for energy infrastructure which explicitly covers solar powered electricity generation or battery storage such as the Cleve Hill Solar Park.

4.5 In the absence of a specific National Policy Statement that is applicable to the proposed Development, the provisions in section 105(2) of the Planning Act provide the basis for decision-making in this case and the Secretary of State must have regard to the matters detailed in that section. This includes any matters which the Secretary of State thinks are both important and relevant to his decision. The Secretary of State is aware that the Overarching National Policy Statement for Energy EN-1 ("EN-1") applies to electricity generating stations with a generating capacity of more than 50MW, although not this particular type of generating station. The Secretary of State, therefore, considers that policies in EN-1 are matters which are both important and relevant to his decision on whether to grant or withhold consent for the Development. However, he acknowledges that it is not possible to rely on the 'presumption of need' that it sets out in respect of certain specified other types of electricity generating stations.

4.6 The Secretary of State agrees with the ExA that the Development, which would comprise the construction, operation, maintenance and decommissioning of a solar photovoltaic array with either an electrical storage facility or an extension to the solar photovoltaic array, together with connection infrastructure and other Associated Development (with the solar photovoltaic array and the energy storage facility each having a generating capacity of greater than 50MW) is consistent with government policy and will contribute to the delivery of low-carbon and renewable energy, ensuring a secure, diverse and affordable energy supply in line with legal commitments to "net zero" and the need to address climate change.

4.7 The Development would also generate low-carbon electricity with a net saving in CO<sub>2</sub> [Greenhouse Gas Emissions] emissions over the course of its life, notwithstanding the loss of a GHG sink in the form of salt marsh within the area of the Development. The Applicant and the ExA place a great weight on this contribution to the decarbonisation of the United Kingdom's electricity generation sector.

### Secretary of State's Conclusion

4.8 The Secretary of State, therefore, agrees with the ExA that substantial weight should be attributed to the contribution that the Development, insofar as it relates to the solar PV element, would make towards the identified need for additional renewable energy generation, consistent with local and national policies on sustainable development. The Secretary of State agrees with the ExA that the proposed co-located battery energy storage system to be a factor of significant additional weight [ER 5.6.2].

## Landscape and Visual Effects

4.9 The Secretary of State acknowledges that this matter is of concern to many local residents. He notes that the total area of land that would be occupied by the proposed Development is around 490 hectares. However, this includes land set aside for the energy storage element of the proposal, land set aside for habitat mitigation purposes, flood defences, internal tracks and a relatively small area occupied by the existing London Array substation. The actual land area that would be covered by the solar panels is around 176 hectares.

4.10 The site of the proposed Development is described in the ExA's Report [ER 6.5.3] as being a flat and featureless coastal plain, interrupted by drainage ditches, borrow pits, reed beds and the 5-metre-high coastal flood defence bund/embankment. The site also contains a 400kV overhead line on lattice towers, a short distance of overhead line on wooden poles and the London Array substation mentioned above. The ExA notes that the 400kV line introduces incongruous vertical structures in a predominantly flat landscape [ER 6.5.5].

4.11 The solar panels themselves would rise to a maximum vertical height above the ground of 3.9 metres and would be aligned in an east-west direction (in contrast to many solar farms which orientate the arrays to the south). The Applicant has chosen the east-west alignment because it argues that, while this results in more panels being needed because the load factor is reduced, the layout offers a better electricity generation profile than south-facing panels.

4.12 Landscape and visual impacts were a major concern for many local people who made representations to the Examination. The Applicant noted that there would be significant adverse effects from the Development but considered that these would be limited to viewers over a relatively small area and would affect only a small number of receptors (although including some properties).

4.13 In considering this issue, the ExA notes [ER 6.2.1] that National Policy Statement EN-1 sets out that “[v]irtually all nationally significant energy infrastructure projects will have effects on the landscape (paragraph 5.9.8). They should be designed carefully to minimise harm to the landscape, providing reasonable mitigation where possible and appropriate. The existing character and quality of the local landscape, how highly it is valued and its capacity to accommodate change should all be considered in judging the impact of the Proposed Development.”

4.14 The ExA states [ER 6.5.41] that “the relatively low, horizontal development is largely visually contained within the Order limits because of the enclosing influence of the existing flood defences and the topography and the vegetated character in the higher ground to the south”. The ExA also notes [ER 6.5.41] that the impacts of the Development are reversible on decommissioning (acknowledging that this might not happen for a considerable length of time – possibly 40 years).

4.15 The ExA's key conclusions on Landscape and Visual Effects [ER 6.6.1] are that: there would be no significant effects on Areas of Outstanding Natural Beauty; that there would be major and significant effects on an Area of High Landscape Value (as designated in a local development plan); in the area of the Development there would be adverse effects on landscape character, scenic value, recreational value, landscape quality and condition; rarity and representativeness. In addition, two residential properties would experience major and

significant long-term impacts on some views as would two Public Rights of Way locally, including the Saxon Shore Way.

4.16 However, the ExA also sets out that while the proposed Development has a considerable footprint, changes to views away from the immediate area would be reduced by the visual containment of the solar panel arrays within the site and, from elevated viewpoints further away, by the effect of distance, topography and the visual context. The ExA also notes that views from the Saxon Shore Way across the Swale Estuary would not be affected but walkers on that path would be aware of the Development behind them.

4.17 The ExA concludes that the adverse effects of the proposed Development on landscape and visual effects should be given moderate weight in the planning balance. However, the local nature of these impacts provides some mitigation to their scale.

### Secretary of State's Conclusion

4.18 The Secretary of State notes the strength of feeling that local residents have expressed about the potential adverse impacts of the Development on the landscape of the Graveney Marshes, both through the Examination and in subsequent submissions to the Department for Business, Energy and Industrial Strategy. However, he also notes that EN-1 sets out that the nature of nationally significant energy projects means they are very likely to have a negative effect on landscape and visual perception and that these effects may be hard to mitigate. In the case of the Development, the Secretary of State considers that, while there will be adverse effects, he agrees with the ExA's assessment that these will be minimised as far as possible.

### Biodiversity and Nature Conservation (see also section on Habitats Regulations Assessment at Section 5 below)

4.19 The Secretary of State notes that this issue is also of major concern to a considerable number of people who made representations to the Examination of the Application and that the ExA acknowledges that it was a major consideration in its assessment. Natural England ("NE"), the Kent Wildlife Trust ("KWT") and the Royal Society for the Protection of Birds ("RSPB") (at least initially in the case of the latter, though it subsequently deferred to NE and KWT as the process moved forward) also took part in the Examination. KWT and RSPB both objected to the proposed Development because of its potential adverse impacts on wildlife – principally in relation to a number of bird species – where they felt that adequate mitigation could not be put in place to prevent significant impacts. Those objections were sustained throughout the Examination process and the consideration of the ExA's Report (as were those from the Kent Ornithological Society).

4.20 The ExA's Report notes that relevant national and local policies were considered during the Examination. The key wildlife species that were considered during the Examination are ground nesting birds – particularly Brent geese, lapwing and golden plover – marsh harriers, dormice and European eels.

4.21 The ExA considered the information provided by the Applicant, the methodology it had used to compile the information, the proposals for mitigation and enhancement and the conclusions it had drawn in assessing the potential impacts of the proposed Development. The ExA noted that the Applicant had refined its approach as it responded to questions from the ExA and others during the Examination. [ER 7.3.1 et seq]

4.22 The ExA also recorded the Applicant's conclusions that there would be no significant adverse impacts arising from the proposed Development on ornithology or on other important ecological features either alone or in combination with other plans or projects. The Applicant concluded that the change of use from agricultural land to solar farm would mean a benefit to invertebrates as there would be no use of pesticides. [ER 7.3.16 et seq]

4.23 In considering the issues raised, the ExA noted the contents of the Local Impact Reports submitted by Swale Borough Council, Canterbury City Council and Kent County Council. The Local Impact Report from Swale Borough Council considered that "there is no certainty that effect [sic] on wildlife will be neutral or positive, or that the aims of the Development Plan policies will be met". In its Local Impact Report, Canterbury City Council stated that biodiversity impacts were a key issue. (However, the Council also noted that only the habitat management aspects of the proposed Development were located in its administrative area). Finally, Kent County Council's Local Impact Report raised concerns about impacts on ground-nesting birds and the use of the site of the proposed Development by birds from adjacent designated areas. Kent County Council suggested that habitats were managed during construction. It noted that the removal of over-wintering and breeding bird habitat was potentially the biggest loss from the proposed Development but deferred to Natural England on the detail. [ER 7.4.1 et seq]

4.24 In relation to specific issues, the ExA noted representations in respect of ground nesting birds (including lapwing, skylark and yellow wagtail), 'letters of no impediment' from Natural England in respect of water voles and great crested newts, insects (the possible use of the solar panels by aquatic insects as places to lay their eggs), the disturbance of birds by piling noise, the establishment, management and adequacy of the proposed Arable Reversion Habitat Management Area (including when it would be sown), the adequacy of the mitigation proposed, especially in relation to the capacity of the Arable Reversion Habitat Management Area to support populations of lapwing, golden plover and Brent geese. There were also concerns about the impact of the proposed Development on marsh harriers.

4.25 In relation to possible impacts on lapwing, golden plover and Brent geese, the Secretary of State notes that there was considerable discussion during the Examination about mitigation measures that might be put in place to minimise the potential impacts of the Development on these species of bird. In particular, there were discussions about the ability of the Arable Reversion Habitat Management Area to support the birds including the use of manure to fertilize the area and improve its capacity to provide the necessary food for the species. There were concerns the manure that might be used on the site would be from animals that had been given ivermectin, a chemical that inhibits worms, but which could, potentially, harm the ability of the land to be used for food supplies for the birds. While Natural England was content with the proposed mitigation measures, the Kent Wildlife Trust maintained its concern that the necessary outcome, in terms of the ability of the land to support the three bird species, would not be achieved.

4.26 As indicated, there were concerns about the impact of the Development on the ability of marsh harriers to continue to forage on the site of the Development once the solar panels were in place with consequent displacement of birds if food sources were no longer available. The Applicant's case was that the arrangement of the solar panels along with the maintenance of drainage ditches would provide suitable space for marsh harriers to continue their foraging activities once the Development was operational. While Natural England was content that the impacts of the Development on the marsh harrier population could be managed

effectively, the Kent Wildlife Trust took a different view and its concerns were sustained throughout the Examination.

4.27 In respect of potential impacts on European eels, the ExA noted that mitigation measures proposed by the Applicant were agreed with the Environment Agency as being in compliance with The Eels Regulations 2009. The Environment Agency was, therefore, content that impacts on European eels would be kept to an acceptable level [ER 7.4.78].

4.28 As far as impacts on dormice were concerned, the Council for the Protection of Rural England indicated that Hazel Dormice were present on the site of the proposed Development as determined by the discovery of a nest. The Applicant and the ExA investigated the claim but concluded that the site of the possible nest was not in an area of the proposed Development where it would be at risk from construction or operational activities and that the nest was unlikely to be a dormouse nest. [ER 7.4.79 et seq]

4.29 In its response to discussion about biodiversity and nature conservation, the ExA noted that it was content with the Applicant's approach to biodiversity surveys. The ExA was also content that, by the end of the Examination, the evidence presented to it allowed it to consider that the information requirements in relevant policy documents, including the Marine Policy Statement and National Policy Statement EN-1 had been satisfactorily met. [ER 7.5.2 et seq]

4.30 The ExA sets out that, as is expected, it has given great weight to the potential effects of the proposed Development on internationally designated sites. The ExA was satisfied that golden plover, lapwing and Brent geese from the Swale SPA and Ramsar sites would receive suitable protection from measures in the Order it recommended to the Secretary of State and the associated habitat management plans to ensure that the sites would be protected from significant effects. The ExA notes that there was general consensus (albeit with some reservation from Kent Wildlife Trust) that that was a reasonable conclusion. [ER 7.5.9]

4.31 In respect of the potential impacts on and mitigation for marsh harriers, the ExA notes that Natural England was content that the interests of the species would be protected. The Kent Wildlife Trust and other parties did not agree. On balance, the ExA was content that the proposed Development would not cause any significant adverse impacts on marsh harriers. [ER 7.5.10 et seq]

4.32 The ExA was satisfied that nationally designated sites of ecological importance – the Swale Site of Special Scientific Interest – could exist alongside the proposed Development. [ER 7.5.13 et seq]

4.33 The ExA notes that no significant impacts on locally designated sites of ecological importance were drawn to its attention. [ER 7.5.17]

4.34 The ExA was content that relevant policy requirements (including in National Policy Statement EN-1) in respect of protected species – European eels and hazel dormice – had been met. [ER 7.5.21]

4.35 The ExA notes that Kent County Council raised concerns about the loss of habitat for ground-nesting birds but considered that the impact would not be significant when considered against the benefits. The ExA, therefore, attached little weight to this matter. [ER 7.5.22]

4.36 The ExA was content that the proposed Development would provide opportunities to conserve and enhance biodiversity. [ER 7.5.23 et seq]

4.37 The ExA notes that National Policy Statement EN-1 sets out a need for mitigation and enhancement to form part of any project. The ExA notes that the original documents submitted with the Application were not clear about mitigation measures but that the Applicant produced further information to augment the initial detail. The ExA notes that the Applicant's original Environmental Statement set out the potential for significant adverse effects on three species of waterfowl associated with the Swale SPA and Ramsar site. There was a great deal of discussion during the Examination about mitigation measures that would prevent a significant adverse impact – principally through the Arable Reversion Habitat Management Area – and the steps that would be needed to sustain its 'carrying capacity' (with the use of manure generating a lot of the discussion). By the close of the Examination, there was nearly consensus (with Kent Wildlife Trust a dissenter) that the mitigation proposed was appropriate for displaced birds from the Swale SPA and Ramsar site flocks. [ER 7.5.25 et seq]

4.38 There was a range of views on whether mitigation proposed for marsh harrier would be effective. The ExA notes the lack of empirical evidence one way or another in this matter and that concerns were raised about whether the solar panels would dissuade the species from foraging. However, taking account of Natural England's evidence presented to the Examination, the ExA considers that, on balance, the mitigation measures proposed by the Applicant are sufficient to mitigate any likely significant effects. [ER 7.5.31]

4.39 The ExA was satisfied that mitigation proposals for other species – including hazel dormice and European eels – would provide suitable protection. [ER 7.5.35]

4.40 The ExA also considered whether there were any other nature conservation biodiversity issues which need to be considered during the Examination – particularly in respect of bird strike on the solar panels and the possibility of aquatic insects laying their eggs on them. The ExA accepted that there was not a great deal of information to inform its thinking – though the information that was available pointed to a low risk of bird strike or insect egg-laying scenarios. The ExA afforded little weight to these matters. [ER 7.5.38 et seq]

4.41 In conclusion, the ExA noted that biodiversity and nature conservation was a major issue for consideration during the Examination. The ExA also noted that the Applicant improved the proposed package of mitigation as the issue was progressed through the Examination, especially in respect of the Landscape and Biodiversity Management Plan. Despite some remaining concerns from some parties about their efficacy, the ExA is content that the Applicant's proposed programme of mitigation and monitoring would ensure there were no significant adverse effects from the proposed Development either on its own or in combination with other plans or projects. The ExA concludes that with the secured mitigation, the proposed Development is in accord with relevant policy requirements and there is no reason to withhold the grant of consent. Biodiversity and nature conservation is, therefore, given neutral weight in the ExA's assessment of impacts.

#### Secretary of State's Consideration

4.42 The Secretary of State notes the complex and technical nature of the issues considered under the biodiversity and nature conservation heading. However, the Secretary of State's own analysis of potential impacts on the Swale SPA and Ramsar sites through a Habitats

Regulations Assessment (see paragraphs 5.1 – 5.8 below) below, draws the same conclusion as the ExA in relation to protected species. The Secretary of State notes the proposed mitigation measures that would be put in place and that Natural England (though not some other consultees) accepted the positive impact these measures would have. Overall, the Secretary of State considers that the ExA's assessment of each of the issues under this heading is sound and its conclusions are robust.

### Cultural Heritage

4.43 The Secretary of State notes the potential adverse impact of the Development on a number of heritage assets. He also notes this matter was a concern raised by a number of Interested Parties during the Examination. While there are no designated cultural assets within the site of the proposed Development (there is an undesignated World War II pill box), there are a number of assets whose 'setting' (the surroundings in which a heritage asset is experienced) would be affected.

4.44 The Applicant identified significant effects on All Saints Church, Graveney (Grade 1 listed), Graveney Court (Grade 2), Sparrow Court (Grade 2) and the Graveney Church Conservation Area which lie within 1 kilometre of the site boundary for the proposed Development. The Applicant also identified further heritage assets within 5 km of the site boundary - ten grade 1 listed buildings, 34 grade II\* listed buildings, 534 grade II listed buildings, 13 scheduled monuments, one grade II Registered Park and Garden, and 15 conservation areas – but predicted that there would be no significant effects on those [ER 8.1.18 – 8.1.19].

4.45 Swale Borough Council agreed with the Applicant's assessment that there would be no direct impact on heritage assets and with the assessment of significant effects as set out above. The Graveney Rural Environment Action Team ("GREAT" – which represents Graveney residents opposed to the proposed Development) and Kent County Council felt that the impacts of the proposed Development would be greater than those identified by the Applicant. GREAT suggested other historic sites that should be considered in Examination.

4.46 In considering the arguments about impacts on heritage assets, the ExA assessed the requirements and advice set out in the National Policy Statements, the National Planning Policy Framework and in relevant legislation (The Infrastructure Planning (Decisions) Regulations 2010).

4.47 The ExA considered the position in relation to the specific heritage assets that the Applicant, GREAT and Swale Borough Council had assessed would be significantly impacted by the Development and concluded:

- All Saints Church, Graveney – the solar panels closest to the Church would be 500 – 600 metres distant. Mitigation planting might provide some help but the proposed Development would "seriously erode the rural character of the area and the contribution of setting to the significance of All Saints Church" [ER 8.1.40 et seq]. The ExA concluded that the less than substantial harm should be weighed as moderate in the planning balance;
- Graveney Court – a house with 15<sup>th</sup> Century origins which owes its significance to its special historic and architectural interests and its setting alongside All Saints Church. The ExA concluded that, as with the Church, the less than substantial harm should be weighed as moderate in the planning balance [ER 8.1.44];

- Sparrow Court – the southern boundary of the proposed Development site would be located some 250 metres from the Court - a farmhouse with 15<sup>th</sup> Century origins. Its significance derives from its special architectural interest and historic links with the Church and Graveney Court. Despite some vegetation cover, the siting of the solar panels would erode the open landscape from which the Court, in part, derives its significance. The ExA concludes that this would be less than substantial harm with moderate weight in the planning balance [ER 8.1.45 et seq].
- Church of St Thomas the Apostle, Harty – this small and isolated church would lie about 2km north of the proposed development site across the Swale Estuary. There would be views from the Church across to the proposed Development but the solar farm would appear relatively small in extensive surroundings. The ExA references the Applicant’s view that the existing sea wall around the site of the proposed Development would substantially screen the solar farm from the Church leaving a band of silver above the sea wall while elements of the proposed Development higher up would be seen against the backdrop of the existing substation for the operational London Array offshore wind farm. The ExA concludes that less than substantial harm would result from the proposed Development [ER 8.1.47 et seq].
- The Shipwright Arms – much of its historic interest is linked to its remote location and links to the Faversham and Oare Creeks. The coastal defences on the north east side of Faversham Creek would offer substantial screening of the solar panels, the impact of which would be insufficient to amount to harm [ER 8.1.52].
- Other listed buildings – the Applicant identified a number of heritage assets within 5km of the proposed Development but detailed assessments were carried out only on those sites within 1km following consultation with Kent County Council and Historic England. The ExA also viewed four other heritage assets which had been suggested by GREAT as it felt they had been omitted from the list of sites assessed by the Applicant in its application (although it recognised that there were limitations in its approach). The ExA concluded that the impact of the proposed Development was so minor that it would not harm the significance of the heritage assets. [ER 8.1.53 et seq]
- Graveney Church Conservation Area – a small, isolated, group of buildings which are linked to Graveney Church and Graveney Court. Though the proposed Development would have an adverse impact on the significance of the Church and the Court, the overall effect on the conservation area would be more benign. The ExA concludes there would be less than significant harm.
- Other heritage assets – there are a number of conservation areas in neighbouring towns. None of these would be affected by the proposed Development. As indicated above, there is a World War II pill box within the site of the proposed Development. While, there would be no physical change to the pill box (other than it being used as a bat roost), the ExA finds that its significance would be diminished and that this carries moderate weight in the planning balance.

4.48 In respect of ‘historic landscape character’, the ExA finds that the proposed Development would dilute the essence of the grazing marshes although retention of the

drainage ditches would retain the historic legibility of the landscape. The ExA concludes that this matter should be given moderate weight in the planning balance.

4.49 The Secretary of State notes the ExA's conclusions [ER 8.1.64 et seq] that there would be harm to the setting of All Saints Church, Graveney, Graveney Court, Sparrow Court, the Church of St Thomas the Apostle at Harty and the Graveney Church Conservation Area but that in individual and cumulative terms, this would be less than substantial. There would also be moderate harm to historic landscapes and a loss of significance of the World War II pill box. The ExA acknowledges the weight that adverse impacts on cultural heritage carry in relevant policies (including EN-1) but concludes that, overall, the harm identified must be weighed against the wider benefits of the proposed Development.

#### Secretary of State's Conclusion

4.50 Having given this matter consideration, the Secretary of State notes the adverse impacts that have been identified on cultural heritage assets and that these are of concern to many local people. However, the Secretary of State agrees with the ExA in respect of the weight the adverse impacts should carry in the planning balance.

#### Agricultural Land

4.51 The Secretary of State is aware that EN-1 sets out that nationally significant energy infrastructure projects should aim to minimise impacts on best quality agricultural land (classified as Grade 1, 2 and 3a under the Agricultural Land Classification ("ALC")) and should instead use land of poorer quality (Grade 3b, 4 and 5 under the ALC). In addition, the National Planning Policy Framework sets out that development should contribute to the protection of soils and respect the economic benefits of the most valuable categories of agricultural land. [ER 8.2.2 et seq]

4.52 The Secretary of State notes there was considerable discussion during the Examination about the classification of the land on which the proposed Development would be located – the matter had been raised in a number of representations submitted to the Planning Inspectorate.

4.53 Swale Borough Council's Local Plan seeks to prevent development on agricultural land unless there is an overriding need that cannot be met elsewhere. The Development Plan sets out restrictions on the development of better quality land, including that classified as 3a under the ALC [ER 8.2.4]

4.54 The Applicant assessed that the proposed Development would affect approximately 370 hectares of arable land of which 2 hectares would be ALC grade 2, 9 hectares of ALC grade 3a and 360 hectares of ALC grade 3b (approximately 97% of the site). [ER 8.2.7]

4.55 Swale Borough Council accepted that more than 90% of the land would be ALC grade 3b but questioned whether any agricultural land should be used for solar power as opposed to rooftops and brownfield land. [ER 8.2.12]

4.56 Arguments were put to the Examination by an Interested Party – Dr Erasin – who contended that the Applicant's assessment of agricultural land quality was flawed and that a far higher proportion of the site of the proposed Development should be classified as being of higher ALC grading than that stated. The Applicant, Dr Erasin and the ExA engaged in a number of

exchanges during the Examination to allow a considered view of the positions adopted by the respective parties to emerge. [ER 8.2.13 et seq]

4.57 After considering the exchanges between the parties, the ExA concluded that Dr Erasin had misunderstood the approach that was taken by the Applicant and that the ALC assessment presented to the Examination by the Applicant was reliable. The ExA's overall conclusion in respect of Agricultural Land was that the vast majority of the land that would be used for the proposed Development is of ALC grade 3b. The proposed Development was, therefore, in accordance with the relevant policy set out in EN-1 and little weight should be given to the loss of agricultural land in the planning balance. [ER 8.2.33]

#### Secretary of State's Conclusion

4.58 The Secretary of State notes the conflicting views during the Examination about how the land that would house the Development should be classified in terms of its agricultural potential. The Secretary of State further notes that the ExA concludes that the vast majority of the land to be used for the project would be in Agricultural Land Category 3(b) and that the test in EN-1 in relation to the use of agricultural land for NSIPs has been met. He sees no reason to disagree with the ExA's analysis of the issues raised in relation to this issue. He considers that little weight should be given to the loss of agricultural land in the planning balance.

#### Traffic and Transport

4.59 The Secretary of State notes that this was another matter which raised concerns among local residents with particular focus on the potential impacts of an increase in traffic movements, especially Heavy Good Vehicles, during the construction of the Development.

4.60 National Policy Statement EN-1 sets out that transport impacts related to national significant energy infrastructure are an important consideration in assessing applications for development consent. EN-1 also sets out mitigation options to minimise impacts from traffic and transport related to nationally significant energy infrastructure projects and recommends that where the project in question is likely to generate a large increase in HGV movements, then measures to limit impacts should be included in any Order that might be granted [ER 8.3.4].

4.61 The ExA records the National Planning Policy Framework as requiring Applicants to consider transport issues at an early stage in the proposal, but notes that "*Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe*". [ER 8.3.6]

4.62 The ExA also notes that both the Swale Borough Council and Canterbury City Council Development Plans contain provisions in relation to assessment of traffic impacts that place great store on maintaining the safety of road users and preserving the character of rural lanes in particular [ER 8.3.7 et seq].

4.63 Swale Borough Council's Local Impact Report noted that there would be long periods where construction traffic would affect residents, including at weekends [ER 8.3.33]. It also noted that the route that would be used by construction traffic was popular with cyclists and that this would result in harm in relation to road safety and recreational amenity. The main construction traffic route would be along what were defined as rural lanes and the impacts of this would mean that policy DM 26 of the Swale Borough Local Plan would not be met.

Canterbury City Council's Local Impact Report indicated no adverse effects for the network of roads within its area. [ER 8.3.35]

4.64 Kent County Council's Local Impact Report indicated [ER 8.3.36] that the operation of the proposed Development would result in few road traffic movements. The Report also set out that the Applicant had assessed the appropriate impacts from HGV activity associated with the construction of the proposed Development. Finally, the Report set out that the Council was satisfied that the impacts of traffic movements during construction (and decommissioning) could be mitigated through the Construction Transport Management Plan submitted by the Applicant as part of its Application.

4.65 Kent County Council's Statement of Common Ground with the Applicant indicated that it agreed with the Applicant on all traffic and transport issues – including the proposed mitigation. [ER 8.3.38]

4.66 The Applicant provided information about traffic and transport assessments in the Environmental Statement submitted with the Application. A pre-Application scoping opinion from the Planning Inspectorate indicated that significant traffic and transport effects during operation of the proposed Development were not likely and so a detailed assessment of traffic movements during this phase of the development was not needed. The Application also proposed that a number of mitigation measures should be agreed with relevant local planning authorities as part of any Construction Traffic Management Plan or Construction and Environmental Management Plan and included provisions for these in a draft Order submitted as part of the Application [ER 8.3.12 et seq].

4.67 The Applicant assessed that the transport and traffic impacts of the proposed Development would be slight at worst [ER 8.3.29].

4.68 There was considerable discussion during the Examination about the potential for impacts on: the road network in the vicinity of the proposed project – particularly where used by HGVs during the construction phase of the proposed Development; the safety of pedestrians, cyclists and other road users; school children attending the Graveney Primary School which lies on the route to be used by construction traffic; and, the wider local population from emissions produced by the construction traffic. There was also an issue raised about the inconvenience that would be caused by construction traffic to local people and businesses using the local road network. There was also consideration of a suggestion by an Interested Party that the Applicant had exaggerated the number of existing HGV movements along the proposed construction corridor in its pre-Application survey work.

4.69 The ExA noted that Kent County Council was content with the Applicant's approach to the consideration of traffic and transport matters and concluded that the evidence provided by the Applicant could be relied upon in considering them. [ER 8.3.50]

4.70 The ExA noted the Applicant's proposed mitigation measures for HGV impacts, including restrictions on when deliveries can be made to the construction site, speed restrictions and plans for holding such vehicles in suitable locations when they are ahead or behind the specified timing restrictions. The ExA records that there would be requirements for highways conditions surveys in the Construction Traffic Management Plan and that it was content with these requirements. [ER 8.3.52 – et seq]

4.71 The construction would require that five abnormal indivisible loads (loads which cannot be split and which do not comply with normal legal requirements regarding weight and size) would have to be taken to the site of the proposed Development along the relevant transport routes. The ExA considers that the mitigation measures to secure the safety of all road users and limit the effect of the small number of such movements that would form any approved Construction Traffic Management Plan would minimise any adverse impacts. [ER 8.3.62 et seq]

4.72 The Examination considered a disagreement between the Applicant and an Interested Party about the width of two local roads that would carry construction traffic to and from the site of the proposed Development. The Interested Party considered that the Applicant had overstated the width of the carriageway and that the narrower carriageway would increase the potential for traffic blockages. The ExA notes that Kent County Council's view was that even if the Interested Party was correct in its measurements, this did not alter the Council's view about the suitability of the route for construction traffic. The ExA concluded that the width of the road, irrespective of specific measurements, would allow a reasonable movement of construction traffic and other vehicles and while there would be some delays to local users, this would not result in significant inconvenience to road users. [ER 8.3.66 et seq]

4.73 The ExA visited the area around the proposed Development on an unaccompanied site visit and noted particular aspects of relevance to transport and traffic matters, including the location of Graveney Primary School and the nature of the roads themselves. The ExA considered the suitability of the local roads to accommodate a large number of Light Goods Vehicle and HGV traffic during the construction phase of the proposed Development.

4.74 The ExA sets out the relevant predicted construction traffic flow information arising from the proposed Development [ER 8.3.71]. The ExA records that daily total construction traffic movements would peak during week 100 at 222 (i.e. 111 vehicles in and out), comprising 162 Light Goods Vehicle movements and 60 HGV movements. Peak HGV flows would be 80 movements per day for four weeks around week 27. Overall, the average number of daily movements would be 62 HGVs and 90 LGVs. The ExA concludes that, on balance, whilst recognising the rural nature of the roads, it is content that the mitigation measures and methods of monitoring and management in the outline CTMP would be effective in minimising adverse effects such as delays, severance, fear and intimidation. No permanent, significant harm to the character of the rural lanes is likely given the temporary nature of the construction traffic.

4.75 In respect of the safety of pedestrians and cyclists along the construction traffic route, the ExA notes there would be restrictions in the Construction Traffic Management Plan on when HGVs would be allowed to deliver to or depart from the site of the proposed Development (to coincide with the start and finish of the school day). The ExA also finds that, while noting the playing field for Graveney Primary School is on the opposite side of the road from the school buildings, this would be acceptable with supervised crossing of the road.

4.76 For pedestrians more generally, the ExA notes that while the construction routes do not generally have pavements, the number of pedestrians is low and that large lorries already use the routes. While the construction of the proposed Development would lead to an increase in traffic, this would not be so great as to affect pedestrian safety or their ability to cross the roads in question.

4.77 Public rights of way across the site of the proposed development would be kept open if safe and practicable to do so and this would be secured in Requirement 12 of the ExA's recommended Order.

4.78 In terms of the safety of cyclists, the Applicant sets out that most cycling activities along the construction route would take place outside the main construction traffic peak period (from 9.30 to 15.30 on weekdays). In addition, mitigation measures in the Construction Traffic Management Plan would reduce impacts. The ExA notes that the impacts of construction would be over a two year period and would, therefore, be temporary.

4.79 In respect of air quality issues arising from transport and traffic effects, The ExA notes that pollution in the areas surrounding the site of the proposed Development would increase as a result of dust and exhaust fumes from onsite vehicular activities and from construction vehicle access. However, the ExA considers that this increase in pollution is in relation to an existing low base so with mitigation, there would be no significant effects. [ER 8.3.79 et seq]

4.80 After considering all the issues raised by the parties, the ExA stated that the impacts of traffic and transport were an important consideration in the Examination of the Application with many representations submitted about it. The ExA was satisfied that the main source of any impacts would be during the construction of the proposed Development rather than during its operation and that a detailed assessment of the latter was not required. The ExA sets out that it was satisfied that appropriate mitigation would be put in place to ensure there would be no significant residual impacts arising from the proposed Development. The ExA also assessed that impacts during the decommissioning of the proposed Development [potentially in 40 years time] would be no worse than those likely to arise during construction. [ER 8.3.86 et seq]

4.81 The ExA's overall conclusions were that the temporary but significant effects of the proposed Development during construction would be mitigated to an acceptable level by measures in the Construction Traffic Management Plan which would meet the relevant provisions in National Policy Statement EN-1 for energy NSIPs. In the same way, the proposed Development would be in accordance with relevant local plans in respect of road user safety and the absence of any permanent damage to the character of rural lanes. Again, the absence of any significant impacts mean that the provisions of the National Planning Policy Statement have been met. The ExA's overall conclusion is that traffic and transport do not weigh heavily against the Order being made though the temporary effects on the local population are a minor negative effect to be weighed in the planning balance. [ER 8.3.90]

#### Secretary of State's Consideration

4.82 The Secretary of State notes the potential for significant effects to arise from traffic and transport impacts related to nationally significant energy projects. He also notes that in the case of the Development, impacts would arise throughout the duration of the construction programme with some additional impacts during its operation. However, he identifies that there will also be mitigation measures put in place to minimise those impacts as much as possible. Overall, the Secretary of State agrees with the ExA's conclusion that the effects identified do not weight heavily against the Order being made.

## Noise and Vibration

4.83 The ExA considers the potential noise and vibration impacts of the proposed Development against the particular policy provisions in the National Policy Statements for Energy, EN-1 and EN-5, which acknowledge that excessive noise can have adverse impacts on human health and quality of life. The ExA also looked at the Swale Borough Council and Canterbury City Plans for their policy proposals.

4.84 The scope of the Applicant's noise assessment was agreed with Swale Borough Council which both seek to avoid or minimise harm from noise impacts.

4.85 The Applicant's assessment of the potential impacts of noise and vibration covered the construction, operation and decommissioning phases of the development's life cycle. The main effects during the construction phase were anticipated to be from piling of the posts that would support the solar panels and transformers and vehicle noise on site noting that daytime noise criteria would be exceeded for no more than one month at the closest point to each receptor. Vibration levels were assessed as being less than perceptible while noise increase from traffic movements on local roads would be minor. The Applicant considered that these effects would not be significant.

4.86 As far as operational impacts were concerned, the Applicant assessed that some daytime and night-time noise limits would be exceeded by noise from the installed plant and there would be significant impacts on the small number of properties affected. The decommissioning impacts were assessed as being similar to those that would arise during construction.

4.87 The ExA notes that mitigation measures would be incorporated into the Construction Environment Management Plan and the Construction Traffic Management Plan and that the Applicant concluded that there would be no significant effects at the properties included in its assessment of impacts. [ER 8.4.25]

4.88 The Swale Borough Council Local Impact Report set out that the predicted noise levels would not lead to complaints. Canterbury City Council's Local Impact Report referred only to the importance of maintaining natural vegetation to provide sound screening. [ER 8.4.33 et seq]

4.89 The ExA notes that noise and vibration were raised by several Interested Parties to the Examination as being of concern including about the way the Applicant had assessed noise impacts in its noise impact methodology. The Graveney Environment Rural Action Team sought its own assessment of the Applicant's methodology. The ExA also notes that in the Statements of Common Ground signed between the Applicant and Swale Borough Council and the Applicant and Canterbury City Council, the Councils confirmed that the Applicant's approach to methodology, assessment, the identification of receptors and proposed mitigation was acceptable. [R 8.3.37 et seq]

4.90 The ExA states that it carefully considered issues raised by Interested Parties. The ExA noted that piling activities would lead to instances of noise exceeding daytime noise criteria at eight properties in the vicinity of the proposed Development. However, the ExA further notes this this would represent a worst case and that the exceedances would be by only a small amount. [ER 8.4.41 et seq]

4.91 In considering the piling impacts, the ExA noted that they would take place over four week periods for each field of solar panels and that this would limit the duration of any adverse events, but that even within this period, the piling would move away from sensitive areas and so the impacts would actually occur over a period of less than four weeks for any receptor. [ER 8.4.44]

4.92 The ExA also notes that vibration levels from on-site activities would be below noticeable levels except at one property – Warm House. However, it was possible that the rolling of some of the stone roadways used with the boundary of the proposed Development could also be noticeable at could also be noticeable at one other property – 4 Crown Cottages. [ER 8.4.45]

4.93 Overall, the impacts during construction would be limited – only just exceeding thresholds – and be of short duration. [ER 8.4.46]

4.94 During operation, noise levels would be above daytime criteria for some properties so further mitigation measures would be needed to alleviate any impacts. The ExA considered that the Construction Environment Management Plan and the Construction Traffic Management Plan, which would be secured in any Order that the Secretary of state might issue, would provide adequate mitigation. The ExA, therefore, agreed, with the Applicant’s conclusions on impacts. [ER 8.4.46 et seq]

4.95 The ExA considers that the decommissioning of the proposed Development would generate similar impacts to those produced during construction. With mitigation measures in place, the ExA agrees with the Applicant’s assessment of impacts. [ER 8.4.56]

4.96 In conclusion, the ExA considers that mitigation measures would be acceptable to alleviate any significant adverse impacts. The ExA concludes that overall, the construction impacts of the proposed Development would be temporary, that the adverse noise and vibration during operation can be mitigated and so be in compliance with EN-1 and EN-5, that the proposed Development would be compliant with the National Planning Policy Framework and with the Swale District and Canterbury City Local Plans. The ExA’s final analysis is that noise and vibration do not weigh against the Order being granted and are neutral in the planning balance. [ER 8.4.56 et seq]

#### Secretary of State’s Conclusion

4.97 The Secretary of State notes the potential for impacts to arise from the Development during both construction and to lesser extent operation (although there would be another increase during decommissioning). The Secretary of State notes that the ExA considers operational noise mitigation measures and includes CEMP and the CTMP in the package of measures to mitigate impacts. The Secretary of State considers that these measures are more appropriate to construction impacts and effects on wildlife. However, the Secretary of State agrees with the ExA that an Operational Noise Assessment will need to be agreed with the local planning authority before development can commence and is satisfied that this process will provide suitable mitigation for impacts arising from operational noise.

## Socio-Economic Effects

4.98 This analysis covers a broad range of issues - the social, economic and land use effects of the Proposed Development, which includes tourism; recreation; land use; employment; human health; public access; health and safety at work; electric, magnetic and electromagnetic fields; telecommunications; television reception; and utilities and waste issues. [ER 8.5.1]

4.99 The ExA considered the proposed Development against the policies set out in the National Policy Statement EN-1, in the National Planning Policy Framework and in the Development Plans for Swale Borough Council and Canterbury City Council. [ER 8.5.3 et seq]

4.100 The Applicant set out that, in its view, there would be positive, though not significant, increases in local employment while there would be minor negative impacts on tourism during construction and operation of the proposed Development. [ER 8.5.15]

4.101 The Applicant assessed that there would be significant effects on users of the Saxon Shore Way during construction operations but this would affect only a short section of the route, be temporary (for a period of twelve months) and only when those operations were taking place within 500 metres of the route. Also, construction would not take place after 13.00 on Saturdays and not at all on Sundays or Bank Holidays. [ER 8.5.16]

4.102 During the operation of the proposed Development, it was predicted that there would be a significant adverse effect on a public right of way (ZR485) though impacts on other public rights of way were assessed as being not significant. [ER 8.5.17]

4.103 The Applicant concluded that there would be no significant cumulative effects on the socio-economics of tourism in Swale Borough, the City of Canterbury or Kent more generally arising from the proposed Development. [ER8.5.18] In addition, the Applicant concluded that no significant effects had been identified in relation to human health, electric, magnetic and electro-magnetic fields, telecommunications, TV reception, utilities or waste management. [ER 8.5.19]

4.104 The Applicant stated that mitigation measures had been incorporated into the design of the proposed Development. [ER 8.5.20 et seq]

4.105 The Applicant's Equality Impact Assessment considered whether the impacts of the proposed Development would discriminate against people with characteristics defined in the Equality Act 2010. It concluded that there was the potential for impacts from the traffic and access during construction in relation to children attending the Graveney Primary School (which sits alongside the construction traffic route) but that mitigation in the Construction Traffic Management Plan would minimise the potential for inequality or discrimination. [ER 8.5.25]

4.106 The ExA noted that socio-economic issues were raised in many relevant representations with the main areas of concern being impacts on footpaths (Public Rights of Way), the local economy, tourist numbers, human health and wellbeing, and the loss of agricultural land. The absence of any direct local benefit arising from the proposed Development was also raised. [ER 8.5.26]

4.107 Swale Borough Council's Local Impact Report noted that the proposed Development was not seeking to obstruct any Public Rights of Way but assessed that potential

impacts on tourism and on the economy through reduced visitor numbers would mean it would not be in compliance with parts of the Borough's Local Plan in respect of tourism and recreational activities. Canterbury City Council's Local Impact Report set out that the proposed Development would have limited economic benefit. Kent County Council's Local Impact Report considered the proposed Development would transform the character of the landscape from arable to industrial and deter the use of Public Rights of Way. [ER 8.5.28 et seq]

4.108 Kent County Council did, however, welcome the Applicant's proposed permissive path that would connect Public Rights of Way ZR488 and ZR484 but was also keen to see the creation of a new off-road path between existing footpaths, CW90 and CW95 included in the proposed Development. [8.5.34 et seq]

4.109 The ExA notes that a considerable number of representations were submitted throughout the Examination in relation to potential socio-economic impacts arising from the proposed Development. Some of these representations related to the methodology used by the Applicant in assessing impacts or omissions in the information provided to assess impacts. There were also concerns about the loss of recreational space on physical and mental well-being of local residents and on visitor numbers to the area (which would have consequential impacts on local businesses). There were concerns that the proposed development would bring no benefits to the local economy. The potential for health impacts arising from electromagnetic fields, the potential security issues and the Applicant's Equality Impact Assessment were also raised.

4.110 There was discussion about improvements to existing cycle routes and proposals for new cycling routes. The use of agricultural land for solar energy farms was also raised.

4.111 The ExA considered all these issues with the Applicant and Interested Parties.

4.112 In respect of economic benefits, the ExA considered the Applicant's contention that the proposed Development had the potential to create 750 Full Time Equivalent jobs in Kent and 4,725 in England and would generate £120 million Gross Value Added in Kent and £670 million in England. The ExA noted that a requirement for a Skills, Supply Chain and Employment Plan would secure local benefits. However, the ExA's overall assessment was that it agreed with the Applicant's analysis that there would be no significant positive economic effect in the region. [ER 8.5.54 et seq]

4.113 On tourism, the ExA noted figures for tourist visits to the Swale region and the income it generated which had been provided by the Applicant. The ExA concluded that while there would be impacts arising from the construction of the proposed Development, these would be temporary and would not be in one fixed place through the construction programme. The ExA considered that there was the possibility that the economic impacts of spending by construction workers working on the proposed Development would offset any impacts from loss of visitor numbers. The ExA's overall conclusion was that, while acknowledging the importance of visitors to the region, it had seen no evidence that the proposed development would lead to a reduction in visitor numbers. [ER 8.5.57 et seq]

4.114 In respect of recreational amenity, the ExA notes that there were proposals from the Applicant to upgrade a number of Public Rights of Way in and around the site of the proposed Development. The ExA did consider that there would be adverse impacts on recreational users of the footpaths in the area in the form of a loss of recreational amenity but that these would be temporary and reversible. The ExA also notes the mitigation measures proposed in the

Applicant's Public Rights of Way Management Plan which would be appended to the Construction Traffic Management Plan. As far as cyclists were concerned, the ExA noted that a proposal for improvements to a cycle route fell outside the Application and could not, therefore, be given any weight in the planning balance. [ER 8.5.64 et seq]

4.115 As far as land use issues were concerned, the Applicant's proposal would see 370 hectares of arable crop production be taken up with solar panels and sheep grazing of which 97% would be graded 3(b) under the Agricultural Land Classification. Land around or under the panels would be seeded with grass and wildflower mix which would be grazed by sheep. The ExA considers this would improve biodiversity. The ExA concludes that the proposed Development would not result in any significant land use effects. [ER 8.5.78]

4.116 The ExA notes that matters related to human health were of concern to Interested Parties. However, the ExA is satisfied that a package of mitigation measures in the Construction Traffic Management Plan and the Construction Environmental Management Plan would minimise any risks to local people or contractors working on the site of the proposed Development. The ExA was also satisfied in relation to other matters raised by Interested Parties in relation to human health that suitable mitigation would be put in place – through the Construction Traffic Management Plan and the Construction Environmental Management Plan and the Battery Safety Management Plan – to avoid negative impacts on the health and well-being of local people. [ER 8.5.82 et seq]

4.117 On equality issues, the ExA noted that the Applicant's Equality Impact Assessment recorded that construction traffic for the proposed Development had the potential to result in inequality and discrimination to pupils at Graveney Primary School. However, the ExA notes that there is already in place a footbridge which links the school car park with the school to obviate the need for pupils and their parents to cross the construction route. While this bridge would not allow access to the school playing fields from the school, the ExA is satisfied that the frequency of HGV traffic along the construction route is not of such a magnitude as to make supervised crossing of the road to be unsafe. Mitigation measures in the Construction Traffic Management Plan and the presence of the existing footbridge would minimise the potential for discrimination and inequality to the children. [ER 8.5.86 et seq].

4.118 The ExA notes a particular issue in respect of a family whose home faces the construction route and backs on the site of the proposed Development. The ExA considered the matter carefully in the light of representations made by the family and the Applicant. The ExA notes that the Applicant has proposed mitigation measures to minimise the impacts and has stated that it will continue dialogue with the family. The ExA takes the view that it is content with the proposed mitigation measures – there is no evidence that they will not be appropriate – put forward by the Applicant. [ER 8.5.91 et seq]

4.119 The ExA's overall conclusions on socio-economic impacts are that these were significant impacts for consideration in the Examination. The Applicant had considered all relevant potential impacts under this heading and the Application therefore met the relevant provisions in National Policy Statement EN-1 for energy NSIPs. The mitigation measures put forward by the Applicant also ensure the application met the relevant provisions with National Policy Statement EN-1.

4.120 In terms of conclusions on specific socio-economic issues arising from the proposed Development, the ExA notes the minor economic benefits, the minor and reversible impacts on tourism and the mitigation measures which would mean inequality and discrimination would be

minimised. In addition, the ExA concludes that there would be harm to users of a number of Public Rights of Way near or running through the site of the proposed Development. Finally, the ExA considers the proposed Development would accord with the relevant local plan as far as safeguarding tourism and providing some local employment opportunities. The ExA's overall conclusion is that the impacts identified are of limited harm and this position is carried into the final planning balance.

### Secretary of State's Conclusions

4.121 The Secretary of State notes the sensitivities of some of the issues raised under this heading, particularly in respect of potential impacts raised in respect of his consideration of the Public Sector Equality Duty. He further notes the ExA's conclusions on these and other Socio-Economic impacts that were considered during the Examination and the range of concerns that were expressed by Interested Parties. While acknowledging these views, the Secretary of State sees no reason to disagree with the ExA's conclusion in this matter. The Secretary of State's Public Sector Equality Duty considerations are set out in more detail in section 8 below. [ER 8.5.96 et seq]

### Water Environment [Flooding and coastal defences]

4.122 The questions of the susceptibility of nationally significant energy infrastructure to flood risk and whether such infrastructure could cause or aggravate flooding are matters covered in the National Policy Statement EN-1 and in the National Planning Policy Framework. Changes to water quality resulting from nationally significant energy infrastructure are also subject to policy drivers. In addition, the Swale Borough and Canterbury City Development Plans are also relevant to consideration of the Application as is the Medway Estuary and Swale Strategy (which sets out a strategy for managing flood and coastal erosion risk over a 100 year period and includes a specific proposal for coastal realignment at Cleve Hill). [ER 8.6.2 et seq]

4.123 The Applicant's case in relation to water environment was that with mitigation measures in place there would be no adverse impacts arising from the proposed Development either alone or in-combination with other plans or projects. The Applicant recorded that there would be a potential improvement in surface water quality at the site of the proposed Development because of a reduction in the use of pesticides and fertilisers. The Applicant's Flood Risk Assessment set out that the site of the proposed Development lies in Flood Risk area 3a, that is land which has a 1 in 100 annual probability of river flooding year risk or 1 in 200 annual probability of sea flooding. However, the Applicant's Flood Risk Assessment concluded that the existing flood defences around the site would protect it up to the 1 in 1,000 year event. [ER 8.6.16 et seq]

4.124 The Applicant is seeking powers in the Order to take over the maintenance of the flood defences from the Environment Agency. The Applicant proposes to undertake such activities if the proposed Development went ahead. [ER 8.6.19]

4.125 The Applicant also submitted that the solar arrays and the related transformers and connecting cables had been designed with additional above ground clearances to ensure that they were able to withstand a 1 in 1,000-year wave overtopping event. Given these design features, the Applicant considered the risk from tidal flooding to be low. The Applicant also took the same view in relation to risks from river, rain and groundwater flooding concluding that these would be negligible. [ER 8.6.22]

4.126 The Applicant's Flood Risk Assessment applied both the 'exception' and 'sequential' tests to the proposed Development as required by EN-1 and the National Planning Policy Framework and concluded that it passed both. The ExA asked whether the latest information on predictions of climate change impacts had been used to model impacts. The Environment Agency confirmed that appropriate data had been used to support the Flood Risk Assessment and that it did not need updating. [ER 8.6.25]

4.127 The Environment Agency and the Applicant submitted a joint paper which set out how the ongoing maintenance of the flood defences would be undertaken in the event the proposed Development went ahead and gave an analysis of why the powers to protect the Development during its operation would be needed. The joint paper also explained the marine licensing position in relation to those maintenance works below Mean High Water Mark. The Marine Management Organisation queried why there was no assessment of likely significant effects in the Environmental Statement submitted with the Application. The Applicant explained that there would be no change to the baseline so it was not necessary to undertake such an assessment. The Applicant also explained that in the event any more extensive works were needed in the future, then it would take these forward under separate consent processes. [ER 8.6.27 et seq]

4.128 The Environmental Statement submitted by the Applicant set scenarios included in the Medway Estuary and Swale Strategy at a draft stage and exchanges with the Environment Agency about the managed retreat of the coastline at the site of the proposed Development. The Environmental Statement noted that the Environment Agency had taken the presence of the proposed Development into account in finalising the Medway Estuary and Swale Strategy.

4.129 The ExA notes that many representations raised concerns about the potential flooding and coastal defence risks and about the responsibility for maintaining the flood defences being transferred from the Environment Agency to the Applicant. [ER 8.6.30]

4.130 The ExA noted that the site of the proposed Development was of strategic importance to the Medway Estuary and Swale Strategy which aims to protect 17,000 homes in its area over a 100 year life cycle. The Cleve Hill site is one of eight that would collectively meet this obligation. The lifetime of the solar park would be 40 years and the proposed delivery programme in the Medway Estuary and Swale Strategy had been adjusted to delay the managed re-alignment of the site from 2039 to 2069. [ER 8.6.31]

4.131 The Environment Agency was content that future maintenance of the flood defences could be passed to the Applicant. The Environment Agency also agreed that the flood mitigation measures included in the design of the proposed Development were suitable. [ER 8.6.32]

4.132 The Marine Management Organisation had discussions with the Applicant about its decision to include powers for maintaining the flood defences in its draft Order. The Marine Management Organisation suggested that a deemed Marine Licence would be the most appropriate way to deal with those parts of the proposed Development – the flood defences – that extended below the Mean High Water Mark rather than pursuing an option transferring existing Marine Licence exemptions held by the Environment Agency to the Applicant. The signed Statement of Common Ground between the Applicant and the Marine Management Organisation reflected that position and amended wording for the deemed Marine Licence was also subsequently agreed. [ER 8.6.33 et seq]

4.133 Flood risk was mentioned in the Local Impact Reports for both Canterbury City Council and Kent County Council (the lead local flood authority) with the former indicating the key issue was flood risk in its area and the latter noting that the proposed Development could lead to an increase in flood risk elsewhere. Kent County Council's Local Impact Report also highlighted the need for an effective mitigation strategy to deal with surface water run-off to avoid sedimentation of watercourses. [ER 8.6.36]

4.134 Several of the Interested Parties disagreed with the Applicant's Flood Risk Assessment and there were concerns about potential flood impacts in Faversham and Whitstable. In addition, concerns were raised about responsibility for maintaining the existing coastal flood defences passing from the Environment Agency to the Applicant. [ER 8.6.38]

4.135 The Applicant argued that the managed realignment set out in the Medway Estuary and Swale Strategy would increase the flood risk at Faversham rather than decrease it. The Applicant submitted the Medway Estuary and Swale Strategy into the Examination. [E 8.6.39]

4.136 The ExA notes there were representations made to the Examination about the opportunity cost of cancelling or delaying the Medway Estuary and Swale Strategy's approach to managed retreat at the Cleve Hill site in respect of flood relief, carbon sequestration and ecosystem services. In response to the point about carbon sequestration, the Applicant set out that data in the Environmental Statement predicted that there would be a 59,000 tonnes of CO<sub>2</sub> per annum offset arising from the proposed Development while a managed retreat approach would offset 1,500 tonnes of CO<sub>2</sub> per annum. [ER 8.6.40]

4.137 In respect of flood relief, the Environment Agency indicated that it was content with a flexible approach to the implementation of the Medway Estuary and Swale Strategy. The Applicant reviewed the Medway Estuary and Swale Strategy and noted two options – the managed realignment at the Cleve Hill site from year 20 or managed realignment in the longer term (with earlier re-alignments taking place at other parts of the Strategy area). The ExA notes that the original Order drafted by the Applicant did not include a fixed timescale for the life of the proposed Development. However, changes were made to the Order during the Examination to limit the lifetime of the proposed Development to 40 years if the Environment Agency was ready to implement managed realignment at that time. The changes have been incorporated into the Order submitted to the Secretary of State by the ExA. The Environment Agency confirmed that the Applicant's proposed decommissioning proposals would leave the Cleve Hill site in a suitable condition for managed retreat to be undertaken. [ER8.6 41 et seq]

4.138 After raising concerns about the possibility of 'rilling' erosion occurring after rainfall dripped from the solar panels, Kent County Council agreed with the Applicant that this would not be a problem. [ER 8.6.44]

4.139 There were concerns raised by Interested Parties that there was the potential for chemicals to leak from either damaged solar panels or damaged battery storage units and contaminate the water environment. The Applicant produced evidence from a number of studies that showed there would be no or little contamination from solar panels. The Applicant also cited information from a company engaged in battery storage projects - Leclanche – which supported the Applicant's conclusion that there would be no significant effects from battery contamination. The Applicant amended its outline Battery Safety Management Plan to make reference to understanding and managing contamination problems. The Battery Storage Management Plan is secured in Requirement 3 of the Order. [ER 8.6.45]

4.140 The ExA asked both the Applicant and the Environment Agency to comment on matters related to the Water Framework Directive. The Applicant noted that it had concluded there would be negligible effects on the water environment and so the proposed Development was in compliance with the Directive. The Environment Agency indicated it had no concerns about the Water Framework Directive providing the construction, operation and decommissioning of the Development were undertaken in a responsible manner.

4.141 The ExA concluded that the proposed Development would be in compliance with the Water Framework Directive (and thus comply with National Policy Statement EN-1) subject to all proposed mitigation measures being secured in the Order. [ER 8.6.47]

4.142 As far as flood risk is concerned, the ExA concludes that the Applicant's Flood Risk Assessment is appropriate and meets the requirements of National Policy Statement EN-1. The ExA also concludes that the Applicant has designed the proposed Development so as to protect the equipment most at risk of flooding. [ER 8.6.48]

4.143 The ExA is content that the risk of flooding in Faversham and Whitstable is not materially increased by the presence of the proposed Development. The ExA comments that, while a concern about such flooding is reasonable, the concerns are based on a misconception about the managed realignment at Cleve Hill. It is supposed to "provide compensatory intertidal habitat to deal with coastal squeeze and the consequential MEASS HRA issues, not reducing flood risk, which would need to be dealt with through other measures". [8.6.49]

4.144 In respect of coastal change and management, the ExA concludes the risks and issues have been adequately addressed. [ER8.6.50]

4.145 With regard to impacts on the water environment, the ExA concludes that the Applicant sets out measures to control pollution in its Environmental Statement. However, there were two outstanding issues carried over into the Examination: the possible contamination from batteries and solar panels; and sediment pollution resulting from water run-off from the solar panels. The ExA concludes that both of these matters have been satisfactorily addressed. The ExA's overall conclusion in this matter is that construction and operational risks have been identified and managed. The ExA is satisfied that there would be no adverse effects on water quality, water resources, water bodies or the wider water environment. The ExA agrees with the Applicant that water quality locally would be likely to improve. [ER 8.6.51 et seq]

4.146 The ExA's key conclusions in respect of water environment is that, taking all policies and mitigations into account, the proposed Development would: be compliant with the Water Framework Directive; be compliant with relevant policies on flood risk; adequately address coastal change and associated risks; adequately address risks through the life-cycle of the project. Finally, while noting some positive impacts, the overall effect on water quality would generally be neutral in the planning balance. [ER 8.6.65]

#### Secretary of State's Conclusion

4.147 The Secretary of State notes the discussion on this matter and that this matter is, understandably, one that has engaged the intense interest of local people. He notes the ExA's conclusions that the risk of flooding as a result of the Development is not materially different to a scenario without the Development. He further notes that there were specific concerns about the responsibility for the flood defences along the river boundary of the Development being transferred from the Environment Agency to the Applicant but that the Agency itself is content

with this arrangement. The Secretary of State considers that the ExA's conclusions are robust and that this is a matter which does not weigh against the grant of consent for the Development.

### Safety and Security

4.148 EN-1 does not make specific reference to battery storage nor are there any relevant Development Plan policies. However, paragraph 3.3.31, EN-1 states... "The Government expects that demand side response, storage and interconnection, will play important roles in a low carbon electricity system.....".

4.149 The Applicant's Environmental Statement concluded that it was unlikely the proposed Development would cause a significant accident, but it acknowledged there were risks, principally in relation to possible fires in the battery storage facility. However, the Environmental Statement set out mitigation measures in the facility that would detect and suppress fires. [ER 8.7.6]

4.150 In relation to security of the proposed Development, the Applicant stated it would be protected by perimeter fencing, CCTV, lighting with sensors and restrictions on who would be able to access the site. [ER 8.7.8]

4.151 The Applicant's Environmental Statement sets out various measures that could be taken to minimise risks of an accident occurring. The Applicant also provided an outline Battery Safety Management Plan which has been reviewed by the Health and Safety Executive and Kent Fire and Rescue Service. The Applicant's Air Quality Impact Assessment considered possible outcomes in the event of a battery fire. The Assessment was criticised by one of the Interested Parties, Dr Erasin, who was concerned about the potential release of poisonous gases in the event of a fire in the battery storage facility. The Applicant responded to say that Dr Erasin's concerns were overstated. [ER 8.7.10 et seq]

4.152 The Secretary of State notes that there were a number of concerns from Interested Parties about the safety of the battery storage facility. These concerns were exacerbated by the new technology that the battery storage facility represented. [ER 8.7.17 et seq]

4.153 The Faversham Society expressed strong concerns about the safety of the batteries that would be utilised in the proposed Development's energy storage facility, stating that: there had been no proper testing of this matter; there was no track record of such large installations in the UK; lithium-ion batteries can catch fire and explode; it was not clear who would be responsible for assessing the safety of the installation; and there was uncertainty about access arrangements for emergency personnel. [ER 8.7.19]

4.154 The Graveney Rural Environment Action Team also raised concerns about the safety of the energy storage facility in respect of the possibility of explosion, fire and the threat of terrorism. [ER 8.7.21]

4.155 The ExA notes that the Local Impact Reports from Swale Borough Council, Canterbury City Council and Kent County Council were all silent on the subject of the safety of battery storage facilities. [ER 8.7.21]

4.156 Later in the Examination, the Faversham Society, raised a number of additional issues in respect of battery storage technologies including that there had been a number of significant battery fires where suppression systems had failed and the cause of the fires was

unknown. In addition, the Society expressed concerns that neither the Application nor the Applicant's draft Order addressed battery storage safety concerns and that there was no established guidance for dealing with battery fires. [ER 8.7.22]

4.157 One of the Interested Parties, Dr Erasin set out concerns about the effects of a fire in lithium-ion batteries with the possible release of toxic fumes – specifically, hydrogen fluoride gas – with potential serious risks for the populations in the vicinity of the proposed Development with Seasalter, Graveney, Faversham and Whitstable being named specifically. Dr Erasin suggested that there should be a 15km safety zone from any population around the battery storage site. [ER 8.7.23] Dr Erasin also raised the possible environmental risk of copper leaching from the solar panels. [ER 8.7.24]

4.158 Dr Erasin made further submissions to the Examination to suggest that it would cost around £40 million to dispose of the batteries as part of any decommissioning of the proposed Development and to express concern about the possible use of Vanadium Redox flow batteries which he considered posed an unacceptable risk given their constituent parts. [ER 8.7.26]

4.159 The Graveney Rural Environment Action Team made representations about the lack of early engagement from the Applicant with the Kent Fire and Rescue Service which had led to the Service not being registered as an Interested Party to the Examination of the Application. The Graveney Rural Environment Action Team also raised the point that some correspondence between the Applicant, Kent Fire and Rescue Service and the Health and Safety Executive had not been disclosed to the Examination. The Graveney Rural Environment Action Team also highlighted that the proposed battery storage facility at the proposed Development would be seven times larger than the current largest similar facility in the world. It also highlighted that battery energy storage fires were more likely to occur in coastal and mountain areas and that they had occurred across a range of battery usage.

4.160 Faversham Town Council raised concerns about the scale of the battery storage element and about fire and toxic risk. [ER 8.7.31]

4.161 The Faversham Society provided another submission towards the close of the Examination which was accepted at the discretion of the ExA setting out the conclusions in a report into two fires at battery storage facilities in Arizona which reinforced the Society's views of the dangers of the proposed storage facility that formed part of the proposed Development. [ER 8.7.32 et seq]

4.162 The Applicant responded setting out its reasons why the Faversham Society's arguments were wrong and that suitable mitigation measures were built-in to the proposals for the battery storage facility at the proposed Development. [ER 8.7.35 et seq]

4.163 In its response, the ExA stated that it had held a special session on battery storage issues in one of the Issue Specific Hearings during the Examination to reflect the level of interest in and concern about the topic. The session heard from Interested Parties who had concerns about the battery storage facility as well as from a company, Leclanche, which appeared at the invitation of the Applicant in an independent capacity. (The ExA considered that Leclanche, while accepting it had no commercial or contractual ties to the proposed Development, could not be counted as truly independent as it provides energy storage systems.) [ER 8.7.40]

4.164 The ExA considered that the Examination hearings provided a lot of additional information about the battery storage facility, though it acknowledged that that might not be sufficient to satisfy the concerns of Interested Parties. [ER 8.7.41]

4.165 Leclanche had installed battery storage systems world-wide but not on the scale as the one that would form part of the proposed Development. However, the company explained that the principles for incorporating safety features into these designs were well-established and applied irrespective of scale. Leclanche said lessons had been learned from battery fires, including those in Arizona, and noted that all of the fires had started at the construction stage of the development cycle. [ER 8.7.43]

4.166 In light of the information about fires during construction, the ExA probed about the safety features that would be installed to prevent such incidents and was reassured about the measures that would be incorporated into the battery storage facility at the proposed Development. The ExA also noted the protective measures that would be in place during the operation of the proposed Development and that inspections could be undertaken by the Health and Safety Executive and Kent Fire and Rescue Service. [ER 8.7.44 et seq]

4.167 The ExA asked about battery leakage and was told that the management systems would be able to detect leaks and initiate automatic shut down. The ExA was content that any leakage would be small and confined within the affected container. [ER 8.7.46]

4.168 The ExA noted that the outline Battery Fire Safety Management Plan set out the minimum information that would need to be included at the detailed design stage for the proposal. The ExA also notes that Requirement 3 of the Order it recommended to the Secretary of State requires the approval of a Battery Safety Management Plan which would set out minimum requirements for safety matters. The ExA was happy that in setting out minimum requirements for information, the relevant local planning authority or Kent Fire and Rescue Service would be able to ask for more information to allow them to fulfil their duties. [ER 8.7.47 et seq]

4.169 In terms of the risk of the escape of gases from the battery storage facility, the ExA concludes on the basis of the information provided by the Applicant that there would be no material threat to health arising from a battery fire at the proposed Development. [ER 8.7.50 et seq]

4.170 The ExA was satisfied that the Applicant's engagement with the Kent Fire and Rescue Service, while late in the application process, has provided "vital understanding which the Applicant has used to inform the outline Battery Safety Management Plan". The ExA allowed the Kent Fire and Rescue Service to take part in hearings during the Examination as a non-Interested Party. In respect of the claim made by the Graveney Rural Environment Action Team that not all of the Applicant's correspondence with Kent Fire and Rescue Service and the Health and Safety Executive had been provided to the Examination, the ExA stated it had an understanding of their respective positions. The ExA noted the concern by the Graveney Rural Environment Action Team that any battery fire might just be allowed to burn itself out but was satisfied with Kent Fire and Rescue Services' position that it would determine how to respond to any situation on the ground by way of a number of possible options. The ExA also considered the concern from the Graveney Rural Environment Action Team about the adequacy of the information available to the Kent Fire and Rescue Service and noted that the Service had written

to indicate it would deal with situations based on experiences elsewhere and by working with the site operator. [8.7.52 et seq]

4.171 In addition, in the event that the Order was made, then the local planning authority and relevant consultees would need to be given details of the proposed installation. The ExA was satisfied, therefore, that this process would make available all the information that the Kent Fire and Rescue would need to be able to fight a fire in the battery storage facility. [ER 8.7.57]

4.172 The ExA notes concerns about the battery storage technology that might be employed at the proposed Development but decided that it would not be appropriate to limit the choice of systems that the Applicant might want to deploy and so had not included any provision to limit flexibility in the Order that it recommended to the Secretary of State. The ExA considered that the relevant processes, legislation and safety requirements would apply to all battery technologies. Similarly, the Applicant would need to satisfy a range of consultees before a Battery Safety Management Plan could be agreed. [ER 8.7.58 et seq]

4.173 As far as security of the site of the proposed Development is concerned, the ExA considered the concerns raised by Interested Parties but was satisfied that measures proposed to protect the site were reasonable. Notwithstanding that point, the ExA acknowledged that fear of criminal activity is capable of being a material consideration in the determination of the Application. However, it went on to conclude that no party had provided any evidence that measures additional to those proposed by the Applicant were necessary. [ER 8.7.60 et seq]

4.174 The ExA noted guidance in National Policy statement EN-1 about security considerations but concluded that there was no indication that the proposed Development would be considered to be critical infrastructure with security implications. [ER 8.7.62]

4.175 The ExA's overall conclusions on safety and security were that there were a large number of representations about this issue which flowed from the scale of the proposed battery storage facility, the fact that it was a new technology, the risk of major fires and the proximity of the battery storage facility to local populations. The ExA acknowledged those concerns. However, it took comfort from the legislation and guidance and the Battery Safety Management Plan which would be subject to consultation with relevant bodies and the ExA was, therefore, confident that the risks could be managed or mitigated appropriately. As far as site safety was concerned, the ExA noted that the measures proposed by the Applicant might be viewed as minimal but there was no evidence before it that anything else was needed – there was a sound basis for managing and mitigating site safety risks. The ExA's overall conclusion on this matter, therefore, was that there was nothing of weight to carry into the overall planning balance.

#### Secretary of State's Conclusion

4.176 The Secretary of State notes that the safety and security of the Development generated many concerns from Interested Parties to the Examination who were worried about the potential health risks of a fire or explosion within the battery storage facility that formed part of the proposed Development. In addition, the Secretary of State notes that the ExA's analysis of this matter was informed by a range of views and considerations, including from the Kent Fire and Rescue Service. He considers, therefore, that its consideration is robust and wide-ranging. While noting the strength of feeling among local people about this matter (since the receipt of the ExA's Report, a considerable number of representations have been received about the impacts of the Development, with many citing the safety of the battery storage unit as a key

issue), the Secretary of State does not see any reason to disagree with the conclusions reached by the ExA.

## **Other Matters**

### Appointment of the Examining Authority

4.177 There were a number of complaints about the appointment of David Rose as Lead Member of the Examining Panel. The complaints arose because Mr Rose had been the Examining Inspector in an application for consent for the London Array Electricity Substation which sits on a site within the boundary of the proposed Development. Mr Rose recommended that consent should be granted for the substation and the Secretaries of State for Trade and Industry and Communities and Local Government agreed with the recommendation.

### Secretary of State's Conclusions

4.178 The matter raised by the complainants is not one for the Secretary of State – the appointment of examiners to conduct Examinations into applications for development consent under the Planning Act 2008 is a matter for the Planning Inspectorate to determine.

### Parameters of the Cleve Hill Solar Park

4.179 The ExA drew the Secretary of State's attention to its view that, while the proposed Development was well defined by reference to the descriptions in the Environmental Statement and in other documentation submitted with the Application, there was a possibility that the 'as built' project could expand beyond those definitions. The ExA, therefore, recommended that additional wording – which it provided – should be added to the Order to prevent any potential for project expansion beyond what had been assessed in the Examination. The ExA did not ask for comments on its proposed wording before the close of the Examination but suggested that the Secretary of state should do so.

### Secretary of State's Conclusion

4.180 The Secretary of State considered the ExA's comments on this matter and decided that the views of the Applicant (and others) should be sought on the proposed wording. A consultation letter was issued on 6 April 2020 covering this and other matters with a form of words for inclusion in any Order that the Secretary of State might issue. The Applicant replied indicating it was content with the inclusion of the proposed wording. Other respondents indicated that they felt the parameters of the proposed Development were too widely drawn. However, they made no comment on the specific wording proposed. Having considered the consultation responses, the Secretary of State considers it is necessary and adequate to prevent any potential for project expansion beyond what has been assessed in the examination and has, therefore, incorporated the proposed wording into the Order that he has decided to make.

### The Ability of Swale Borough Council to Monitor and Enforce conditions in any Order that Might be Granted

4.181 A number of Interested Parties during the Examination and several parties in the wake of the Secretary of State's receipt of the ExA's Report (including in responses to the

Secretary of State's consultation) expressed concerns about Swale Borough Council's ability to monitor and enforce conditions in any Order that might be granted by the Secretary of State.

#### Secretary of State's Conclusion

4.182 The Secretary of State notes that Swale Borough Council expressed its views about the way the draft Order provided by the Applicant did not provide a straightforward way to set out conditions. However, the Council did not express views about its ability to physically monitor and enforce conditions. The ExA did not express any views on Swale Borough Council's ability to perform its functions in relation to this matter. The Secretary of State does not consider that the concerns expressed by Interested Parties and others have any adverse impact on his decision.

#### Late Representation from Sir David Melville for the Faversham Society

4.183 Sir David Melville, from the Faversham Society, wrote to BEIS officials on 29 and 30 April 2020 to raise concerns about a legal action between Wirsol (one of the partners in the Cleve Hill Solar Park Limited joint venture) and an energy company [Toucan] that had bought some of Wirsol's solar power plants. An article provided by Sir David reported that Toucan was suing Wirsol about faults in the construction of a number of solar farms with Toucan countersuing Wirsol. Sir David wanted the Secretary of State to be aware of the matter.

4.184 Professor Harold Goodwin, the Chair of The Faversham Society, also wrote to the Secretary of State on 19 May 2020 to reiterate concerns about the Development and draw the Secretary of State's attention to an online petition opposing the project which had been signed by more than 4,000 people.

#### Secretary of State's Consideration

4.185 The legal action between Toucan and Wirsol (which was, according to the Applicant initiated by Wirsol with a counterclaim by Toucan) was considered by the ExA during the Examination, including particular allegations concerning a breach of contractual obligations between the parties. That litigation has not reached its conclusion and the ExA has fully considered the safety elements of the proposal. Any safety issues arising during the lifetime of the proposed Development would be for the Health and Safety Executive to consider.

4.186 The Secretary of State considers that neither the letter of 19 May 2020 nor the online petition raise any new issues that had not been covered in the Examination.

### **5. Impacts on Natura 2000 Sites and Their Features**

5.1 The Conservation of Habitats and Species Regulations 2017 ("the Habitats Regulations") require the Secretary of State to consider whether the project is likely, either alone or in combination with other plans and projects, to have a significant effect on a Natura 2000 Site, as defined in the Habitats Regulations. If likely significant effects cannot be ruled out, then an Appropriate Assessment of the implications of the project for that site in view of its conservation objectives must be undertaken by the Secretary of State pursuant to regulation 63(1) of the Habitats Regulations. In light of that, the Secretary of State must determine whether the project will have an adverse effect on the integrity of the site. Consent may only be granted if the project will not adversely affect the integrity of a European site.

5.2 In the case of the proposed Development, the Secretary of State notes that the Applicant and other parties including Natural England and non-Governmental Organisations provided information to assist in the consideration of habitats impacts. The ExA produced a Report on the Implications for European Sites (“RIES”) to compile, document and signpost information provided in the Application, and on information submitted throughout the Examination by both the Applicant and Interested Parties in relation to potential effects on Natura 2000 sites and states that this was published and comments were invited on it. The ExA took account of representations on this matter in its Report.

5.3 The boundary of the proposed Development overlaps to some extent with the boundaries of two Natura 2000 sites – the Swale Special Protection Area and the Swale Ramsar site.

5.4 The ExA records that the Applicant carried out a study of Natura 2000 sites that could potentially be affected by the proposed Development. The Applicant concluded that there would be no likely significant effect on most of those sites: the Outer Thames Estuary Special Protection Area, the Blean Complex Special Area of Conservation, or the Thanet Coast and Sandwich Bay Special Protection Area and Ramsar Site. These conclusions were agreed with Natural England and Kent Wildlife Trust. The ExA notes that no Interested Parties disputed this conclusion. [ER 9.6.4]

5.5 The Applicant did, however, conclude that there was the potential for likely significant effects on the Swale Special Protection Area and Swale Ramsar site. The Applicant set out a range of factors arising from the proposed Development that had the potential to lead to a likely significant effect on these sites: loss or change of habitats; noise and visual disturbance; hydrological changes; and deposition of dust. [ER 9.6.6]

5.6 The ExA considered all these matters with particular attention being focused on the potential for displacement of four species of bird that formed part of the interest feature of the Swale Special Protection Area and Swale Ramsar site: Brent goose, lapwing, golden plover and marsh harrier due to loss or change of habitats. Detailed discussion about the potential impacts on these species is set out in paragraphs 4.19 to 4.42 above (in the ‘biodiversity and nature conservation’ section).

5.7 The Secretary of State notes that the ExA’s overall conclusion was that the proposed Development would not lead to an adverse effect on the integrity of the Swale Special Protection Area or Ramsar site due to noise and visual disturbance, loss or change of habitats, hydrological changes or deposition of dust. The ExA considered that there was sufficient information available to the Secretary of State to be able to, if deemed necessary, undertake an appropriate assessment of the effects of the proposed Development on Natural 2000 sites.

5.8 The Secretary of State’s Habitats Regulations Assessment that accompanies this decision letter concludes that a likely significant effect could not be ruled out in respect of the Swale Special Protection Area and Ramsar site due to the effects of noise and visual disturbance, loss or change of habitats, hydrological changes or deposition of dust. The Secretary of State, therefore, then needed to consider whether the proposed Development would have an adverse effect on the integrity of those sites, either alone or in-combination, with other plans or projects. An Appropriate Assessment was, therefore, undertaken to assess the implications of the proposed Development in relation to the conservation objectives of those sites to ascertain whether it would adversely affect the integrity of the Natura 2000 sites. The

overall conclusion of the Assessment was that there would be no adverse effects on the integrity of either the Swale Special Protection Area or the Swale Ramsar site either alone or in combination with other plans or projects subject to the mitigation secured in the DCO.

## **6. Compulsory Acquisition & Temporary Possession**

6.1 The Applicant is seeking powers for the Compulsory Acquisition of freehold interests and private rights and for the acquisition of temporary possession of land.

6.2 The Planning Act 2008, together with related case-law and guidance, sets out that compulsory acquisition can only be granted if certain conditions are met.

6.3 The ExA notes that the Applicant had provided relevant documentation to support its case – a Book of Reference, a Land Plan, a Statement of Reasons and a Funding Statement – and that the documents were amended as necessary as the Examination proceeded. [ER 11.3.2 et seq]

6.4 The ExA also noted that the Applicant reported that it had reached agreement with 91% of all parties in respect of obtaining agreement for access to land. [11.3.5]

6.5 The ExA sets out the reasons given by the Applicant for wanting the powers requested: to secure land, new rights over land, the imposition of restrictions and the temporary use of land required to enable CHSPL to construct, operate and maintain the Project within a reasonable commercial timeframe. The inclusion of powers of compulsory acquisition in the Order is sought in order to ensure that this can be achieved [taken from the Applicant's Statement of Reasons of November 2018 Revision A].

6.6. The ExA notes that there were two objections to the grant of Compulsory Acquisition and Temporary Possession powers – from London Array Limited (submitted by Charles Russell Speechlys LLP) and from National Grid Electricity Transmission. Other representations were received from Interested Parties which expressed formal interests in this issue but did not object to the grant of Compulsory Acquisition and Temporary Possession powers being requested. [ER 11.5.2 et seq]

6.7 The ExA considered the Applicant's case for securing the powers requested by looking at the Application through the prism of the key tests set out in the Compulsory Acquisition guidance issued by the Department for Communities and Local Government (now the Ministry of Housing, Communities and Local Government). The Applicant considered that the approach it had adopted and the information it had provided met the key issues set out in the guidance: whether reasonable alternatives had been considered; whether the Applicant had a clear idea about how it would use the land; whether the proposed action was legitimate, proportionate and necessary; whether there was a compelling case in the public interest [to grant the powers requested]; and, whether the Applicant had appropriate funding available for the payment of compensation. [ER 11.5.17 et seq]

6.8 As far as the availability of funds was concerned, the ExA notes that the Graveney Rural Environment Action Team informed it before the close of the Examination that Wirsol (one of the partners in the Cleve Hill Solar Park Limited joint venture) had not filed its financial accounts which were due by 30 September 2019 and its ability to fund the proposed Development was, therefore, compromised. The Applicant responded that while the filing of the accounts had been delayed, that issue would have no bearing on the proposed

Development. The ExA considered the position and was content with the Applicant's funding arrangements for the proposed Development. The ExA also noted that Article 39 in the Order submitted to the Secretary of State provided protection for landowners in respect of compensation. [ER 11.5.23 et seq]

6.9 During the Examination, the ExA questioned the Applicant about the request for Compulsory Acquisition and Temporary Possession powers sought in respect of the flood defences and the proposed Habitat Management Areas (Works 9 and 8 respectively). Looking at the flood defences, the ExA was happy that these were correctly categorised as Associated Development as their purpose was to protect the proposed Development. That being the case, the ExA concluded that the test for granting Compulsory Acquisition powers over them had been met. [ER 11.5.28 et seq]

6.10 In respect of the Arable Reversion Habitat Management Area and the Freshwater Grazing Marsh Habitat Management Area, the ExA was also content that these constituted Associated Development, and the Compulsory Acquisition powers sought were therefore justified in this case as well. [ER 11.5.32]

6.11 The ExA's consideration of the Lowland Grassland Meadow Habitat Management Area noted that this area forms a major portion of Plot No. 5/03 with the remainder occupied by solar arrays and bordered by proposed native species hedging (forming Works 1 and 4). The ExA notes that the Applicant says the main aim of the Lowland Grassland Meadow Habitat Management Area is to establish a grassland sward and scrub with greater ecological value than the existing land. No physical works were proposed within this Lowland Grassland Meadow Habitat Management Area. [ER 11.5.34]

6.12 In considering this matter, the ExA took the view that the primary mitigation of impacts had already been achieved by deleting solar panels from the part of the site that would be used for the Lowland Grassland Meadow Habitat Management Area. The ExA was not, therefore, convinced that the case had been made for the inclusion of Plot No. 5/03 in the provision granting Compulsory Acquisition powers except in respect of Works 1 and 4 (though powers of Temporary Possession would still be in place for all other relevant Works).

6.13 However, the ExA noted in its Report that it had not sought views on whether all except Works 1 and 4 should be removed from the scope of Compulsory Acquisition powers over Plot No. 5/03. BEIS, officials, therefore, on behalf of the Secretary of State, wrote out to the Applicant and other Interested Parties on 6 April 2020 to seek their views on the possible exclusion of Plot No. 5/03 from the list of plots subject to Compulsory Acquisition powers.

6.14 The Applicant responded to set out that it was strongly of the view that the Compulsory Acquisition powers over Plot No. 5/03 for Works other than 1 and 4 should be retained as the Lower Grassland Meadow Habitat Management Area was an integral part of the Authorised Development and the Landscape and Biodiversity Management Plan. The Lowland Grassland Meadow Habitat Management Area was a key consideration in the overall planning balance. The Applicant repeated the arguments that were put to the ExA during the Examination and stated the outline Landscape and Biodiversity Management Plan contributed to overall biodiversity net gain. The Applicant went on to state that if the Lowland Grassland Habitat Management Area was not delivered, then the predicted biodiversity net gain would be reduced. In addition, Requirement 5 of the Order requires the Applicant to deliver the Lowland Grassland Habitat Management Area (as part of the Landscape and Biodiversity Management Plan). Finally, the Applicant argues that the inclusion of Compulsory Acquisition powers over

Plot No. 5/03 in respect of relevant works accords with the tests for granting such powers set out in the Planning Act 2008: it would not be appropriate, therefore, to limit those powers in the current case.

6.15 The RSPB's response set out that the Lowland Grassland Meadow Habitat Management Plan was needed to avoid impacts on wildlife.

6.16 Natural England's position was that the Lowland Grassland Meadow Habitat Management Plan was not needed to provide mitigation to avoid an adverse effect on the integrity of the Swale SPA. However, Natural England went on to say that the Area was important for biodiversity net gain and for the proposed Development as a whole.

6.17 Consultation responses were also received from the Faversham Society, Faversham Town Council and CPRE but none of these representations touched on the particular issues related to Compulsory Acquisition.

6.18 As far as the objections from London Array Limited and National Grid Electricity Transmission (with regard to their particular interests), the ExA notes that these were withdrawn. [ER 11.5.49 et seq]

6.19 The ExA considered the effects on statutory undertakers and others with protective provisions in the Order and concluded they were acceptable. The ExA further considered that Crown Land had suitable protection subject to the inclusion of provisions acceptable to the Crown Estate in the Order. Finally, the ExA was content that Section 132(3) of the Planning Act 2008 in respect of open space land had been satisfied. [ER 5.11.58 et seq]

6.20 The ExA considered that the provisions of the Human Rights Act 2008 had been met. There would be significant benefit from the grant of the Order which would only be realised if the requested Compulsory Acquisition and Temporary Powers were granted (except for those relating to the Lowland Grassland Meadow Habitat Management Area in Plot No. 5/03 in respect of Works other than 1 and 4). The ExA also notes that there were no outstanding objections to the grant of Compulsory Acquisition and Temporary Possession powers at the end of the Examination. [ER 11.5.63]

6.21 In its conclusion, the ExA considered that all legislative and policy requirements had been met (subject to the qualification in relation to the Lowland Grassland Meadow Habitat Management Plan in Plot No. 5/03). The ExA's specific conclusions were that: there was a compelling case for the powers requested; the proposed Development was in accord with National Policy Statements EN-1 and EN-5; the land in question was needed to secure the proposed Development (except for Plot No. 5/03); there would be a public benefit from the proposed Development; any private loss would be mitigated or minimised; the Applicant had explored reasonable alternatives; there were no alternatives which ought to be preferred; and secure funding for the proposed Development was available. [ER 11.6.7]

6.22 However, the ExA notes that the argument for agreeing Compulsory Acquisition and Temporary Possession powers must be based on the case for the development overall. The ExA concludes that consent should be granted for the proposed Development (except for Plot No. 5/03) and that Compulsory Acquisition and Temporary Possession are justified because there is a compelling case in favour of doing so. [ER 11.6.8]

6.23 As indicated above, the ExA considers that Temporary Possession powers are necessary and should be granted. The ExA considers that it is "...not appropriate to apply Temporary Possession powers prospectively emerging from the Neighbourhood Planning Act 2017 in this case, as by the close of the Examination those powers had not yet commenced." [ER 11.6.9]

6.24 Affected Persons were consulted about the proposed Development and the project design was developed on the basis of the situation prior to the passage of the Neighbourhood Planning Act 2017. The ExA notes that the Applicant proposes to exclude the operation of Temporary Possession provisions of the Act in article 6 of the Order. The ExA considers this to be an appropriate response. [ER 11.6.10]

### Human Rights

6.25 As far as human rights in relation to the proposals for compulsory acquisition and temporary possession of land and rights over land are concerned, the ExA is satisfied that: the Examination ensured a fair and public hearing; any interference with human rights arising from implementation of the proposed Development is proportionate and strikes a fair balance between the rights of the individual and the public interest; and that compensation would be available in respect of any quantifiable loss. The Secretary of State sees no reason to disagree with the ExA's conclusion that there is no disproportionate or unjustified interference with human rights so as to conflict with the provisions of the Human Rights Act 1998, even with the inclusion of Plot No. 5/03.

### Overall Conclusion on Compulsory Acquisition

6.26 The Secretary of State is satisfied that there are no outstanding issues or reasons to refuse the Compulsory Acquisition and Temporary Possession powers as recommended by the ExA. However, in respect of the ExA's consideration of the request for Compulsory Acquisition powers in relation to Works other than 1 and 4 over Plot No. 5/03, the Secretary of State considers that in accordance with s122 of the 2008 Act, the land is required and that there is a compelling case for inclusion particularly in view of the additional benefits in respect of biodiversity net gain that the Development would be able to deliver if the Lowland Grass Meadow Habitat Management Area can be implemented in full.

## **7. The Secretary of State's Consideration of the Planning Balance**

7.1 The Secretary of State notes that decision-making in Planning Act 2008 cases is a balancing exercise and the weight afforded to different elements of the matrix of impacts and benefits will affect the overall conclusion. As indicated above, he further notes the absence of a type-specific National Policy Statement for solar power or for battery storage (although the general presumption in favour of all types of energy generation in National Policy Statement EN-1 is a relevant and important matter, even if the presumption of need and that the relative weight to be given to specified criteria in EN-1 does not directly apply in this case). In the absence of a type specific National Policy Statement, the Secretary of State is required to determine applications for development consent for nationally significant infrastructure projects against section 105 of the Planning Act 2008. Section 105(2) requires the Secretary of State to have regard to:

- (a) any local impact report (within the meaning given by section 60(3)) submitted to the Secretary of State before the deadline specified in a notice under section 60(2),

(b) any matters prescribed in relation to development of the description to which the application relates, and

(c) any other matters which the Secretary of State thinks are both important and relevant to the Secretary of State's decision.

7.2 The Secretary of State considers that there is a strong case in favour of granting development consent for the proposed Development. National Policy Statement EN-1 which gives support to renewable electricity generating nationally significant infrastructure projects is relevant and important to the consideration of the Application. This support must however be considered in the planning balance.

7.3 In addition, the Secretary of State acknowledges and adopts the substantial weight the ExA gives to the contribution to meeting the need for renewable energy infrastructure given by the proposed solar farm element of the proposed Development on its own account and the further weight in favour of the proposed development's battery storage facility. He further notes the ExA has identified that the Development would, in addition to meeting demand for electricity, also do in a way which be consistent with the Climate Change Act 2008 (2050 Target Amendment) Order 2019 which amended the Climate Change Act 2008 to set a legally binding target of a 100% reduction in greenhouse gas emissions (compared to 1990 levels) in the United Kingdom.

7.4 However, there are a number of adverse effects also identified by the ExA in respect of landscape, visual, recreational, and cultural heritage impacts, and limited weight attributed by the ExA to temporary transport and traffic impacts. In addition, local residents and some local organisations have raised various concerns, including about the proposed battery storage facilities citing the risk of fire, explosion and the release of poisonous gases and the impacts on amenity, wildlife and general well-being.

7.5 The Secretary of State has considered all the merits and disbenefits of the proposed Development and concluded that, on balance, the benefits of the Development outweigh its negative impacts.

## **8. General Considerations**

### Equality Act 2010

8.1 The Equality Act 2010 includes a public sector "general equality duty" ("PSED"). This requires public authorities to have due regard in the exercise of their functions to the need to eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Act; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not in respect of the following "protected characteristics": age; gender; gender reassignment; disability; marriage and civil partnerships<sup>2</sup>; pregnancy and maternity; religion and belief; and race.

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<sup>2</sup> In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

8.2 In considering this matter, the Secretary of State (as decision-maker) must pay due regard to the aims of the PSED. This must include consideration of all potential equality impacts highlighted during the Examination.

8.3 The Secretary of State notes that the Applicant did not include within the Equalities Impact Assessment (“EqIA”) document it submitted to the Examination an assessment of the impact of the proposed Development on specific children with protected characteristics potentially affected by noise and other effects from the construction and operation of the proposed Development. However, it did consider impacts on relevant receptor groups and noted there are a range of disabilities which could result in an individual with a protected characteristic experiencing different effects from the proposed Development than those who do not share that characteristic. Nor did the EqIA mention any potential for any disproportionate adverse impacts on elderly people – a point raised by Graveney and Goodnestone Parish Council in a submission to the Examination. (The Applicant did cover the potential equality impacts on young people at the Graveney Primary School.)

8.4 The Secretary of State has considered the potential equality impacts on the family and concluded that there was no evidence to show that the mitigation measures that had been proposed by the Applicant would not be effective. While noting that it is possible that any impact on members of the family could be of such magnitude as to breach their human rights, the Secretary of State believes that the ExA’s consideration of this issue is a reasonable one and does not see any reason to disagree with it.

8.5 Again, the Secretary of State notes that the ExA did not consider potential equality impacts on old people specifically. However, the Secretary of State has considered this matter and has not identified any effects of the proposed Development that would affect elderly people differently compared with other members of the population in its vicinity. Having had regard to the aims of the PSED, the Secretary of State does not, consider that there would be any breach of the PSED in respect of this particular population.

#### Natural Environment and Rural Communities Act 2006

8.6 The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006, has to have regard to the purpose of conserving biodiversity, and in particular to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when granting development consent.

8.7 The Secretary of State is of the view that the ExA’s report, together with the environmental impact analysis, considers biodiversity sufficiently to inform him in this respect. In reaching the decision to give consent to the Development, the Secretary of State has had due regard to conserving biodiversity.

### **9. Other Matters**

9.1 The Secretary of State notes that there are various other consents, licences and permits that are likely to be required to construct and operate the Development [ER 1.6.1], and has no reason to believe that the relevant approvals would also not be forthcoming.

## **10. Representations Received After the Close of the Examination**

10.1 The Secretary of State received a considerable amount of correspondence after the close of the examination raising concerns about the potential impacts of the Development. The Secretary of State has considered the matters raised in the correspondence but does not believe that they raise any new issues that were not considered by the Examining Authority in its Report.

## **11. Secretary of State's Conclusions and Decision**

11.1 For the reasons given in this letter, the Secretary of State considers that there is a strong case for granting development consent for the Cleve Hill Solar Park. Given the national need for renewable energy infrastructure and the substantial weight the Secretary of State attaches to the contribution of this development to meeting that need the Secretary of State does not believe that this is outweighed by the Development's potential adverse impacts, as mitigated by the proposed terms of the Order.

11.2 The Secretary of State has therefore decided to accept the ExA's recommendation to make the Order granting development consent [ER 13.3.1] to include modifications set out below in section 12 below. In reaching this decision, the Secretary of State confirms regard has been given to the ExA's Report, the LIRs submitted by SBC, CCC, KCC and to all other matters which are considered important and relevant to the Secretary of State's decision as required by section 105 of the Planning Act 2008. The Secretary of State confirms for the purposes of regulation 4(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 that the environmental information as defined in regulation 3(1) of those Regulations has been taken into consideration.

## **12. Modifications to the Order by the Secretary of State**

12.1 The Secretary of State has made the following modifications to the Order:

- Amendment to Article 4(1) to confirm that the undertaker is granted development consent for the authorised development within the Order limits;
- Addition at Article 5(1) to confirm the provisions of the Order have effect solely for the benefit of the undertaker except as otherwise provided by the Order;
- Removal of provisions in Article 5 setting time limits on the Secretary of State to consent to requests to transfer the benefit of the Order. There is no suggestion that the Secretary of State has previously failed to respond to such requests within good time. Further, the consent of the Secretary of State is not required in straightforward transfers in the circumstances specified in subparagraph 7 of the Article;
- Removal of provisions within Articles 5 and 35 for the referral of the Secretary of State's decision-making for determination. The Secretary of State agrees with the ExA's consideration of these provisions;
- Amendment to Article 14(4) to confirm that the undertaker is authorised to enter land to carry out protective works within the Order limits;
- Amendment at Article 24(4) to remove the term "temporary". It appears that only those works specified in subparagraphs 24(4)(a)-(d) are intended to remain after the undertaker gives up temporary possession of the land and the amendment reflects that position;
- Removal of Article 34(3), which provided that references in certified documents to provisions of the draft DCO that are numbered differently in the final Order must be

construed as referring to the corresponding provision in the Order as made. This has been removed to ensure legal clarity when referring to certified documents;

- Addition at Schedule 1, Part 2, of subparagraph 2(2)(c) to provide that details of the authorised Development must accord with the principles and assessments set out in the environmental statement. The Secretary of State has consulted on this issue and considers this addition necessary to prevent potential expansion of the project beyond approved parameters;
- Amendment at Schedule 1, Part 2, paragraph 18 to remove reference to the Secretary of State. There appear to be no requirements under which approval from the Secretary of State is required;
- Amendment of Schedule 7, Part 4, paragraph 11 to remove reference to determination of drainage disputes by the Secretary of States for BEIS and DEFRA. Such matters are to be determined by an arbitrator.

12.2 The Explanatory Note to the Order has been amended to enable public inspection of the Order online while restrictions on movement remain in place in response to the coronavirus pandemic.

12.3 In addition to the above, the Secretary of State has made various changes to the draft Order which do not materially alter its effect, including changes to conform with the current practice for statutory instruments (for example, modernisation of language), changes made in the interests of clarity and consistency, and changes to ensure that the Order has its intended effect.

### **13. Challenge to decision**

13.1 The circumstances in which the Secretary of State's decision may be challenged are set out in the Annex to this letter.

### **14. Publicity for decision**

14.1 The Secretary of State's decision on this Application is being publicised as required by section 116 of the Planning Act 2008 and regulation 31 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

14.2 Section 134(6A) of the Planning Act 2008 provides that a compulsory acquisition notice shall be a local land charge. Section 134(6A) also requires the compulsory acquisition notice to be sent to the Chief Land Registrar, and this will be the case where the order is situated in an area for which the Chief Land Registrar has given notice that they now keep the local land charges register following changes made by Schedule 5 to the Infrastructure Act 2015. However, where land in the order is situated in an area for which the local authority remains the registering authority for local land charges (because the changes made by the Infrastructure Act 2015 have not yet taken effect), the prospective purchaser should comply with the steps required by section 5 of the Local Land Charges Act 1975 (prior to it being amended by the Infrastructure Act 2015) to ensure that the charge is registered by the local authority.

Yours sincerely

*Gareth Leigh*  
**Gareth Leigh**

## **LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS**

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the Planning Court during the period of 6 weeks beginning with the day after the day on which the Order is published. The decision documents are being published on the date of this letter on the Planning Inspectorate website at the following address:

<https://infrastructure.planninginspectorate.gov.uk/projects/south-east/cleve-hill-solar-park/>

**These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655)**