

North Lincolnshire Council answers to the Examining Authority's first set of written questions for the Little Crow Solar Park Project

Question 1.1.1 – Generating capacity

With respect to your particular matters of interest, please comment on what, if any, implications there would be if the generating capacity for the Proposed Development exceeded 150MWp but was no more than 200MWp.

Answer

NLC do not consider that there would be any implications or additional adverse impact resulting from an increase in generating capacity from 150 to 200 MW. The environmental and other impacts of the development are largely driven by the physical parameters such as the area required for the siting of the panels, the size and layout of the panels, means of access and drainage etc. Should these physical parameters not change as a result of the increase in generating capacity (e.g. due to improvements to the efficiency of the panels) then there would be no new or materially different impacts that would need to be assessed.

It is further noted that should improvements in solar panel technology allow for greater efficiency then this would be beneficial in respect of the amount of renewable energy generated. In simple terms, the benefits of the proposed development would increase without any further adverse impact being generated.

Question 1.1.8 - Alternatives

Under a 'do nothing' scenario for the Proposed Development, where might 150 to 200 MW of electricity be generated as an alternative to the Proposed Development? Is there previously developed land in the area that could be used as an alternative to the Order Limits?

Answer

NLC is not aware of any parcels of previously developed land within its administrative area that could be used as an alternative to the Order Limits. The Order Limits cover an area of approximately 225 hectares and there are no previously developed sites of this size within North Lincolnshire that the Council is aware of and which are known to be available.

Given the land take normally associated with renewable energy schemes it is likely that any previously developed site within North Lincolnshire that could be used to generate 150 to 200 MW of electricity would necessitate the use of more traditional technologies (i.e. the burning of fossil fuels). It is also noted that a major limiting factor in the location of electricity generation proposals is the availability of a grid connection with available capacity. NLC is not aware of any previously developed sites that could be used for the generation of 150 to 200 MW of electricity that are currently available.

Question 1.1.10 – Cumulative and in-combination effects

With respect to the description of the likely effects on the environment stated in the submitted ES, and having regard to the requirements of Regulation 14(2)(b) and paragraph 5 of Schedule 4 of the EIA Regulations, are there any existing or proposed developments that it is considered should have been included in the Applicant's assessment of the cumulative and in-combination effects of the Proposed Development?

Answer

There are no additional existing or proposed developments that need to be included in the Applicant's assessment of the cumulative and in-combination effects of the Proposed Development.

Question 1.4.2 – Use of footpath 214

Please provide any counts or survey data that may have been undertaken/gathered relating to the use of definitive footpath 214. The Applicant and the Council should agree amongst one another who is best placed to answer this question.

Answer

NLC does not have any records of counts or survey data in respect of the use of footpath 214; nor are the Council aware of any such counts or surveys being undertaken by private individuals.

Question 1.4.4 – Status of woodland to the east

Please advise what status the woodland to the east of the Order Limits has, i.e. is that land publicly owned or is land to which the public have the right to access it using definitive footpath 214 or other rights of way or permissive routes?

Answer

The woodland to the east of the order limits is privately owned and managed. The public have a right of access through this land along definitive footpath 214. Other than for FP214, the Council has no information relating to any other access that the public might or might not enjoy within the woods.

Question 1.4.5 – Permissive paths

Please advise whether the Council is aware of any permissive path routes crossing and/or running around the perimeter of the Order Limits. Should the Council be aware of any such permissive routes, please identify those on a map of an appropriate scale.

Answer

The Council's PROW officer has confirmed that the local authority do not have any records or maps of permissive paths in the adjacent woodland to the east, or running around the perimeter of the site. The Council is aware that the adjacent woods are used by local residents and believe that the paths that there are in the vicinity of the site, FP214 aside, are informal and the result of landowner toleration as such we are unable to provide any specific details of these paths or a plan showing their locations.

Question 1.6.5 – Requirement 9

*With respect to **Requirement 9** (outline Construction Traffic Management Plan [CEMP]) of the dDCO [APP-045]:*

- a) In requirement 9(2)9b) what does 'adjoining highway' mean, should the reference be to the public highway? Would the precision of this part of the Requirement be aided by referring to specific road names and/or numbers?*
- b) In Requirement 9(2)(c), what would be the purpose of undertaking, a '...condition survey of any road ...', as there is no requirement to do anything further to respond to the results of the condition survey? Is Requirement 9(2)(c) necessary and/or incomplete?*

Answer

- a) It is assumed that 'adjoining highway' means the adopted highway. However for clarification purposes it is suggested that the Requirement should state the road name and//or number.
- b) Requirement 9(2)(c) is incomplete. The Council as local highway authority consider that this Requirement is necessary but that the Requirement needs to include a requirement that any defects identified as a result of the condition survey that are attributable to the construction works must be rectified by the developer following discussions with NLC.

Question 1.6.7 – Requirement 11

*With respect to **Requirement 11** (Construction hours) of the dDCO [APP-045]:*

- a) *Is there a need for construction hours to be stated in a freestanding Requirement or is this a matter that could be included within the Construction Environmental Management Plan subject to Requirement 8?*
- b) *If Requirement 11 is to be retained as a freestanding Requirement in any made DCO, should the tailpiece phrase '... unless otherwise agreed by the local planning authority' be deleted?*

Answer

- a) NLC are of the opinion that the construction hours could be included in the same Requirement (8) as the CEMP, either mechanism can be enforced should the developer operate outside of the agreed hours.
- b) Should Requirement 11 remain it is agreed that the tailpiece phrase identified should be deleted.

Question 1.6.9 – Requirement 14

***Requirement 14** (Protected species) of the dDCO [APP-045], please review the draft wording for completeness and:*

- a) *Is there a need for the provisions of Requirement 14(2) to be contained in a freestanding sub-paragraph or could the inclusion of 'any site preparation works' within what is meant by commencement simply be stated as 'No work,*

including site preparation works, shall be commenced in any phase until a final pre-construction survey has been carried out for that phase...'

- b) *In Requirement 14(3), in the event of a survey finding a protected species to be present, why prior to a mitigation scheme being submitted for approval by North Lincolnshire Council would it be necessary for a pre-consultation to be undertaken with the Council as well as Natural England?*

Answer

- a) NLC would be happy for the Requirement to be amended as suggested and if this were done then it is agreed that there would no longer be a requirement for Requirement 14(2) as a freestanding sub-paragraph.
- b) It is agreed that prior consultation with NLC is not strictly speaking necessary, but it would help to speed up the approval process if NLC were consulted alongside Natural England prior to submission of the mitigation scheme.

Question 1.6.11

With respect to the 'Procedure for Discharge of Requirements' set out in Part 2 of Schedule 2 of the dDCO [APP-045] please provide explanations within an updated version of the EM [APP-046] and make any amendments to the dDCO, as necessary, to address the following matters:

- a) *Identify all of the organisations that would constitute a 'discharging authority' for the purposes of Part 2 Schedule 2 of any made DCO;*
- b) *Whether the heading for Part 2 of Schedule 2 is correctly titled, given that during the course of Issue Specific Hearing 1 it was explained that some consents from discharging authorities would concern Articles within any made DCO and not just Requirements contained in Part 1 of Schedule 2 of the dDCO.*
- c) *Why in Paragraph 21(1)(c) are:*
- i. *Appeals concerning the use of sections 60 and 61 of the Control of Pollution Act 1974 being referred to, when there is an appeal mechanism available under that legislation via the Magistrates Court system?*
 - ii. *If an appeal was to be dismissed, what implications might that decision have for the resolution of the matter if it was then to be remitted to the Magistrates Court as a contravention of sections 60 or 61?*

Answer

Parts a) and b) of this question are left to the applicant to answer.

In respect of part c):

- i. NLC are of the opinion that Appeals concerning the use of sections 60 and 61 of the Control of Pollution Act 1974 should not be included in the 'Procedure for Discharge of Requirements' set out in Part 2 of Schedule 2 of the dDCO [APP-045] as there is an existing appeal mechanism available under that legislation via the Magistrates Court. Paragraph 21(1)(c) does not relate to the discharge of Requirements and would unnecessarily duplicate the existing appeal mechanism under separate legislation. Furthermore, were this section to remain it could hinder the ability of the local authority to take expedient action to address issues of noise during construction as the timeframe for submitting an appeal set out in paragraph 21(2)(a) at 42 days is significantly longer than the 21 days period for submitting an appeal set out in sections 60 and 61 of the Control of Pollution Act.
- ii. It is not clear what the implications might be should such an appeal be dismissed, if it were to be remitted to the Magistrates Court as a contravention of sections 60 or 61. NLC would reiterate its position that the creation of a new appeals mechanism in respect of sections 60 and 62 constitutes unnecessary duplication of an existing and well established appeal mechanism and can only cause confusion and delay in enforcing these matters whilst offering no clear benefits or efficiency gains.

Question 1.6.12 – Provisions of the dDCO

With respect to the provisions of the dDCO [APP-045], please advise:

- a) *Whether there are any Articles or Requirements that the Council considers should be included within or removed from the dDCO and if so explain why that is the case. If it is considered there are any omissions, please submit wording for any suggested additions to the Articles and/or Requirements.*
- b) *Whether the Council has any detailed drafting concerns relating to any part of the dDCO. If there are any such concerns, please provide suggested revisions to the Applicants drafting to APP-045, together with any explanations as necessary.*

Answer

- a) North Lincolnshire Council has produced a Local Impact Report in respect of the proposed development. The LIR, amongst other things, gives

consideration to the Requirements proposed in the dDCO. Alterations to Requirements 11 (Construction hours) and 13 (Archaeology) of the dDCO are suggested at paragraphs 8.5 and 7.28 of the LIR respectively.

An additional Requirement relating to the details of plant and securing noise mitigation where necessary has also been suggested at paragraph 8.4 of the LIR.

The reasons for the proposed changes are provided within the LIR along with the suggested wording.

b) NLC does not wish to raise any drafting concerns with regards to the dDCO

Question 1.8.2 – Landscape and visual mitigation

Does the Council have any comments to make about the adequacy of the proposed landscape and visual mitigation measures for the effects of the Proposed Development during its operational and construction phases?

Answer

NLC agrees with the approach to the assessment and mitigation of landscape and visual impacts, as set out in section 6 of the environmental statement (APP-063).

The Solar Park will affect a significant area of land and will represent a significant change in the landscape, particularly for users of Footpath 214. For other receptors, the development will largely be screened by existing vegetation, including the Broughton Woods Complex.

Significant landscape enhancements are proposed, as set out in the outline Landscape and Ecological Management Plan. This incorporates advice given by North Lincolnshire Council and will be secured by the draft text of requirement 10. Assuming the proposed approach to mitigation and enhancement is followed through the requirements of the Order, then the Council considers the overall effect to be neutral or minor positive.

Question 1.8.3 – Restoration

As part of the decommissioning of the Proposed Development, please provide the Council's views on how the land within the Order Limits might be restored. In particular, please comment on whether the intended screen planting along the route of definitive footpath 214 should be retained having regard to any visual effects for the users of the footpath and the biodiversity value provided by any retained screen planting.

Answer

NLC would wish to see the continuation and enhancement of the landscape and biodiversity benefits, if at all possible. We agree with the decommissioning process described in the LEMP, which would be based on ecological surveys and the implementation of mitigation and enhancement measures for any notable habitats or species recorded.

Upon removal of the solar farm infrastructure, any disturbed grazing land should be returned to grazing. This may necessitate re-seeding with a wildflower and grass mix, as described in the LEMP or may be achievable through natural regeneration from the soil seed bank and surrounding sward. Ideally, the sensitive cultivation of the arable plant margins should continue and the acid grassland should be positively managed.

Turning to the hedgerows along footpath 214:

Under The Hedgerow Regulations 1997, any hedgerow that is more than 30 years old, species-rich and adjacent to grazing land and a footpath is likely to qualify as "important" and should therefore be retained. At the time of writing, such a hedgerow would also qualify as a habitat of principal importance (priority habitat) in terms of section 41 of the Natural Environment and Rural Communities Act 2006.

At the time of writing the adopted Landscape Character Assessment and Guidelines document (SPG5) gives the following guidance for this area:

Wooded Scarp Slope – Manton, Raventhorpe and Santon

Landscape Strategy:

Seek to conserve the wooded character of this escarpment feature whilst also developing local opportunities to plant new woodland and hedgerows and encourage ecological diversity.

Landscape Guidelines:

Seek to conserve, enhance and encourage further tree cover along the scarp slope and also the development of hedgerows, particularly where linking with woodland blocks, to maximise possibilities for habitat linkage and wildlife dispersal.

Promote woodland and hedgerow management to re-structure excessively even-aged woodland and ensure the continuation of valuable habitat resources.

Therefore, in landscape terms, the guidance suggest that the hedgerows should be retained and positively managed.

Question 1.8.4 - Receptors

The Landscape and Visual Impact Assessment references “Users of publicly accessible paths” and “Users of the transport network” as visual receptors [paragraphs 6.3.43 to 6.3.46 of PDA-006]. The assessment of the impact of the Proposed Development is confined to users of footpaths and motorists. Other non-motorised users such as cyclists and equestrians are not referenced. What is the potential for effects on cyclist and equestrian receptors?

Answer

Footpath 214 gives the public a right of way on foot only and should not be used by cyclists or equestrians. There is the potential for the Proposed Development to impact upon cyclists and equestrians using the public highway; however these impacts are unlikely to be materially different to those already assessed in respect of motorists using the highway.