



SUNNICA ENERGY FARM

EN010106

8.56 Written Summary of Applicant's Oral Submissions at the
Compulsory Acquisition Hearing (CAH) 1 on 6 December 2022

Planning Act 2008

Infrastructure Planning (Examination Procedure) Rules 2010



16 December 2022
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(Examination Procedure) Rules 2010**

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1. Introductory remarks

1.1 Introduction

1.1.1 The Compulsory Acquisition Hearing (CAH) was held at 14:00pm on 6 December 2022 as a blended event at King Edward VII Memorial Hall, High Street, Newmarket, Suffolk CB8 8JP and by virtual means using Microsoft Teams.

1.1.2 The CAH took the form of running through the items listed in the agenda published by the Examining Authority (ExA) on 1 December 2022 (Agenda). The discussion predominantly focused on:

- (a) The Applicant's strategic case;
- (b) Alternatives and design flexibility;
- (c) The compulsory acquisition and related provisions as presented within the draft development consent order [REP2-012] ('DCO') and the Land and Crown Land Plans [REP2-003] ('Land Plans');
- (d) Statutory conditions and general principles;
- (e) Review of the Objections Schedule and related matters.

1.2 In the time available, the CAH only covered Agenda items 1 to 7 (inclusive) in full. The CAH was adjourned until Tuesday 14 February 2023 where the outstanding items 8 to 12 (inclusive) are to be discussed.

2. Agenda Item 1 – Welcome, Introductions and arrangements

2.1 The Examining Authority

2.1.1 Grahame Kean, Guy Rigby and Karin Taylor.

2.2 The Applicant

2.2.1 **SPEAKING ON BEHALF OF THE APPLICANT:** Richard Turney (Barrister at Landmark Chambers) and Richard Griffiths (Solicitor at Pinsent Masons LLP).

2.2.2 Present from the Applicant: Luke Murray (Director at Sunnica Limited), Nigel Chalmers (Technical Director at AECOM Limited), Bill Gregory (Associate Director at AECOM Limited), Jon Rooney (Associate Director at Arup), Chris Johnson (Principal Environmental Consultant at AECOM Limited), Lynn McHale (Associate Land and Property Surveyor at WSP UK Limited), Max Flowerdew (Land Consultant at WSP UK Limited).

2.2.3 The Applicant's legal advisors: Nicholas Grant (Barrister at Landmark Chambers), Tom Edwards (Solicitor at Pinsent Masons LLP), Matthew Fox (Solicitor at Pinsent Masons LLP) and Olivia Henshall (Solicitor at Pinsent Masons LLP).

2.3 Host Authorities

2.3.1 West Suffolk Council ('**WSC**'): Julie Barrow (Principal Planning Officer at WSC).

2.4 Interested parties

2.4.1 Say No To Sunnica Action Group ('**SNTS**') and Newmarket Horseman's Group ('**NHG**): Daniel Kozelko (Barrister at 39 Essex Chambers).

2.4.2 The Mitcham Family: Samuel Nobbs (Bidwells).

2.4.3 HPUT A Limited and HPUT B Limited ('**HPUT**'): Isabella Tafur (Barrister at Francis Taylor Building).

2.4.4 Drug Development Solutions Limited ('**DDS**'), LGC Limited and LGC Bioresearch Limited ('**LGC**): Jonathan Bower (Solicitor at Womble Bond Dickinson (UK) LLP)

3. Agenda Item 2 – Purpose of the Hearing

3.1 The ExA explained the purpose of the CAH, being to enable the ExA to examine the Applicant's strategic case, and whether the relevant legal tests, policy and guidance have been addressed.

3.2 The ExA referred to the recent submission made by the Applicant – Update by the Applicant on Heritage Matters and Substation Connection [**REP3A-037**] – covering the following:

- (a) the substation connection at Burwell;
- (b) the impacts of the Scheme on an area of potential archaeological importance at Snailwell (namely a Roman villa);
- (c) potential impacts to the B-50 bomber crash site close to Isleham; and
- (d) archaeological mitigation at field W04 (as shown numbered on the Parameters Plan [**APP-136**]) of the Scheme.

3.3 The ExA indicated that it was minded to publish a procedural decision following the hearings making a request under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 to all interested parties to comment on this submission in due course and, in particular, give its views on the suggested changes to the examination timetable.

3.4 Richard Turney, on behalf of the Applicant, clarified at this stage that in relation to the crash site, the Applicant's proposal is for a 50-metre exclusion zone and any further exclusion zone is a matter that would be subject to input from the relevant statutory body.

3.5 The ExA confirmed that for the purposes of this CAH, the assessment will be on the basis of the application as currently submitted, including the changes application already made by the Applicant and accepted by the ExA.

4. Agenda Item 3 – The Applicant's Strategic Case

- 4.1 The ExA raised that in relation to the cross-referencing in the Book of Reference **[REP3-003]** ('BoR') to the DCO articles, there is no explanation in the front end of the BoR which sets out what new cable rights and/or access rights are being sought by the Applicant. The ExA asked for an explanation on why the 'category of rights sought' column states 'where relevant', but then the descriptions in this column state 'N/A'.
- 4.2 Richard Griffiths, on behalf of the Applicant, referred to paragraph 1.2.6 of the BoR which identifies the categories of rights to be included in the new 'category of rights sought' column. This links back to Schedule 8 of the draft DCO which identifies cable rights and access rights and describes what they are. Mr Griffiths acknowledged that some inclusions of 'N/A' were incorrect, for example plot number 1-05. The Applicant will cross-check the BoR and draft DCO ahead of Deadline 4 to ensure all the plot numbers in Schedule 8 correspond with the BoR.
- 4.3 Richard Turney, on behalf of the Applicant, also confirmed to the ExA that the Applicant is satisfied that no person outside the Order limits may make a possible claim and therefore nobody outside of the Order limits needs adding to Part 2 of the BoR.
- 4.4 The ExA then made the following queries in relation to the Land Plans:
- (a) Whether the Land Plans are Rev-02 or Rev-03, as the submission titles suggest Rev-03 whereas the individual sheets suggest Rev-02.
 - (b) Why the key on all sheets shows a green box even though not all sheets contain a green plot. The ExA stated that it would be useful if the green box in the key was only included on the sheets where there are green plots.
 - (c) Plot 21.04 of the Land Plans is barely discernible, and a large scale inset of that plot would be useful. For example, the inset on Plot 21.04 on Rev-01.
- 4.5 Richard Turney, on behalf of the Applicant, responded to the ExA queries as follows:
- (a) Mr Turney confirmed that the Land Plans are Rev-03.
 - (b) Mr Turney said that the Applicant would look into why the sheets may potentially show an incorrect key. Mr Turney also confirmed that the green key does not show replacement land because the Scheme has no replacement land. The green key refers to the temporary use or temporary possession of land only.
 - (c) Mr Turney confirmed that Plot 21.04 was the only green plot on sheet 21 but that the Applicant can provide an inset.
- 4.6 The Applicant has submitted REV-04 of the Land and Crown Plans alongside this document at Deadline 4 addressing the comments above.
- 4.7 The ExA asked whether there was an update on the negotiations regarding the license agreement or whether the Applicant will need to rely on temporary possession powers under

Article 28 of the draft DCO. Max Flowerdew, on behalf of the Applicant, responded that the Applicant is currently negotiating with the landowner. The Applicant contacted the landowner on 6 December 2022 and a response was received on 7 December 2022 confirming that they are still looking for a solicitor to act on their behalf.

4.8 The ExA then asked for the Applicant to set out its strategic case in relation to the compulsory acquisition ('**CA**') or temporary possession ('**TP**') of land and/or rights. Mr Turney set out the below:

4.8.1 The Applicant is seeking powers to ensure the Scheme can be built, maintained and operated. This is to deliver the benefits of the Scheme as set out in the DCO application, meeting policy on new renewable energy generation and net zero carbon emission targets for 2050. Without the CA and/or TP powers, Order land might not be assembled, uncertainty will continue to prevail, and its objectives and Government policy objectives would not be achieved.

4.8.2 In respect of CA, freehold acquisition is focused is on the main solar farm sites which comprise areas of solar panels, other infrastructure (such as substations, the battery, energy and storage systems (**BESS**) and other related development), and land required for landscaping and ecological mitigation. In other words, there are multiple uses for the pink plots of land on the Land Plans.

4.8.3 The Applicant's intention has been to acquire these interests through negotiation. In large, the Applicant has negotiated and completed agreements for the main parts of the site. Where agreement is not yet reached it is the Applicant's expectation that it will be reached by the close of the examination. Notwithstanding, it is appropriate for CA powers to be in place if, for any reason, the relevant landowners do not proceed to grant a lease in accordance with the relevant option agreements then the CA powers can be used to give effect to those arrangements. A further reason for the freehold CA powers proposed is so that it is possible for the Applicant to extinguish other rights concerned to the extent such rights would conflict with the Scheme.

4.8.4 In respect of the grid connection route, Mr Turney stated that the Applicant requires the acquisition of property interests in third party ownership in respect of Grid Connection Route A and Grid Connection Route B and lesser interests within the Order limits (for example to facilitate access, subsoil under the highway). This has the clear purpose of allowing the Scheme and generating station to be connected to the substation at Burwell. In consequence of that, a series of CA powers are required, including under Article 20 (Compulsory Acquisition of Rights), Article 21 (Private Rights), and Article 23 (Acquisition of Subsoil only). The Applicant has applied for the grant of powers to facilitate acquisition and/or creation of new rights and interests, and to extinguish or suspend rights over land.

4.8.5 Mr Turney added that although TP provisions are different from CA powers (for example to allow the Applicant to enter land for a particular construction or maintenance purpose, such as Article 27), they are essential and are to be considered in the same way as CA powers. The reason for seeking TP powers over this land is that it allows the Applicant to enter on to land for particular construction and maintenance purposes (including site preparation works) in advance of the vesting of the relevant land/rights. This enables the Applicant to be able to only compulsorily acquire the minimum amount of land and rights over land required to construct, operate and maintain the Scheme. This is a standard approach. The

Statement of Reasons [REP2-018] ('SoR') sets out in more detail why the Applicant requires the CA and TP powers as applied for.

- 4.9 The ExA sought clarification whether as part of the CA strategy, the Applicant first intends to take temporary possession of all Order land to undertake detailed surveys and design work, such that the CA powers are then only used in respect of those parts of the Order land which have been identified as being required. For example, taking temporary possession of the entire 100m width of the cable corridor land, then once it has been worked out where the cable corridor is going within that width, only take CA rights over the land needed for that cable corridor.
- 4.10 Mr Turney, on behalf of the Applicant, confirmed that this analysis is correct but *only* in respect of the cable corridor because in respect of the cable corridor, the Applicant will need a working corridor for the construction of the cable, with the width of such corridor varying in certain circumstances. The actual location of the permanent easement for the cable can only be identified following micro siting. It is the Applicant's intention, therefore, to use TP powers for the working width of the cable corridor, from which the permanent easement corridor will be identified, which will be significant narrower than the working width. This will enable the Applicant to minimise its use of CA.
- 4.11 Mr Turney further explained that temporary rights connected with construction are for a 30m corridor, which is sufficient to allow the working area around the trench in most circumstances. However, there are some instances where the Applicant has taken a wider corridor for construction because a larger working area is required (for example at the crossing of a railway line, where a number of separate drills are required under the railway line). Mr Turney continued that during the operational phase, the permanent easement corridor will be a 10-20m corridor which the Applicant would have permission to enter and carry out works to the cable. Further information is contained in Appendix A to the Statement of Reasons. The right would be to keep the cable in the ground and to prevent interference, and to enter onto it and carry out any maintenance work required.
- 4.12 In relation to the cable crossings, the ExA queried whether the Applicant was satisfied that there is enough land with rights being sought over. Mr Turney, on behalf of the Applicant, confirmed this was the case. The Applicant has been in discussion with Network Rail and its engineers and the separation distances between the drills are based on tolerances which are adequate for Network Rail. Mr Turney expanded that, the width has been established through dialogue with the relevant party.
- 4.13 The ExA noted that the pink plots for the main solar site include allowances for landscaping. Mr Turney, on behalf of the Applicant, explained that the detail of landscaping has been done at a high level, but detailed design will follow, so the extent of works may vary following approval of the final landscaping scheme with the local authorities. It would be premature for the Applicant to limit itself to specific plots of land for landscaping until the final landscaping plan has been approved. Mr Turney confirmed that this gives flexibility in terms of detailed design, but also ensures that the Scheme can be maintained during the lifetime of the Scheme by managing access to land. In summary, it allows delivery of landscaping to meet the Scheme objectives.

5. Agenda Item 4 – Alternatives and design flexibility

5.1 The ExA invited the Applicant to present the approach taken to the Scheme's components and explain the need to acquire the land and rights sought for in relation to the following matters:

- (a) Solar panels and battery storage,
- (b) Cable alignments, including the use of TP,
- (c) Each substation, including landscaping,
- (d) The National Grid connection substation, including the need for land and rights in respect of both options 2 and 3, and in respect of other projects with agreements to connect at Burwell,

and the associated landscaping in each case.

5.2 Richard Turney, on behalf of the Applicant, set out the following:

5.2.1 That the Statement of Need [**APP-260**] is the starting point for the assessment of alternatives. This clearly articulates the fundamental need for large-scale solar generation in the UK in order for the UK to meet its legally binding climate change targets. The need case is built upon the contribution of the Scheme to the three important national policy aims of net zero and the importance of deploying zero-carbon generation assets at scale; security of supply (geographically and technologically diverse supplies); and affordability of electricity supplies.

5.2.2 In respect of the Scheme, there is a 500MW grid capacity available at the point of connection at the Burwell substation, as a result there is a need for land to host the development of the solar farm and associated development. In the Draft National Policy Statement for Renewable Energy Infrastructure (EN-3), as to the scale of land or extent of land required for a solar farm, the ratio is described to be 2 to 4 acres for each megawatt (**MW**) of output. This relates to 0.8 to 1.6 hectares (**ha**) for each MW of output. In terms of the scale of developable area for the Scheme, the ratio is approximately 1ha per MW, so within the range. It is then up to 1.6ha if the areas not being developed, such as landscaping, are taken into account. This is also within the aforementioned range. The land which has been identified within the Scheme documentation will allow the Applicant to develop a scheme which is matched to the available grid connection capacity, so optimising both resources.

5.2.3 On the question of site selection, Mr Turney referred the ExA to the Alternatives Site Assessment [**APP-054**] and Chapter 4: Alternatives and Design Evolution of the Environmental Statement (**ES**) [**APP-036**]. Mr Turney confirmed he did not intend to touch on alternative technologies.

5.2.4 In respect of the cable route, Mr Turney explained that three alternative cable route options (Cable Routes 1, 2 and 3) were considered at the pre-scoping stage. There is a high-level evaluation of these general options appearing at Table 4-4 of Chapter 4: Alternatives and

Design Evolution of the ES **[APP-036]**, which explains why cable route Option 1 was selected as the preferred cable route option.

- 5.3 On the assumption that cabling is not likely to change dramatically as technology advances, the ExA queried whether the area required for the solar panels and BESS might reduce as a result of developments in technology. Mr Turney agreed with the ExA in relation to the cable corridor in that the Applicant considers that the extent of rights required are appropriate as currently applied for. However, in respect of the pink plots of land, Mr Turney drew the ExA to the following factors:
- 5.3.1 Firstly, in relation to BESS, there are issues raised on battery and fire safety. Mr Turney referred to the Outline Battery Fire Safety Management Plan **[REP2-032]** which sets out possible layouts, effects and safety requirements. One issue is separation distances (in other words, the land around the BESS). Mr Turney explained that in this regard the development of technology might not mean reduced land required; and
- 5.3.2 Secondly, in relation to the solar panels, Mr Turney confirmed that there are various places in the Scheme where the Applicant is looking at constraining the solar panel area. For example, the sets of proposals made for the proposed changes application as set out in Update by the Applicant on Heritage Matters and Substation Connection **[REP3A-037]**. The Applicant's aim is to make the best use of the 500MW connection, and whilst the Scheme is designed to meet environmental considerations, the Applicant must ensure it is making good use of that 500MW connection.
- 5.4 The ExA then referred to the Applicant's response to ExQ1.3.5 **[REP2-37]** in relation to the substation and quoted that '*Negotiations for a lease of land with NGET ceased on 10 March 2022 when the Applicant was informed that Option 1 was no longer available to it*'. The ExA asked that, given Option 1 is no longer available to the Applicant, whether this mean that no lease is required of this land.
- 5.5 Richard Turney, on behalf of the Applicant, confirmed the status of negotiations with National Grid Electricity Transmission plc ('**NGET**') in respect of the works at Burwell substation, namely that Option 3 is technically feasible. Therefore Option 3 has been introduced by virtue of the first change application and Option 1 removed, with the Applicant now proposing to remove Option 2. The Scheme will operate through Option 3, being a 400KV connection between the National Grid substation and the Scheme substation. As a result, there is no longer a need for the Scheme substation at Burwell. In effect, the Applicant is proposing to connect into a modified substation that already exists, therefore there is no need to enter into an arrangement for the freehold CA of land outside the substation for a new substation nor the lease of land within the National Grid substation site (as the works to modify the National Grid substation can be carried out without a lease). Mr Turney confirmed that a lease of NGET's land would have only been required if Option 1 was being pursued. However, now the Applicant has confirmed the feasibility of Option 3, in CA terms the Scheme is preferable as less CA is required.
- 5.6 The ExA continued by reference to the Schedule of Negotiations and Powers Sought **[REP3-007]** and **[REP3-008]** ('**SoN**'), as recently submitted. This submission suggests that negotiations with National Grid are at Step 2 of the Clearance Process for negotiations for the necessary easement. The ExA requested an update on the stages.

5.7 Richard Turney, on behalf of the Applicant, confirmed that an easement would still be required for connecting into the National Grid substation. In terms of stages, Luke Murray from the Applicant suggested that the relevant stages are:

- (a) Submit an application and pay a fee to National Grid;
- (b) National Grid to produce a report for review;
- (c) National Grid and the Applicant to review the report together;
- (d) The Applicant to seek to agree an engineering solution with National Grid;
and
- (e) Agree the relevant related property agreements.

Post-hearing clarification: Mr Murray has provided a post-hearing clarification on behalf of the Applicant, that the steps required are as follows (which slightly varies from the oral submission made at the hearing):

1. Step 1. Customer Enquiry
2. Step 2. Estate Review
3. Step 3. Customer Design
4. Step 4. Engineering Review
5. Step 5. Formal Negotiation
6. Step 6. Legal Completion

5.8 In terms of timescales for the above stages, Mr Murray confirmed to the ExA that there is a timeline on the National Grid website which suggests between 6 to 12 months.

5.9 Mr Turney, on behalf of the Applicant, added for context that the Applicant is settling protective provisions with NGET. Therefore, the technical and legal process for final sign-off of agreements setting out what the Applicant is permitted to do on NGET's landholding do not need to be completed before the conclusion of the examination, as protective provisions will ensure such agreements can be completed thereafter with NGET's interests adequately protected. In other words, the Applicant is seeking to 'twin-track' the technical process and the protective provisions. The Applicant fully expects to reach agreement with NGET over protective provisions before the end of the Examination, which will enable NGET to remove its objection. This will provide the ExA with the necessary comfort irrespective of where the Applicant and NGET have got to in the staged process.

5.10 Mr Turney confirmed to the ExA that the Applicant expects to reach agreement with NGET so that the works can commence under that agreement, rather than having to rely on the protective provisions which are in effect a fall back. However, protective provisions ensure that the DCO powers cannot be exercised in a way which is detrimental to NGET.

- 5.11 Mr Turney added that the only other point for the Applicant to provide is an update on issues raised by HPUT (freeholder) and DDS and LGC (occupiers), which relate to alternatives for cable alignment. Mr Turney updated that the Applicant has been in correspondence with both sets of parties, and the Applicant is very willing to negotiate protective provisions with them to protect their site. The Applicant is in receipt of protective provisions from by HPUT, which the Applicant is currently reviewing.
- 5.12 Ms Tafur, on behalf of HPUT, referred to HPUT's written representation [REP2-144]. This identified what HPUT considered as potential alternatives for cable route and access strategy. For example, routing the cable to the south of the campus as set out in Figure 7 and Figure 8 of [REP2-144]. Ms Tafur also expressed dissatisfaction with the inclusion of alternative access for HGVs in the Applicant's response to the written representation [REP3A-035], as shown in green on Sheet 16 of the Land Plans. Ms Tafur queried why this alternative access was not set out originally and why not all traffic can use that access track. Having said that, although it is not the current position, Ms Tafur was hopeful that protective provisions and side agreement can be agreed ahead of the hearings in February 2023.
- 5.13 Mr Turney, on behalf of the Applicant, re-iterated that the Applicant is in negotiations with HPUT in respect of protective provisions and alternative arrangements, which the Applicant will pursue. The Applicant is satisfied that it would not have been appropriate to propose the cable route to the South of HPUT as set out in its response to the written representation [REP3A-035]. Instead of going into the detail of the merit, Mr Turney concluded that for the purposes of the CAH, the Applicant welcomes HPUT's proposed protective provisions and hopes to resolve HPUT's objection through such provisions. Mr Turney added that, on the basis that DDS and LGC are the occupiers of the land owned by HPUT, the Applicant hopes that the negotiation of protective provisions can take account of both sets of interests, to avoid the need to have two sets of negotiations. The ExA was satisfied that if negotiations are progressing then the Applicant can update in post hearing submissions.
- 5.14 Samuel Nobbs, on behalf of The Mitcham Family, requested further detail from the Applicant around cable design (for example the depth laid to and width/diameters), and particularly the anticipated timescales and agricultural land drainage. Mr Nobbs noted that due to the nature of the land, there may be issues if construction is over a number of years. Richard Turney, on behalf of the Applicant, confirmed that the Applicant would provide information to Mr Nobbs to reflect the level of design currently known. Mr Turney added that the Applicant is also happy to consider appropriate wording in the Construction Environmental Management Plan [REP3-015] ('CEMP') to ensure field drainage is a matter considered by the contractor when it comes to detailed design of the Scheme, to ensure any existing field drainage system is considered (to be diverted or redirected as necessary).
- 5.15 The ExA asked the Applicant whether an Agricultural Liaison Officer is to be appointed. Richard Turney, on behalf of the Applicant, confirmed that the Applicant has committed to liaison on timetabling under the CEMP. However, this is currently proposed to be liaison generally, as opposed to a specific Agricultural Liaison Officer, although general liaison will most naturally be in relation to agricultural issues given the nature of the Scheme. The latest iteration of the CEMP reflects this position, although Mr Turney acknowledged the matters concerning land drainage and the related issues of soil management and suggested that the Applicant would be willing to add in some wording dealing with these matters specifically in the next iteration of the CEMP.

5.16 Jonathan Bower, on behalf of DDS and LGC, supported the earlier submissions of Ms Tafur, but emphasised three points:

- (a) Alternative access through the campus was only proposed by the Applicant post statutory consultation. Then, at Deadline 3A, the proposals have been updated to remove HGV access from the campus. Mr Bower repeated Ms Tafur's uncertainty as to why access for all other traffic cannot be taken away too.
- (b) Mr Bower welcomed the point made earlier by Mr Turney around including DDS and LGC in the ongoing negotiations of protective provisions between the Applicant and HPUT.
- (c) Mr Bower noted the intention to withdraw DDS and LGC's objection by the February 2023 hearings, although he raised concerns with the current pace of engagement and welcomed a faster pace of engagement.

5.17 Richard Turney, on behalf of the Applicant, responded as follows:

- (a) It would not be necessary to go into detail on the access points at the hearing, although the Applicant is willing to provide a summary of why it needs the access proposed;
- (b) On the basis that the Applicant has been negotiating with HPUT, whilst DDS and LGC are separately represented but raising similar concerns, Mr Turney suggested that Ms Tafur and Mr Bower form a united approach to assist in making the negotiations more efficient; and
- (c) Mr Turney suggested that the allegations of a lack of engagement are not reflective of the fact that the Applicant has been engaging with HPUT as the freehold landowner, whose interested are aligned largely with DDS and LGC as the occupier. Mr Turney emphasised the willingness of the Applicant to reach agreement and noted that the Applicant is fairly confident a resolution will be met on the outstanding points.

6. Agenda Item 5 – The compulsory acquisition and related provisions as presented within the draft DCO and the Land Plan

6.1 Which articles engage CA and TP powers

6.1.1 Richard Turney, on behalf of the Applicant, confirmed that Articles 18 through to Article 31 (inclusive) of the draft DCO are concerned with CA and TP.

6.2 The need for the cable corridor width generally, and the particular need for a cable corridor width of up to 100m; and any transfer to National Grid

6.2.1 Richard Turney, on behalf of the Applicant, referred to Appendix A of the SoR [REP2-018] which explains the areas where different approaches to width are taken and the reasons

why. The ExA asked the for the Applicant to provide a brief explanation on this in a post hearing submission to be made by Deadline 4.

Post-hearing submission: The working width which is required for material laydown and construction equipment is expected to be 30m across the majority of the cable corridor; however, the working width increases to 50m and 100m along limited sections of the cable corridor where particular environmental and engineering constraints exist.

The cables will be laid directly into the trenches, or ducting will be installed, and the cables pulled through the ducting. Where the cable route encounters obstacles such as tree root systems, the width of the cable route (both permanent and temporary) may change locally.

Joint bays will be required every 500m to 2km to join sections of cable together. At this stage, a maximum of 90 joint bays are anticipated. The dimensions of these are determined by how many sets of cables will be in the joint bay. The distance between joint bays will be determined through the design process and is dependent on existing infrastructure along the cable route, cable specification and cable delivery limitations.

Articles 27 and 28 permit the Applicant to take temporary possession of any part of the Order land where it has not yet exercised powers of compulsory acquisition – for example, Article 27 would allow the Applicant (for instance) to initially take temporary possession of the cable corridor up to the maximum width as shown on the Land Plans (this is the working width required for construction, estimated to be between 30 to 100 metres at different locations along the cable route, dependent on factors outlined in Appendix A) for the electrical cables and temporary construction laydown along the cable route (Work No. 4) (over which the power to acquire new rights is included in the Order), and once it has carried out detailed surveys and installed the cables, to acquire new rights (pursuant to the powers set out above) only in respect of the relevant strip within that overall corridor in which the permanent easement would be located. Such an approach has precedent amongst other DCOs including the Eggborough Gas Fired Generating Station Order 2018 and the Drax Power (Generating Stations) Order.

6.2.2 At the end of the discussion on Agenda Item 5, Samuel Nobbs (on behalf of The Mitcham Family) re-iterated in relation to this sub-item that that it would be useful for the Applicant to include a clarification of where and why any widths are required above 30m. Mr Turney, on behalf of the Applicant confirmed that this information is in Appendix A to the SoR.

6.2.3 Mr Nobbs raised that The Mitcham Family's main concern is in relation to timetabling for the purposes of planning crop rotations. Mr Nobbs welcomed as much information as possible to enable The Mitcham Family to clarify crop rotations. Mr Turney confirmed that the Applicant will continue discussions with Mr Nobbs and his client(s) offline to provide an indication of the likely project timetable.

6.3 **How the DCO will operate in the context of other nearby projects, including any other projects with agreements to connect at Burwell, and the A11 improvement project, in the various possible consent, construction and operational programme situations**

6.3.1 Richard Turney, on behalf of the Applicant, updated the ExA on how the Applicant intends to deal in the context of other projects:

- (a) In respect of Burwell, various works are anticipated at the substation to facilitate the connection of the Scheme and other schemes in the vicinity. National Grid is responsible for designing and building those works, therefore coordination across the projects is inherent as National Grid will be carrying out the works themselves.
- (b) In respect of the A11 improvement project, the Applicant has considered the Fiveways junction scheme and acknowledged there is potential for diversions, although it is up to National Highways to identify and settle the appropriate alternative diversions. As diversions are a major part of the Strategic Road Network, any diversions would need to consider HGV and similar traffic. The Applicant does not expect any difference from the addition of traffic as a result of the Scheme. The Applicant understands that National Highways plans closure of the gaps between the A11 and Red Lodge, and the Applicant expects that the gap closure work will be completed prior to the construction of the Scheme. If not, there will be diversionary routes that again will be the responsibility of National Highways to manage.

6.4 The ExA asked for confirmation that, in any event, any impact north of Red Lodge would have limited effect. Richard Turney, on behalf of the Applicant, confirmed this was the case. Mr Turney also added that the cumulative impacts from the Scheme in combination with other schemes, including energy schemes tying into Burwell and other developments, in the area have been considered for all environmental disciplines. These assessments are presented within each of the technical chapters in the ES (Chapters 6 to 16 [APP-038 to APP-048]). Two additional cumulative assessments were undertaken in response to the Relevant Representations response [REP1-016], these are presented in Appendix A of the Relevant Representations response for Land North of Acorn Way, allocation SA10(a) and Breach Solar Farm (21/00706/ESF). Although potential effects were identified, all projects and programmes can be delivered.

6.5 The ExA also asked for confirmation that the Applicant is satisfied there are no matters within any extant planning permissions which may have an effect. Richard Turney, on behalf of the Applicant, responded that the interaction with other planning permissions is something more suitably to be addressed at the DCO hearing. The Applicant has picked up any relevant proposals that the Applicant considers relevant. If any further matters are raised during the examination, the Applicant will take any further matters on board.

6.6 **Whether the DCO excludes the application of a compensation provision or modifies it beyond what is necessary to enable that provision to be applied**

6.6.1 Richard Turney, on behalf of the Applicant, confirmed that the compensation provisions at Schedule 9 (Modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants) of the draft DCO do not change the entitlement to compensation but ensures that the compensation code is applied

correctly to additional categories of acquisition covered by the Order – the creation of new rights and the imposition of restrictive covenants in particular. This is consistent with the provisions in other made solar DCOs, for example Cleve Hill Solar Park Order 2020.

6.6.2 For the purposes of Section 126(2) of the Planning Act 2008, the relevant compensation provisions are modified only to the extent necessary to ensure that they apply properly to the acquisition of rights and do not affect the amount of compensation to which landowners would be entitled. Schedule 9 has also been updated to reflect any necessary changes arising as a result of the Housing and Planning Act 2016.

6.7 **Whether protective provisions are in a satisfactory form and one that is agreed with the relevant parties**

6.7.1 Richard Turney, on behalf of the Applicant, referred to the substantive update submitted at Deadline 2 [REP3A-037]. Although there has been progress in each of the protective provisions ('PPs') being negotiated. Mr Turney offered to provide a further detailed update in the written summary.

Post hearing submission: see the below update regarding the negotiation of PPs.

- (a) Agreed and final form PPs in the DCO submitted at Deadline 2 [REP2-012]:
 - (i) **Anglian Water (agreed):** The agreed PPs are contained in Part 3 of Schedule 12 to the draft DCO.
 - (ii) **Cadent Gas Limited (agreed):** The agreed PPs are contained in Part 4 of Schedule 12 to the draft DCO.
 - (iii) **Eastern Power Networks and UK Power Networks (agreed):** The agreed PPs are contained in Part 7 of Schedule 12 to the draft DCO.
 - (iv) **National Highways (agreed):** the agreed PPs are in Part 9 of Schedule 12 to the draft DCO.
 - (v) **Swaffham Internal Drainage Board (agreed):** the agreed PPs are in Part 8 of Schedule 12 to the draft DCO.
- (b) Not yet agreed, but substantial progress has been made and it is expected the PPs will be agreed before the end of the Examination:
 - (i) **Environment Agency (in progress)**
 - (ii) **National Grid Electricity Transmission plc and National Grid Gas plc (in progress)**
 - (iii) **Network Rail (in progress)**
 - (iv) **South Staffordshire Water ("SSW") (in progress)**

(v) **Cambridgeshire County Council as Lead Local Flood Authority (in progress)**

(vi) **Suffolk County Council as Lead Local Flood Authority (in progress)**

(c) There are eight other utility providers (seven telecommunications companies, and one electricity undertaker (Lightsource)) that the Applicant has been in contact with. Lightsource's asset is now in the ownership of UK Power Networks, which has the benefit of agreed PPs. Vodafone and Virgin have confirmed that their assets are not affected by the Scheme. A substantive response is awaited from the remaining telecommunication companies, however standard PPs are included in the draft DCO providing appropriate protection should those parties have assets within the Order limits (provisions for the protection of operators of electronic communications code networks are contained in Part 2 of Schedule 12 to the draft DCO).

6.7.2 Mr Turney also acknowledged additional PPs being negotiated with HPUT. The Applicant is also trying to negotiate a side agreement with the highways authorities to obviate the need for PPs although Mr Turney acknowledged that PPs will likely be needed if the side agreement cannot be finalised by the conclusion of examination.

6.8 **Article 6 (application of legislative provisions); whether to include elements of the approach to TP set out in the Neighbourhood Planning Act 2017**

6.8.1 Richard Turney, on behalf of the Applicant, responded that the relevant provision of the Neighbourhood Planning Act 2017 ('NPA') is that the regulations required to provide more detail on the operation of the regime have not yet been consulted upon, let alone made. This creates uncertainty for the Applicant, and indeed affected persons, as to the legal regime that would apply should the DCO be granted.

6.8.2 As such, it is considered appropriate to apply the 'tried and tested' temporary possession regime which has been included in numerous DCOs and Orders made under the Transport and Works Act 1992 to date and to ensure that this endures throughout construction of the Scheme. The Applicant's approach here is not novel and is consistent with other DCOs made since the NPA came into force. A similar provision was included, for the reasons outlined above, in the Cleve Hill Solar Park Order 2020 (see Article 6), Silvertown Tunnel Order 2018 (see Article 3(1)(p)), the Eggborough Gas Fired Generating Station Order 2018 (see Article 26(12)), the A19/A184 Testo's Junction Alteration Development Consent Order 2018 (see Article 2(7)), the Port of Tilbury (Expansion) Order 2019 (Article 3(g)), the Millbrook Gas Fired Generating Station Order 2019 (see Article 27(13) and Article 28(12)).

6.8.3 Mr Turney confirmed that the Applicant is content that the 14-day minimum notice period is sufficient and appropriate to the Scheme and would ensure that the construction programme would not be threatened. Article 6 of the draft DCO is to be read alongside the CEMP identifying when the Applicant needs possession, and at which plots. Mr Turney confirmed on behalf of the Applicant that it will engage with landowners in a timely fashion, whilst

acknowledging that although the DCO provision is important, the commitment to engagement with landowners on matters of timetabling is equally important. The CEMP provides for liaison with landowners which would therefore ensure that landowners are aware of the construction programme in advance of any notice being served, if voluntary agreement is not reached.

6.9 Articles 27 and 28 (temporary use of land); whether the draft DCO provides clarity for landowners in the preliminary works, construction, maintenance and decommissioning scenarios, and where the project is delivered in phases and/or to different programmes

6.9.1 The ExA asked the Applicant whether its intention is to have a stakeholder community plan, so that matters relating to Articles 27 and 28 allows stakeholders to be communicated to. The ExA referred to the Applicant's response to ExQ.1.3.18 [REP2-037] and the reference to a Community Liaison Group in the CEMP.

6.9.2 Richard Turney, on behalf of the Applicant, confirmed that this is what the Applicant envisages in the latest version of the CEMP, although the Applicant is willing to revisit the wording if required. Mr Turney acknowledged that in the context of this particular issue, it is important for landowners to know why rights are being sought.

7. Agenda Item 6 – Statutory conditions and general principles

7.1 The Applicant to confirm that the application includes a request for CA in accordance with section 123(2) of the Planning Act 2008 (PA 2008)

7.1.1 Richard Turney, on behalf of the Applicant, confirmed that the application includes a request for compulsory acquisition in accordance with section 123(2) of the Planning Act 2008. The extent of the compulsory acquisition of land and rights is set out in Section 4 of the SoR.

7.2 The Applicant to set out briefly whether the purposes for which the CA powers are sought comply with section 122(2) of the PA 2008

7.2.1 Mr Turney also confirmed that land is required for development for which the DCO application relates. The SoR sets out why the land identified is required for the development.

7.3 Whether consideration has been given to all reasonable alternatives to CA and TP

7.3.1 Mr Turney submitted that the first point to note is that the Applicant has attempted to acquire the land subject to the CA and TP powers through voluntary agreement. For example, the Applicant is in process of securing the necessary property rights for the solar farm site itself (all option agreements have either been exchanged or are about to be exchanged).

7.3.2 In relation to the cable route however, Mr Turney stated that it has not been possible to acquire all of the necessary land and rights by agreement in respect of the underground grid connection cable route and works to facilitate access, despite efforts by the Applicant to do

so. The key point is the focus of the Applicant on taking rights only. In other words, the Applicant is avoiding the CA of the freehold title.

7.3.3 Mr Turney also confirmed to the ExA that this approach forms part of the rationale for pursuing Option 3, as this option does not require CA of the freehold land close to Burwell.

7.4 **Whether the rights to be acquired, including those for temporary possession, are necessary and proportionate**

7.4.1 Mr Turney stated that the rights to be acquired are necessary and proportionate, as set out in the SoR, which is to be read along with the Works Plans [APP-007]. The Applicant has attempted to reduce the extent of the Scheme where possible in response to particular constraints. Mr Turney highlighted that there are various Scheme refinements which indicate that what is remaining is necessary and proportionate to the Scheme benefits.

7.5 **Whether, in accordance with section 122(3) of the PA 2008, there is a compelling case in the public interest for the CA proposed, both in relation to the need in the public interest for the project to be carried out and in respect of the private loss to those affected**

7.5.1 Mr Turney emphasised the need for the Scheme as being urgent and very significant. In such circumstances, the Applicant is able to justify the extent of the land required and the nature of the rights required, which is a clear case for concluding a compelling case in the public interest.

7.5.2 The ExA clarified whether this conclusion applies in the context of the current policy situation. Mr Turney, on behalf of the Applicant, confirmed that the national policy referred to in the SoR supports this conclusion.

8. Agenda Item 7 – Review of Objections Schedule and related matters

8.1.1 Jonathan Bower, on behalf of DDS and LGC, indicated that DDS or LGC are not mentioned in the SoN. Mr Bower requested that the Applicant includes DDS and LGC in the next iteration. Richard Turney, on behalf of the Applicant, confirmed that the Applicant will issue a revised SoN for Deadline 4 which will include Mr Bower's clients.

9. Agenda Items 8 to 12 (inclusive)

9.1 The ExA adjourned the meeting. As the following agenda items were not discussed in full, they will each be formal agenda items for when the hearing resumes in February 2023:

9.1.1 Agenda Item 8 – Funding

9.1.2 Agenda Item 9 – Statutory undertakers

9.1.3 Agenda Item 10 – Crown land

- 9.1.4 Agenda Item 11 – Public open space
- 9.1.5 Agenda Item 12 – Human rights and Public Sector Equality Duty (PSED)
- 9.2 In the meantime, Richard Turney made the following submissions on behalf of the Applicant:
 - 9.2.1 Agenda Item 8 – The Applicant will put an update in for the Funding Statement [**APP-023**] by Deadline 5.
 - 9.2.2 Agenda Item 9 – The detail will need to be discussed in February.
 - 9.2.3 Agenda Item 10 – There is one plot of Crown Land (Plot 4-03), which the Applicant and National Highways are in negotiations over. In any event, Article 45 of the draft DCO would deal with this issue. Mr Turney confirmed that the Applicant will update the ExA in advance of February 2023 whether the Applicant believes anything further is to be discussed¹.
 - 9.2.4 Agenda Item 11 – Following its enquiries, the Applicant has not identified any special category land².

¹ The ExA confirmed that this shall be kept formerly on the agenda but it can be dealt with quickly at the re-convened hearing.

² As above.

10. Agenda Item 13 – Next steps

10.1 Actions for parties arising out of the Hearing

10.1.1 The ExA read out its list of actions from the CAH which were published on the PINS website following the hearing:

10.1.2 **The Applicant can confirm the position in respect of the Deadline 4 actions (i.e. where they can be found within the Applicant's Deadline 4 submissions) in the table below:**

| ExA Action | Response in Deadline 4 submissions |
|---|---|
| Applicant to revise the BoR [REP3-003] to ensure that any cross-referencing in the BoR coincides with the relevant DCO, by Deadline 4. | This document has been submitted at Deadline 4 under Application document reference: EN010106/APP/4.3 |
| Applicant to update the Land and Crown Land Plans [REP2-003] to regularise where any plots are coloured green, by Deadline 4. | This document has been submitted at Deadline 4 under Application document reference: EN010106/APP/2.1 |
| Applicant to progress negotiations of the licence agreement in relation to Plot 21-04 in lieu of relying on temporary possession under Article 28 of the draft DCO, by Deadline 4. | An update is provided at paragraph 4.7 of this written summary of the Applicant's oral submissions. |
| Applicant to submit an updated Schedule of Negotiations and Powers Sought [APP-025], to include the updated position with National Grid and to add in the status of negotiations with Drug Development Solutions Limited, LGC Limited and LGC Bioresearch Limited. | This document has been submitted at Deadline 4 under Application document reference: EN010106/APP/4.4 |
| Applicant to submit post hearing submissions to elucidate where cable widths need to differ from the normal 30m, by reference to a document where possible. | This has been addressed at paragraph 6.2.1 of this written summary of the Applicant's oral submissions. |
| Applicant to give an update on all protective provisions, including the status of discussions with the county councils as the lead flood authorities. | This has been addressed at paragraph 6.7.1 of this written summary of the Applicant's oral submissions. |

11. Agenda Item 14 – Adjournment of hearing

11.1 The ExA adjourned the hearing at 16:59pm, to be resumed on Tuesday 14 February 2023.