

Our Reference: CLA.D5.OS.A.C

Your Reference: EN010106

Comments on the Applicant's D4 submissions

This document sets out the comments on the Applicant's Deadline 4 (D4) submissions by Cambridgeshire County Council (**CCC**). The tables below set out the document in question that the Council is commenting on, together with the relevant paragraph or reference number.

Except where expressly stated otherwise below, the Council reiterates and relies on its comments submitted to the ExA at previous deadlines.

2.1 Land and Crown Land Plans - Rev: 04 [REP4-003 and REP4-004]

Topic	Paragraph Number	Council's Comment
Proposed use of land	Relevant to all plans	The Council requests that the Applicant provide details of its intended use for the land where it proposes to temporarily compulsorily acquire rights from the local highway authority (LHA). We also request that the Applicant provide details of its intended use for the land where it proposes to temporarily compulsorily acquire rights where highway rights also exist? Without such information, it is difficult for the local highway authority to fully understand the impact of the Applicant's proposals on the highway network and the effect that the proposals could have on the authority's ability to carry out its statutory functions.
Extent of highway	Relevant to all plans	It is assumed that the undertaker wishes to install cabling beneath or above the highways that the new infrastructure will cross. Indeed, Article 26 of the draft DCO grants the undertaker the right to use subsoil or airspace below and above any street within the order limits. It is considered imperative that the undertaker engages with the LHA in respect of any highway that the proposed works will intersect with, prior to undertaking any works in the vicinity of the highway. Clearly the width of the highway will need to be clear to the undertaker, in order to ensure that no unauthorised or accidental incursion into the highway occurs. However, the vertical extent of the highway also needs to be considered in these circumstances, as the area over which the LHA has a vested interest extends both above and below the road surface. The extent of that interest will vary depending on the nature of the highway and its use by the public – for instance, an A road may have a broader vertical plane than a minor unclassified road.
Effect of temporary acquisition of land on	Relevant to all plans	The Council requests that the Applicant explains whether the temporary possession of rights in land that carries public highway will have any effect on the rights of the public user, or the responsibilities of the local highway authority. It is unclear whether the undertaker

the interests of the highway authority		assumes any legal obligations in respect of the highway, as a result of temporarily acquiring rights over land where highway rights exist. Further, we request that the Applicant explains whether the temporary acquisition of rights over land owned by the LHA, but which does not form part of the public highway, will have any impact on the LHA's ability to use that land for the purposes of managing and maintaining the highway.
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8.18 Draft Statement of Common Ground with Suffolk Wildlife Trust - Rev: 01 [REP4-019]

Topic	Paragraph Number	Council's Comment
Assessment – Designated Sites: Impact to County Wildlife Sites - cabling	Table 2, row 1, page 6	The Council welcomes the proposed addition to the CEMP at Deadline 5 to provide further reassurance that drilling methods will be appropriate for the conditions, to avoid failure. However, the impact of the drilling on the County Wildlife Sites must be overseen by an Ecological Clerk of Work and monitoring / remedial actions undertaken, should any impacts occur. This should also be included in the CEMP.
Assessment - Aquatic invertebrates	Table 2, row 1, page 7	<p>The Council welcomes confirmation that <i>“monitoring will be undertaken of those aquatic macroinvertebrates taxa potential at risk of being attracted to solar panels from waterbodies and watercourses”</i>. However, this has not been included within the Post-Construction Monitoring section (para 1.8.31) of the framework LEMP [REP3-011].</p> <p>The Council requires the framework LEMP to be updated to include the proposed monitoring of aquatic invertebrate monitoring.</p> <p>The Councils seek further clarification as to the areas of site that will be monitored. We expect it would include land in close proximity to the existing watercourses (e.g. Lee Brook).</p>

8.57 Written Summary of Applicant's Oral Submissions at the Issue Specific Hearing – Environmental Matters on 7 December 2022 [REP4-030]

Topic	Paragraph Number	Council's Comment
Bird surveys	3.1.7	<p>The post meeting note states that further surveys prior to commencement of construction will be carried out to reaffirm the baseline for ground nesting birds in particular is <i>“secured through the Framework CEMP [REP3-015]”</i>.</p> <p>However, the Framework CEMP [REP3-015] states that <i>“Pre-construction surveys will be undertaken to validate and, if necessary, update the baseline habitat survey findings and to</i></p>

		<p><i>update on the presence and location of invasive species</i>" (page 16C-17), but does not include pre-commencement surveys for protected species.</p> <p>The Councils request the wording of the FCEMP be updated to include updates for baseline habitat <u>and</u> protected species.</p>
Impacts on Stone Curlews and adequacy of proposed mitigation	3.2.13	The Councils welcomes confirmation that the Applicant will be updating the Offsetting Habitat Provision for Stone-Curlew Specification [APP-258] and LEMP at the Hearing for Deadline 5.
Bats – AIA	3.3.13	The Councils request that the Applicant submits further evidence to demonstrate that <i>"there is nothing new in the AIA that would alter the conclusions of the existing [ecological] assessment"</i> .
Bats - CEMP	3.3.16	<p>Professor Wade confirmed that measures relating to bats are secured through the Framework Construction Environment Management Plan (CEMP) [REP3-015]. However, the Councils cannot find any reference within the CEMP to the requirement for pre-commencement surveys for bats. The Councils are particularly concerned given the Applicant has confirmed on page 39 of their response the Councils' Local Impact Report [REP3-019] that <i>"bat roost surveys (emergence/re-entry) will be necessary"</i> for tree(s) of high potential for roosting bats and <i>"if a bat roost is confirmed at this location a bat mitigation licence (e.g. an EPSML) will be required to be obtained prior to the loss of this roost"</i>.</p> <p>The Councils request the framework CEMP is updated to address this matter.</p>

8.58 Written Summary of Applicant's Oral Submissions at the Issue Specific Hearing 3 (ISH3) on 8 December 2022 **[REP4-032]**

Topic	Paragraph Number	Council's Comment
PROW gains	7.9.4	<p>In response to CCC's request for permanent dedicated paths within the scheme boundary, Mr Turney said that the Applicant was not able to dedicate rights of way within the scheme boundary because it would be a leaseholder; it was not compulsorily acquiring the land.</p> <p>Camilla Rhodes of CCC said that the proposed status of the land had been unclear which had made it difficult for the LHAs to know how to approach the matter of appropriate PROW gains. Mr Turney stated that the Applicant was <i>"entirely supportive of making meaningful contributions to the local communities to mitigate the adverse impact of the scheme"</i> and was <i>"willing to look at funding gains"</i>.</p>

8.61 Applicant's response to East Cambridgeshire District Council, Cambridgeshire County Council, Suffolk County Council and West Suffolk Council Deadline 2, 3 and 3A Submissions [REP4-035]

Topic	Paragraph Number	Council's Comment
Lack of protection for decommissioning phase	Page 10	<p>The Applicant states that the <i>"DEMP will include measures relating to landscape and ecology in line with the Framework DEMP"</i>. There is no provision within the framework DEMP to manage habitats, either those retained or reinstated as part of the decommissioning works. The LEMP required under Regulation 8(2)b [REP4-005] only covers the management of maintenance of <i>"landscape / ecological measures during the operational life of the authorised development to the date on which the decommissioning environmental management plan is implemented pursuant to requirement 22 (decommissioning and restoration)."</i> Therefore, there will be no LEMP to cover the decommissioning phase or a period of restoration to ensure that all habitats (either retained or reinstated as part of decommissioning) will establish and achieve their target condition.</p> <p>The Council is concerned that habitats will not be protected during the decommissioning / restoration phase due to the lack of habitat management, which is likely to result in failure of any mitigation / compensatory habitat (required as part of the decommissioning works) and decline in the quality of any retained habitats.</p> <p>The Council require this issue be addressed through the rewording of Requirement 22 to include the production and implementation of a LEMP to cover the decommissioning and restoration phase. This should cover both the management of retained and reinstated habitats, ensuring appropriate establishment of the habitats and management towards their target conditions. Management should be sought in perpetuity, as discussed within section 8 of the Council's Written Summary of Oral Case for Issue Specific Hearing 2 [REP4-080]</p>
Stone Curlew – Deadline 3A submission: Q1.2.5 & Q1.2.7	Pages 11-13	<p>The Council's concerns have not been addressed.</p> <p>The Councils await further clarification within an updated Offsetting Habitat Provision for Stone Curlew Specification – to be submitted by the Applicant at Deadline 5.</p>

Biodiversity Net Gain – Deadline 3A submissions ExQ1	Pages 13-14	<p>The Council's concerns have not been addressed.</p> <p>The Council awaits submission to the Examination by the Applicant of a technical note detailing calculations using the latest BNG metric 3.1 and accounting for the proposed changes to the scheme.</p>
Site access and Crane routes – Deadline 2 submission: Q1.10.45	Pages 27-29	<p>The Council's concerns have not been wholly addressed regarding the need for the Applicant to establish highway boundaries, in order to accurately ascertain whether the Applicant will have sufficient powers within the DCO to undertake the necessary works to actually deliver the scheme,. Without this data, the Applicant may find that that delivery is constrained in ways it has not anticipated, which would raise risk and cost to the scheme.</p>
Site access and Crane routes – Deadline 2 submission: Q1.10.45	Para 1, Page 27	<p>This will require further detailed review of the amended Annex C of the Framework Construction Traffic Management Plan [REP3A-004]. The local highway authority however continue to have significant reservations regarding the details provided at many accesses.</p>
Site access and Crane routes – Deadline 2 submission: Q1.10.45	Para 2, Page 27	<p>While discussions have been ongoing regarding the La Hogue Road passing bays, safe use by HGVs has not yet been established. The Applicant should be invited to provide a fully independent Stage 1 Road Safety Audit, having first received approval for the Audit Brief and proposed Audit Team from the local highway authority as Overseeing Organisation. Any problems identified in the audit should then be resolved to the satisfaction of the local highway authority prior to determination.</p>
Site access and Crane routes – Deadline 2 submission: Q1.10.45	Para 2, Page 28	<p>The Applicant indicates that they do not anticipate large loads being required to use the accesses during the operational phase; it remains unclear what activity can be anticipated in the event that maintenance is required. This would presumably include delivery of some materials and plant, which will share many accesses with existing ongoing agricultural use. With regard to Article 5(3), Environmental Statement assessments are not considered appropriate in determining whether the impact of proposed use during the operational phase would be detrimental to highway safety.</p>
Public Rights of Way (PRoW) – Article 11	Page 29	<p>The Councils reiterate that temporary closures must be a last resort, and that, if they are required, alternative routes must be provided. The Applicant stated at ISH3 that there could be room within the authorised corridor for works, as the minimum space needed for cable works was 8-10m.</p> <p>It would be helpful within the CTMP [REP3A-004] for cross-reference to be made to the CEMP [REP3-015] to ensure that contractors are aware of the environmental reasons for minimising temporary closures of PROW.</p>

		The Councils have provided proposed amended wording on this subject, in response to the ExA 2 nd written questions (Q2.9.10).
Public Rights of Way (PRoW) – Article 11(1)(b)	Page 30	The Councils welcome the amendment to this Article, but highlights the corresponding provision at Schedule 6 also needs to be amended to align correctly with Article 11. Column 3 of Schedule 6 Part 2 currently states that “ <i>motor vehicles under the direction of the undertaker may pass along, or cross, the length of the public right of way</i> ”. This should be amended to say “ <i>motor vehicles under the direction of the undertaker may cross the public right of way</i> ”.
Public Rights of Way (PRoW) – Consultation procedure	Page 30	The Councils refer to previous comments made in their D4 submission [REP4-137].
Public Rights of Way (PRoW) – Schedule 1 permissive path	Page 30	The Councils note that the Applicant is updating its OLEMP and Environmental Masterplan and awaits these amendments before commenting further.
Public Rights of Way (PRoW) – Schedule 2: impact of noise on equestrians	Pages 30-31	The Councils refer to previous comments made in their D4 submission [REP4-137].
Access to Works – Q1.5.22 Article 12	Para 2 (Page 31)	From ongoing discussions with the Applicant, it is unclear whether approval of the detailed design of junctions and other works within the highway will be through the CTMP or separate approval process; and if the former, whether the CTMP is the appropriate means in planning terms of approving permanent works that extend beyond the construction phase. Feasibility of providing safe access within land within the Applicant’s control and the public highway must first be established; this must include consideration of the proposed uncontrolled use of accesses during the operational phase. It is not considered appropriate to intensify use of any existing access, however minimally, where that access is already deficient in terms of geometry and visibility for its existing use, such that road safety would be further compromised.
Access to Works – Q1.5.22 Article 12	Para 3 (Page 31)	The local highway authority will continue to have ongoing responsibility for road safety after implementation of this scheme, and any statutory powers given to the Applicant must not therefore compromise the authority’s ability to ensure that safe access is provided.

Access to Works – Q1.5.22 Article 12	Para 2 (Page 32)	It is noted that outline planning permission would require that it is feasible to deliver the proposals as part of a full application. Annex C does not yet provide the appropriate level of confidence in this regard.
Vehicular Access Schedule 2 (Requirement 16)	Para 3 (Page 32)	It remains unclear whether CTMP is the appropriate means of approving permanent works that extend beyond the construction phase. Irrespective of the approval process for detailed design, the feasibility of providing safe access must be established prior to determination of this application as detailed in response to Q1.5.22 of Article 12.
Highways – Article 10	Page 33	It is noted and welcomed that the Applicant is in the process of negotiating Head of Terms in respect of highway matters. This relates to a proposed agreement which would set out the legal framework in respect of highways matters”. Until significant progress is made on matters related to the Highway Authority’s involvement in the design, inspection, certification, and adoption of works within or affecting the highway, CCC will retain its concerns about Article 10 and its objection to the current wording.
Construction Traffic Management Plan – Post Hearing Submissions	Para 1 (Page 35)	This issue has yet to be resolved to the satisfaction of the Highway Authority.
Abnormal Loads Q1.10.6 Councils specific concerns	Point 6 (Page 41)	It is noted in the response that the highway extent has been requested; updated plans should be provided for review.
Abnormal loads – access to Sunnica East Site A: plans do not show highway boundaries	Page 44	Land Registry data will only show freehold land, where registered; it does not show highway rights. The LHAs have therefore strongly recommended that the Applicant obtains this data from them. We note that the Applicant states on page 44 that they have requested highway boundary data from the LHA. At the time of writing, CCC has not yet received such a request but trusts that it will be received shortly.
Site Access and Crane use. Q1.10.40, 1.10.42 and Q1.10.44	Para 4 (Page 45)	Any use beyond the existing agricultural use is considered an intensification and appropriate improvements are needed to the access. Where powers to maintain are to be included in the DCO, suitable means of access should be established, recognising the possible need for delivery of plant and materials during the operational phase.

		The Environmental Statement is not considered appropriate in assessing whether the potential maintenance use of access will have any detrimental effect on highway safety.
	Para 6 (Page 45)	While discussions are ongoing, the suitability of proposals in Annex C have yet to be agreed.
	Para 2/3 (Page 46)	This is noted and should again be reviewed once appropriate information has been included on plan.
Appendix A Brief comments on then Transportation and access Technical Note	11.1.4 Para 3 (page 62)	<p>Provision of information commensurate with an outline application would be considered appropriate providing:</p> <ol style="list-style-type: none"> 1. The information provided at this stage is sufficient to determine that construction of safe accesses can be feasibly achieved within the DCO and/or highway boundary. 2. That suitable measures are in place for the Highway Authority to approve detailed design in a similar fashion to reserved matters applications. It is unclear whether the Applicant intends this to be through submission of the Construction Traffic Management Plan, and whether this would be sufficient in planning terms with respect to the proposed permanent works. 3. That appropriate control is maintained by the Highway Authority, via a separate legal Agreement, in the approval of the detail design for any works within the public highway – including the specification and form of construction, all of which, it is suggested, should align with the Highway Authorities' current processes for s278 agreements (including payment of applicable fees).

8.66 Appendix 9C: Flood Risk Assessment Addendum - Parts 1 and 2 [REP4-040 and REP4-041]

Topic	Paragraph Number	Council's Comment
Revised peak rainfall climate change guidance	5.1.11	We welcome the use of the FEH data. We note in chapter 5 - Revised peak rainfall climate change guidance, the increase in total storage to provide capacity to accommodate the revised average storage required. This is based on assumed infiltration rates as per the original principles of the Drainage Strategy. Should infiltration testing as part of ground investigations show the need to accommodate the upper range, suitable proposals will need to come forward as part of Requirement 12, Surface Water Drainage Strategy.

