

Cambridgeshire County Council (20031358)
East Cambridgeshire District Council (20031149)
Suffolk County Council (20031377)
West Suffolk Council (20031311)

Joint answers to Examining Authority's Questions 3 (ExQ3)

Sunnica Energy Farm (EN010106)

Deadline 7

3 March 2023

Preamble:

This document has been prepared jointly by the four host local authorities to avoid duplication of work, especially where technical expertise is shared between authorities, based on a template provided by the Planning Inspectorate case team. For ease of use, questions which are not addressed to the local authorities have been greyed out.

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ExQ3	Question to:	Question:	Local Authority Answer:
3.0 Principle and Nature of the Development			
Q3.0.1	The Applicant	Decommissioning	
Q3.0.2	The Applicant	Decommissioning	
Q3.0.3	The Applicant	Decommissioning	
Q3.0.4	The Applicant	Good design	
Q3.0.5	The Applicant	Community benefit and legacy	
3.1 Air Quality and Human Health			
Q3.1.1	The Applicant	BESS: future large scale solar farm projects	
Q3.1.2	The Applicant, WSC, ECDC	<p>BESS: relevant regulations</p> <p>Are you aware of any proposals before Parliament to bring specifically within scope of the relevant regulations large scale battery storage development for solar energy projects? If so, please provide brief details.</p>	<p>The Councils are aware of a 10-minute rule motion introduced by Maria Miller MP on 7 September 2022 which would specifically bring lithium-ion battery storage development within the scope of the relevant regulations and would make Fire and Rescue Services statutory consultees for planning applications for these.</p> <p>The text of the bill does not appear to be available, but the Hansard reference for the motion debate is available at the following link:</p> <p>██</p> <p>██</p> <p>██</p> <p>██</p>

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			<p>The second reading of the bill will be on 24 March 2023, meaning that it is unlikely to be passed into law before the close of this examination.</p> <p>In any case, it is the Councils’ understanding that though this bill would provide specifically for lithium-ion batteries to be brought within the scope of the relevant regulations, it does not mean that particular battery storage developments do not already fall within the scope of the regulations.</p>
Q3.1.3	The Applicant	BESS: COMAH and P(HS) regulations	
Q3.1.4	The relevant local authorities	<p>BESS: design assumptions</p> <p>Please comment on the Applicant’s response to our ExQ2.1.4 in respect of assumptions made about the size, power rating and chemical make-up of the BESS and the consequent assessment of the impacts.</p>	<p>The question appears to be focussed on air quality impacts. WSC agrees with the Applicant’s response in so far as the assessment of air quality is concerned. WSC accepts that the further modelling assessments in respect of air quality are secured via Requirement 7. However, in the absence of any further information more generally, WSC remains concerned about the risks posed by the BESS. These concerns have been raised in previous submissions [REP1-024] [REP4-132]</p> <p>East Cambridgeshire District Council would like to point out that the given the chemical make-up not being known, a reasonable worst case scenario cannot be considered. It is unknown therefore how the developer expects the ExA to make a reasoned decision based upon the Rochdale Envelope. The Council has provided comments via Counsel submissions on the BESS systems (REP5-081). As it currently stands Requirement 7 could, in theory, be discharged based</p>

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			on the fire service comments, whilst the separate hazardous substances consent could well be refused based upon its own consultation and consideration. Given that the HSE has shown little willingness to consider the risks of batteries, the District Council’s may be faced with the only professional input coming from Doctor Fordham in order to make its decision. This may well lead to the application being significantly delayed and/or being recommended for refusal.
Q3.1.5	HSE UKHSA and EA	BESS: unplanned atmospheric emissions	
Q3.1.6	HSE and EA	BESS: consent under COMAH and P(HS)	
Q3.1.7	WSC	<p>BESS: hazardous substances consent</p> <p>You state in your Deadline 5 reply [REP5-101] to the Applicant’s response to the LA’s joint submissions [REP4-035] that the DCO should provide for the granting of hazardous substances consent in the event that it is required, rather than it being subject to a separate consenting process.</p> <ul style="list-style-type: none"> • Would it not be more practicable and effective to require the Applicant to meet the standards set out in the consenting regime for such matters? • Do you have cause for concern that such regime would not adequately deal with those matters, and if so, why? 	<p>The District Councils accept that, as an alternative to the DCO providing for the granting of hazardous substances consent, it may be considered practicable and effective to require the Applicant to meet the standards set out in the consenting regime for such matters. However, we note that at least part of the reason this would now be an effective route is because the Applicant failed to provide any details regarding the BESS during (and prior) to this examination, contrary to NPS EN-1 (para.4.12.1 and footnote 94).</p> <p>As to any application for a separate Hazardous Substances Consent and any other associated and relevant regulations, the District Councils are conscious of the risks inherent in the BESS, the potential for serious adverse impacts, and the technical complexity involved. The Councils therefore remains concerned that to date the HSE does not appear to have actively engaged with this examination and that a</p>

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			proper review of such information is dependent on the HSE’s involvement. The Councils do not have the technical expertise to assess such information and would be entirely reliant on the HSE for advice. In the circumstances, the Councils have concerns about how the separate consenting regime will be effectively addressed.
Q3.1.8	The Applicant	BESS: emergency response plan	
Q3.1.9	The Applicant	BESS: final version of the outline Battery Fire Safety Management Plan (OBFSMP)	
Q3.1.10	HSE	BESS: health and safety related concerns	
Q3.1.11	The Applicant	Emergency response and evacuation planning	
3.2 Biodiversity and Nature Conservation (including Habitats Regulation Assessment)			
Q3.2.1	The Applicant	Framework CEMP [REP5-044]	
Q3.2.2	The Applicant	Framework CEMP [REP5-044]	
Q3.2.3	The Applicant	Framework CEMP [REP5-044]	
Q3.2.4	The Applicant, the LPAs	Ecology working group How is it proposed to continue to fund the Ecology Working Group, including funding work undertaken by that group?	The Ecology Working Group will have a key role in the managing and monitoring of the LEMP, which is secured by requirement of the DCO, and it is therefore essential that they are appropriately funded to ensure that attendance by the Councils can be resourced. It also cannot be assumed that Statutory Consultees will have the resources to participate in this group.

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			<p>The Councils are keen to participate, but do not have funds to support the Ecology Working Group in addition to their existing statutory duties, and consider it appropriate for developers to resource work generated as a result of their scheme.</p> <p>Funding will need to be secured through a S106 to allow the Ecology Working Group to continue during the lifetime of the development. The Applicant’s current position is that the OLEMP is the appropriate place to deal with ecology obligations [as per comments on draft S106 provided to Councils 17/02/2023], however the Councils do not see how this is set out in the OLEMP as currently drafted, or why this is a better means to secure monetary contributions.</p>
Q3.2.5	The Applicant	ISH2: correction	
Q3.2.6	The Applicant	HRA: dust monitoring	
Q3.2.7	NE	HRA: stone curlew	
Q3.2.8	NE	HRA: conservation objectives	
Q3.2.9	NE	HRA: Eversden and Wimpole Woods SAC	
Q3.2.10	NE	HRA: noise and light spill	
Q3.2.11	NE	HRA: air quality	
Q3.2.12	Relevant local authorities, SNTS	<p>HRA: in-combination assessment</p> <p>Are IPs satisfied that the Applicant’s in combination assessments, contained within its</p>	<p>The Councils provided a list of applications it considered relevant to the HRA in its LIR [REP1-024] page 83. An update on the status of these applications was provided in West Suffolk Councils ‘Comments on applicant’s deadline 5 submissions’ [REP6-080].</p>

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		<p>HRA Report has fully considered all relevant plans or projects? If not, what assessment remains outstanding?</p>	<p>A further update on ‘Bexwell to Bury St Edmunds Pipeline in East Cambridgeshire (Ecdc ref 18/00752/ESO). Construction effects will also be controlled by implementation of the CEMP which requires pre-construction Stone Curlew survey to be undertaken within 500m of the pipeline corridor.</p> <p>The Applicants HRA, in section 4.4, lists the types of projects and plans that should be considered (based on PINS advice note 10) and lists the projects they have considered in table 4-3. The project types, in section 4.4.1, excludes ‘projects identified in the relevant development plan’ as set out in PINS advice note 10.</p> <p>Table 4-3 of the HRA Report omits an assessment of the potential for in-combination effects on site SA4 allocated in the Site Allocations Local Plan (2019) for the Forest Heath area of West Suffolk – see pages 31-34. Site SA4(a) Focus of growth – Land west of Mildenhall allocates land for a mixed-use development in Mildenhall which includes 1300 dwellings. The Councils concern in relation to in-combination effects are in LIR 8.69 [REP1-024]</p>
Q3.2.13	LPAs, SNTS	<p>HRA: great crested newt Are IPs satisfied with the conclusion of no LSE on the Great Crested Newt (<i>Triturus cristatus</i>) qualifying feature at Fenland SAC?</p>	<p>The Councils are satisfied with the conclusion of no LSE on the Great Crested Newt (<i>Triturus cristatus</i>) qualifying feature at Fenland SAC “due to the absence of the species from Chippenham Fen and the distance between Wicken Fen and Woodwalton Fen and the Order land” as stated on page 8M-42 of Table 4.1 of Appendix 8M Habitats Regulations Assessment: Report to Inform an Appropriate Assessment [REP5-045].</p>

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			<p>Natural England, who manage Chippenham Fen have confirmed to the Councils that there was a single record of Great Crested Newt (GCN) at Chippenham Fen (around 2014) inputted into a recording database (MAGIC / NBIS). However, upon thorough investigation and detailed GCN survey work, it was concluded this record was an error in the dataset and there have been no valid records of GCN at Chippenham Fen. Therefore, the Councils are satisfied with the Applicant’s statement in Table 4.1 of Appendix 8M Habitats Regulations Assessment: Report to Inform an Appropriate Assessment [REP5-045] that “Great Crested Newt is not known to be present at Chippenham Fen” (page 8M-42), upon which their assessment for no LSE is based.</p>
3.3 Compulsory Acquisition, Temporary Possession and Other Land or Rights Considerations			
The ExA has no questions in this round.			
3.4 Cultural Heritage and Historic Environment			
The ExA has no questions in this round.			
3.5 Draft Development Consent Order (dDCO)			
Q3.5.1	The Applicant, ECDC, WSC	<p>Fees Schedule and related matters</p> <ul style="list-style-type: none"> • How would the DCO be amended, with possible reference to Schedule 13, paragraph 2, to incorporate an eventual Fees Schedule for the discharge of Requirements in the DCO? • What further changes are necessary or desirable to the proposed wording set out by WSC in its Deadline 5 submissions? 	<p>The importance of securing an appropriate fee to enable the Councils to properly resource the determination of the requirements must not be under stated. The suggestion that the requirements will somehow be straightforward because there is a repetition of the same type of development fails to take account of the varying contexts of the different parcels and the complex interrelationships between the different issues, many of which have not been fully bottomed out due to a lack of detail at this stage.</p>

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		<ul style="list-style-type: none"> • How would a commitment by the Applicant to pay, prior to commencement, a contribution towards enforcement monitoring during the lifetime of the proposed development be best secured? • Are there any significant examples, of which the District Councils or the Applicant are aware, of monetary commitments set out in plans certified in a DCO, where a dispute has arisen and was resolved through enforcement of the relevant DCO Requirement? 	<p>We are mindful that a large amount of detail has been pushed to the requirement stage and we anticipate that dealing with the requirements in a timely manner is going to result in a significant strain on resources for the local authorities. In this regard we believe the fees proposed are an appropriate reflection of the officer time and financial burden that is likely to be involved.</p> <p>WSC has a single Ecology and landscape Officer covering the whole district and the consideration of the requirements will be a significant strain on this resource. East Cambridgeshire District Council (ECDC) does not have an ecologist or landscape officer and would need to hire in this resource. The Councils will have to send work out to consultants which they would have to finance.</p> <p>In addition the applicant is seeking determination within one month, this will require a large amount of resource in order to determine this large scale multi discipline project in that timeframe.</p> <p>The fees for the requirement need to cover this the additional cost.</p> <p>The district Councils consider that the DCO should be amended to include the fee schedule submitted at deadline five, appropriately updated to fund the agreement of technical details</p>
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			<p>The only suggested changes to the wording proposed at deadline 5 is that the appropriate fee category for requirement 6 is the erection/alterations/replacement of plant and machinery and that the maximum fee for each authority is set at a maximum of £150,000 and the enforcement monitoring element would be more appropriate in the S106.</p> <table border="1" data-bbox="1279 512 2031 1327"> <thead> <tr> <th data-bbox="1279 512 1816 568"><i>Requirement</i></th> <th data-bbox="1816 512 2031 568"><i>Fee</i></th> </tr> </thead> <tbody> <tr> <td data-bbox="1279 568 1816 756"> <p>Category 1: reserved matters (major)</p> <p>Requirement 6: Detailed design approval</p> </td> <td data-bbox="1816 568 2031 756"> <p>In accordance with subparagraphs (2), (3) and (4)</p> </td> </tr> <tr> <td data-bbox="1279 756 1816 1230"> <p>Category 2: minor reserved matter and other details</p> <p>Requirement 11: Fencing and other means of enclosure</p> <p>Requirement 12: Surface and foul water drainage</p> <p>Requirement 21: Permissive paths</p> <p>Requirement 22: Decommissioning and restoration</p> </td> <td data-bbox="1816 756 2031 1230"> <p>£2,028</p> </td> </tr> <tr> <td data-bbox="1279 1230 1816 1327"> <p>Category 3: re-approvals</p> </td> <td data-bbox="1816 1230 2031 1327"> <p>£462</p> </td> </tr> </tbody> </table>	<i>Requirement</i>	<i>Fee</i>	<p>Category 1: reserved matters (major)</p> <p>Requirement 6: Detailed design approval</p>	<p>In accordance with subparagraphs (2), (3) and (4)</p>	<p>Category 2: minor reserved matter and other details</p> <p>Requirement 11: Fencing and other means of enclosure</p> <p>Requirement 12: Surface and foul water drainage</p> <p>Requirement 21: Permissive paths</p> <p>Requirement 22: Decommissioning and restoration</p>	<p>£2,028</p>	<p>Category 3: re-approvals</p>	<p>£462</p>
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			<p>(i) In respect of any Category 1 or Category 2 requirement where an application is made for discharge in respect of which an application has been made previously; and</p> <p>(ii) Requirement 5: Approved details and amendments to them</p>	
			<p>Category 4: Other</p> <p>Requirement 3: Phasing of the authorised development and date of final commissioning</p> <p>Requirement 7: Fire safety management</p> <p>Requirement 8: Landscape and ecology management plan</p> <p>Requirement 10: Stone curlew</p> <p>Requirement 13: Archaeology</p> <p>Requirement 14: Construction environment management plan</p> <p>Requirement 15: Operational environment management plan</p> <p>Requirement 16: Construction traffic management plan</p> <p>Requirement 17: Operational noise</p> <p>Requirement 18: Ground conditions</p>	<p>£116</p>

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			<p>Requirement 19: Water management plan</p> <p>Requirement 20: Skills, supply chain and employment</p>	
			<p><i>Calculation of Category 1 fees</i></p> <p>(2) Subject to sub-paragraph (3) and (4) below, applications for discharge of requirement 6 shall be calculated as follows –</p> <ul style="list-style-type: none"> (a) Where the site area does not exceed 5 hectares, £462 per 0.1 hectare (or part thereof) (b) Where the site area exceeds 5 hectares, £34,934 +£138 for each additional 0.1 hectare (or part thereof) in excess of 5 hectares. <p>(3) For the purpose of the calculation of fees pursuant to paragraph 5(2)–</p> <ul style="list-style-type: none"> (a) the gross site area shall be taken as consisting of the area of land to which the application relates; <p>(4) The maximum total fee payable to each local planning authority for discharge of requirement 6 shall be £150,000.</p> <p><i>Refund of fees</i></p> <p>(5) Any fee paid under this Schedule shall be refunded to the undertaker within 8 weeks of–</p> <ul style="list-style-type: none"> (a) the application being rejected as invalidly made 	

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			<p>Please note that while this fee schedule is adapted from the Sizewell C DCO, that is based in turn on the provisions of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 [‘Fee Regulations’ from now on]. The Councils consider that the Fee Regulations are a sound basis for calculation of fees. Contrary to arguments put forward by the Applicant, the fact that this approach was deployed for the Sizewell C project does not imply a lack of proportionality for smaller projects. The Fee Regulations have instead been shown to be flexible enough to cover a range of projects from Town and Country Planning Act applications on one end (including sub-50MW solar PV developments in Suffolk and Cambridgeshire) all the way to one of the most complex and technically demanding projects in the NSIP regime on the other (i.e. Sizewell C).</p> <p>The Councils consider that a commitment by the Applicant to pay, prior to commencement, a contribution towards enforcement monitoring during the lifetime of the proposed development would be best secured through the S106. The Councils have suggested this to the Applicant who has advised this is not something they are willing to include. In the absence of a separate commitment to contribute towards the enforcement monitoring, which will be a significant burden on the authorities, it is considered that the maximum level of requirement fee proposed above should be increased.</p> <p>The District Councils are not aware of any monetary commitments set out in plans certified in a DCO, where a</p>
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			dispute has arisen and was resolved through enforcement of the relevant DCO Requirement.
Q3.5.2	ECDC	<p>Temporary use of land</p> <p>You have previously expressed concerns over the widespread use of the term “temporary use of land” within the DCO.</p> <ul style="list-style-type: none"> • What amendments do you think should be made, if any, to the DCO to identify appropriate precise time limits in relation to the various uses of the term? • If you have any such preferred amendments, please provide a justification for them. 	ECDC have requested that this be restricted to 24 months from the start of construction as suggested by the developer, this is covered in ECDC’s Post Hearing Submission.
3.6 Environmental Statement – general matters			
The ExA has no questions in this round.			
3.7 Landscape and Visual Effects			
Q3.7.1	The Applicant	Photomontages	
Q3.7.2	The Applicant, SNTS	Photomontages	
3.8 Noise and Vibration			
The ExA has no questions in this round.			
3.9 Socio-Economics and Land Use			
Q3.9.1	CCC, SCC	<p>PRoW and haul roads</p> <p>Further to the CCC response to our ExQ2.9.12, are you satisfied with the revised wording in the</p>	The Councils are disappointed that CCC’s suggested amendment to include a requirement for the pre-condition survey and reinstatement provisions has not been accepted

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		<p>draft DCO submitted at Deadline 6 [REP6-013] of Requirement 6, and also of Schedule 6 Part 2 in respect of the temporary use of motor vehicles on public rights of way? If not, please explain why not.</p>	<p>by the Applicant. Similarly, its proposed amendment to Schedule 2 Requirement 16 has not been accepted.</p> <p>The Councils welcome the inclusion of a requirement for the Applicant to undertake a condition survey of PROW before, during and after construction – as per 7.2.15 of the CTMP [REP5-016]. The Councils are also pleased to see that the OLEMP has been amended to require the reinstatement of boundary hedges, respecting the extent of the PROW [AS-324].</p> <p>However, the Councils note that the CTMP [AS-325] has not been amended to accommodate CCC and SCC’s other recommendation for changes to the CTMP, submitted to ExAWQ2.9.10 [REP5-079].</p> <p>At ISH4, further to CCC’s response to ExWQ2.9.10. [REP5-079], Counsel for the Applicant agreed that Article 11 should be amended to include a similar protective provision for the reinstatement of PROW, as is provided for other streets under Article 9(3). PROW are highways and should be afforded the same protection as other streets. This addition would resolve the Councils’ need for a similar controlling mechanism for reinstatement works to be undertaken to the Councils’ reasonable satisfaction. The mechanics of how this is done should then be fleshed out through the CTMP [REP5-016], OLEMP [REP5-012] (because PROW straddle landscape and ecological matters) and the highways legal agreement.</p>
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			<p>Having reviewed Article 10, the Councils consider that Article 11 should also include similar provisions to article 10(2) and 10(3), i.e. the undertaker should be required to maintain any temporary alterations of PROW and also should maintain any restored PROW for 12 months from the date that the LHA certifies it is satisfied with the reinstatement.</p> <p>The Councils consider that the highways legal agreement currently under negotiation is critical to ensuring the necessary mechanics for protection during delivery of the development. For example, this will deal with the mechanics of inspection and certification of reinstatement works, including timescales. The proposed protective provisions within the DCO are currently inadequate, though subject to ongoing negotiations.</p> <p>If Article 11 is amended to include the above additional provisions, and if Schedule 2 Requirement 16 and the CTMP [REP5-016] are amended in accordance with CCC and SCC's recommendation (and further if the proposed legal agreement is completed by the close of the Examination), then the Councils will be content that these measures will provide sufficient protection for the LHAs in respect of temporary alterations to PROW. If these changes are not made, then the Councils' objections concerning appropriate measures to control the impact and restoration of PROW affected by the development will remain.</p> <p>The Councils are now satisfied with Schedule 6 Part 2 as amended.</p>
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Q3.9.2	The Applicant	Consolidated access and PRow plans	
Q3.9.3	The Applicant	Consolidated access and PRow plans	
Q3.9.4	The LHAs	<p>PRow improvement plan</p> <p>Are the proposals in the Applicant’s response to our ExQ2.9.14 for a section 106 agreement acceptable?</p>	<p>The Councils welcome the broad principle of provision within a s106 agreement for the Local Highway Authorities to use their powers to create or improve PRowS. As stated at ISH4, the Councils wish to make clear that they consider such a s106 agreement to be primarily in mitigation of the adverse impact of the development on local communities and users of the PRow / local road network, rather than just being seen as a benefit arising from the development, as suggested by the Applicant. The s106 monies would enable the creation of additional PRow in areas unaffected by the development, providing alternative paths to the existing paths and linking roads that run through and around the site, which are affected by the development. The Councils has requested that the OLEMP [REP5-012] and references to the s106 agreement be amended to reflect this purpose of the monies. The Councils consider that, whilst the adverse impact of the development can never be fully mitigated, acknowledgment of the psychological impact on the local communities would be appropriate.</p> <p>However, proposals presented by the Applicant since ISH4 are not capable of providing either mitigation for effects on non-motorised users or offsetting for impacts on communities.</p> <p>The Councils are concerned to learn that the nature of the private land agreements with the Applicant may be such as to preclude provision of monies by the Applicant for SCC</p>

			<p>and CCC to create PRoWs by order over any land within the ownership of landowners party to those agreements, or even potentially party to such an agreement. The LHAs would be reliant on coming to voluntary agreements with those landowners. Whilst both CCC and SCC would always seek to create paths by agreement wherever possible, where this is not possible the LHAs need to be able to use the s26 Highways Act power to create PRoWs by order.</p> <p>Indeed, while both LHAs regularly conclude agreements to dedicate PRoWs by consent, it is in the context of having s26 powers available as a backstop. This is analogous to the position of an applicant for Development Consent entering into private agreements, but still seeking Compulsory Acquisition powers in case a negotiated agreement is not forthcoming.</p> <p>Beyond the objection to a planning obligation that ties the LHA's hands, if the LHAs cannot rely on the use of their s26 powers the s106 simply does not secure that any mitigation can actually be delivered.</p> <p>The Applicant's private agreements would effectively prevent the provision of mitigation even on land owned by the landowners outside the Order Limits of the project. The area of land which would be unavailable for the LHAs to create PRoWs by order would be so great as to make it impossible to guarantee delivery of any mitigation of substance.</p>
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			For these reasons, the Councils find the Applicant’s proposals unacceptable, and entirely insufficient to resolve the adverse impacts of the scheme on local communities.
Q3.9.5	CCC and the Fordham Walking Group	Fordham Walking Group concerns Are you satisfied with the proposals put by the Applicant in its response to our ExQ2.9.18? If not, please explain why not.	<p>The Councils refer to their comments on the Applicant’s response to ExQ2.9.18, as per CCC’s D6 submission [REP6-057]. The Councils wish to correct CCC’s comment concerning the local Ramblers’ representative. The Councils now understand that the local Ramblers’ representative is still active, and have now seen their representation to the Examination. As a statutory user group for changes to the rights of way network, the Ramblers’ Association will be included in any consultations undertaken by the Councils on proposed new paths or changes to the status of existing paths.</p> <p>However, the Councils remain of the view that, as FCWG is clearly a sizeable local user group, it is appropriate that the FCWG are included in consultations regarding proposed new paths. The Council is content to do this, should the development receive consent, and once any s106 monies have been received by SCC and CCC.</p>
Q3.9.6	The Applicant	Fordham Walking Group concerns	
Q3.9.7	The Applicant	Additional spurs on circular path at E05	
Q3.9.8	The Applicant	Sectional drawings	
Q3.9.9	The Applicant	Shared use of accesses	
Q3.9.10	The Applicant	NMUs	

<p>Q3.9.11</p>	<p>The Applicant, CCC, SCC, WSC, ECDC</p>	<p>Enhancements to the PRoW network</p> <p>Please summarise, with reference to relevant policy statements or guidance if considered relevant, your understanding of how, if at all, the ExA may or should take account of the extent to which a section 106 obligation or obligations completed by the end of the Examination would meet concerns expressed by IPs for the need for the proposed development to incorporate enhancements to the PRoW network.</p> <p>In your response, please include what account may or should be taken by the ExA in its recommendation report in the event of any proposed party failing without reasonable excuse to make good progress to complete the same.</p>	<p>Notwithstanding the response provided at 3.9.4 above, that the specific proposals provided by the Applicant do not meet concerns expressed by IPs, the Councils offer the following survey of national and local policy to illustrate how the ExA may take account the extent to which planning obligations may be used to meet these concerns.</p> <p>National Policy</p> <p><u>Overarching National Policy Statement for Energy EN-1:</u></p> <p>5.10.19 – 5.10.21 of EN-1 sets of the mitigation principles in the context of Section 5.10: Land use including open space, green infrastructure & Green Belt. In the context of this scheme, the PRoW network is a component of green infrastructure connecting communities in the area. Of particular relevance is para 5.10.20: ‘Where green infrastructure is affected, the IPC should consider imposing requirements to ensure the connectivity of the green infrastructure network is maintained in the vicinity of the development and that any necessary works are undertaken, where possible, to mitigate any adverse impact and, where appropriate, to improve that network and other areas of open space including appropriate access to new coastal access routes.’</p> <p>And at 5.10.21: ‘The IPC should also consider whether mitigation of any adverse effects on green infrastructure and other forms of open space is adequately provided for by means of any planning obligations, for example exchange land and provide for appropriate management and maintenance agreements.’</p>
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			<p>In this case, mitigation of adverse impacts would be by obligation enabling the creation of PRowS to strengthen the network, rather than provision of exchange land.</p> <p>5.10.24 sets out an expectation for applicants to take appropriate mitigation measures to address adverse effects on rights of way. Note that at 5.11.23 of draft EN-1, similar policy is provided in terms which are even more explicit in terms of opportunities for improvement and how the character of existing rights of way should be taken into account: ‘Public Rights of way, National Trails and other rights of access to land are important recreational facilities for example for walkers, cyclists and horse riders. The Secretary of State should expect applicants to take appropriate mitigation measures to address adverse effects on coastal access, National Trails, other rights of way and open access land and, where appropriate, to consider what opportunities there may be to improve or create new access. In considering revisions to an existing right of way, consideration should be given to the use, character, attractiveness and convenience of the right of way. The Secretary of State should consider whether the mitigation measures put forward by an applicant are acceptable and whether requirements or other provisions in respect of these measures should be included in any grant of development consent.’</p> <p>5.13.4 is less directly relevant, discussing travel plans in the context of managing transport impacts, but does state that the Applicant should provide details of ‘proposed measures improve access to public transport, walking and cycling’. It is the Councils’ view that such an objective would be served</p>
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			<p>by provision of PRow measures through a planning obligation.</p> <p><u>Draft Overarching National Policy Statement for Energy EN-1:</u> 5.11.19 of draft EN-1 states that ‘Where green infrastructure is affected the SoS should consider imposing requirements ... where appropriate, to improve that network and other areas of open space including appropriate access to National Trails and other public rights of way and new coastal access routes’ which should be noted adds reference to PRowS in comparison with the equivalent provision in the current EN-1 at 5.10.20.</p> <p><u>Draft National Policy Statement for Renewable Energy EN-3:</u> 2.49.5 states that: ‘Developers are encouraged to design the layout and appearance of the site to ensure continued recreational use of public rights of way ... It should be noted that sites may provide the opportunity to facilitate enhancements to the local footpath network and the adoption of new public rights of way through site layout and design of access.’ 2.49.6 simply notes that the SoS anticipates provision of an outline PRow Management Plan.</p> <p><u>National Planning Policy Framework:</u> Paragraph 100 of the NPPF requires that development should protect and enhance access to the countryside.</p> <p><u>Defra’s 25 year Environment Plan [REP4-138]:</u></p>
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			<p>Chapter 3 seeks to enhance people’s engagement with the natural worlds and to address inequalities in access, by opening up the mental and physical health benefits of the natural world to people from the widest possible range of ages and backgrounds.</p> <p>Local policy</p> <p><u>CCC Rights of Way Improvement Plan [REP1-024h]</u></p> <p>CCC’s ROWIP includes Statements of Action aimed at protecting and bring about improvements to the rights of way network and enhancing countryside access. SoA2 A Safer and Health-Enhancing Activity (page 9 of the ROWIP) explains that enabling access to the countryside and active travel opportunities is closely linked to better health outcomes. On page 10 it states: ‘The consideration of rights of way as part of planning for new developments can help to address safety issues from the outset, and can sometimes help to provide safe crossings of major routes, or diversions to the rights of way network.’</p> <p>CCC’s ROWIP is closely link to the Cambridgeshire and Peterborough’s Health and Wellbeing Strategy. The link to the former Strategy is cited in the ROWIP at page 9. A new 2022-2030 Strategy was adopted in December 2022, re-emphasising the importance of enabling access to the environment and encouraging people to be responsible for their own positive health outcomes. It highlights that obesity is widely considered to be the most pressing public health concern. Page 15 of the Strategy states that it will: ‘Create an environment to give people the opportunities to be as healthy as they can be’</p>
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			<p>‘Environment’ here is used in the widest sense, so includes wider determinants of health such as health behaviours, infrastructure, and socio-economic factors, as well as access to green spaces and clean air.</p> <p>This also includes the opportunities for better health which the NHS provides; partly healthcare, but also encouraging people to take greater responsibility for their own health.</p> <p>The Strategy therefore highlights the key role that PROW and good wider connectivity have in achieving these vital public health outcomes.</p> <p>On page 12 of the ROWIP SoA3 states: “New development should not damage countryside provision. Where appropriate, development should contribute to the provision of new links and/or improvement of the existing PROW network”. This SoA highlights s106 agreements as a means of securing funds to enable the protection of the network, and to enable improvements and new links.</p> <p>SoA5 states ‘Filling the gaps: Countryside provision should build on the platform of the historical network to meet the needs of today’s users, particularly equestrians, and land managers.</p> <p>‘A central action for the updated ROWIP is to improve the network as a whole, making connections with the cycle network and wider transport network. Given the lesser extent of the bridleway network, there is also a real need to provide a better connected network for horse riders too, as well as walkers, carriage drivers and 4x4 users.’</p>
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			<p>SoA5 recognises the vulnerability of equestrians in particular on the roads, and foresaw the emergence of active travel as a key plank in contributing to local transport solutions and reducing rural isolation.</p> <p>Further discussion of the Cambridgeshire ROWIP is provided at paras 14.16 of the joint LIR [REP1-024]</p> <p><u>CCC emerging Active Travel Strategy</u> CCC’s emerging Active Travel Strategy aligns closely with the ROWIP SoAs. It will be considered for adoption on 7th March 2023.</p> <p><u>East Cambridgeshire Local Plan [REP1-024e]</u> The relevant East Cambridgeshire Local Plan policy is COM7: Transport Impact which, among other things, requires development proposals to provide a comprehensive network of routes giving priority for walking and cycling. The relevance of this policy to PRoW issues is outlined at Table 11 of the joint LIR REP1-024].</p> <p><u>Suffolk Green Access Strategy [REP1-024g]</u> The Suffolk Green Access Strategy is the statutory ROWIP for Suffolk. Objective 2.3.2 of the SCC Green Access Strategy sets an action to ‘Obtain significant public rights of way improvements and legacies on nationally important development projects, [sic] such as Sizewell C and East Anglia Wind Farm developments.’ Notwithstanding that the reference should clearly be to Nationally Significant</p>
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			<p>Infrastructure Projects, this objective specifically considers how projects such as the present scheme can make contributions to statutory ROWIPs.</p> <p>Further discussion of the Suffolk Green Access Strategy is provided at paras 14.12 – 14.14 of the joint LIR [REP1-024]</p> <p><u>WSC Local Development Plan [REP1-024b]</u></p> <p>Core Strategy Policy CS 12 sets out that the Local Development Framework will support, among other things, ‘Improvements to the rights of way in the District required to achieve the objectives of the Suffolk Rights of Way Improvement Plan including consideration of any cross boundary issues arising’.</p> <p>Joint Development Management Policies Document 2015 Policy DM44: Rights of Way sets out that ‘Development which would adversely affect the character of, or result in the loss of existing or proposed rights of way, will not be permitted unless alternative provision or diversions can be arranged which are at least as attractive, safe and convenient for public use. This will apply to rights of way for pedestrian, cyclist, or horse rider use. Improvements to such rights of way will be sought in association with new development to enable new or improved links to be created within the settlement, between settlements and/or providing access to the countryside or green infrastructure sites as appropriate and to achieve the objectives of the Suffolk Rights of Way Improvement Plan.’</p> <p>These two policies provide the Suffolk Green Access Strategy with weight in the Statutory Development Plan for West Suffolk in addition to their existing status as a</p>
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			<p>statutory document under the Countryside and Rights of Way Act 2000.</p> <p>Conclusion</p> <p>It is the Councils’ view, therefore, that a s106 agreement (or other planning obligation) providing a significant contribution is necessary in order to mitigate the significant landscape-scale adverse impact of this development upon local communities and users of the PRoW and local road network within that landscape. Whilst such adverse impact can never be completely mitigated against, such a contribution would enable the Councils to enhance the PRoW network by creating new public paths in countryside unaffected by the development. Some existing paths could be upgraded in status, extending cycle and equestrian access. These would provide alternative high quality experience countryside access for local communities to routes affected by the development.</p> <p>The Councils also envisage that the s106 monies could be used to provide active travel links between some parishes alongside some of the busier roads that traverse the development site, and would make improvements to existing paths that serve communities. The Councils also wish to seek to improve connections between communities, for example between Isleham and Freckenham.</p> <p>However, as noted at 3.9.4 above, the current proposals are fundamentally flawed and are incapable of securing effective mitigation because they effectively prevent the LHAs from using their order-making powers under s26 of the</p>
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			<p>Highway Act as a backstop in the event that agreements with landowners are not forthcoming by restricting the use of the proposed PRow contribution from being able to be used by the Councils to fund the order-making process (including related compensation that may be payable). This could leave the Councils in a position where agreements with landowners to improve, create or upgrade routes for public access cannot be concluded but the Councils cannot then use the PRow Contribution to fund the order-making process to deliver this mitigation.</p> <p>The Councils are therefore now concerned that it might not be possible to reach agreement on this matter before the close of the Examination. If this situation occurs then the Councils’ view will be that the relevant policies have not been addressed, and therefore the Councils’ objection to the application on grounds of significant adverse impact on the landscape and on local communities and users of the PRow and local road network in that landscape will remain.</p> <p>The Councils consider that the ExA should take all the above into account in weighing the balance for the Application.</p>
Q3.9.12	The Applicant	Public and private roads	
Q3.9.13	The Applicant	PRow closures	
Q3.9.14	CCC, SCC	<p>PRow closure note [REP5-068] How do you see the proposals for marshals to be in place to guide PRow users, crossing where works would take place, working in practice, for example with regard to timing and availability?</p>	<p>The Councils see this working as for any other development in the local area.</p> <p>Preference 1: the contractor maintains a safe passage within the limit of the legal extent of the right of way, at all times.</p>

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			<p>This should be fenced off with Heras fencing or similar, so as to avoid the need for a banksman.</p> <p>Alternatively, the work could be done sequentially, so as to only fence off part of a right of way, whilst work is undertaken, and then to fence off the other half. However, this will be dependent upon the construction methodology and the width of the PROW.</p> <p>The Councils would expect the contractor to liaise with the LHA to determine the legal extent of each PROW as part of the detailed CTMP, to be approved via the LPA. Legal widths are individual to each path, so consultation and approval by the LHA is essential to ensure adequate condition surveys and reinstatement of the complete asset.</p> <p>Preference 2: Typically this involves a gate system, with the gates remaining open for NMUs and only shut when construction vehicles are crossing, aided by a banksman. The contractor ensures there is always a banksman available during the working day to guide users across the site as and when they appear. Signage should be provided ahead of the crossing to explain the system.</p> <p>Preference 3: If it is not possible to provide safe passage within the extent of the PROW, a diversion route could be provided close to the path without a temporary closure if it is de minimis, i.e. less than 5m from the legal line.</p> <p>Preference 4: the last resort is a formal temporary traffic regulation order closure. The Councils would require the</p>
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			Applicant/contractor to agree a suitable alternative diversion, either within the wider corridor within the redline boundary of the DCO, or via other rights of way/roads. As previously stated by both SCC and CCC, this should very much be a last resort due to the significant additional distances such diversions entail and the potential adverse impact on NMU lives.
Q3.9.15	The Applicant	PRoW closure note	
3.10 Traffic, Transport and Highway Safety			
Q3.10.1	The Applicant	CTMP and TP [REP5-015]	
Q3.10.2	The Applicant	CTMP and TP [REP5-015]	
Q3.10.3	The Applicant	CTMP and TP [REP5-015]	
Q3.10.4	The LHAs	<p>Traffic regulation measures</p> <p>Are you content with the revised drafting of Article 44?</p> <p>If not, please explain why and suggest alternative drafting.</p>	<p>The Councils have already secured amendments to article 44(1) which now requires the prior consent of the traffic authority before exercising the powers under 44 and to article 44(2) which enables the undertaker to place temporary traffic signals in the locations specified in Part 4 of Schedule 14, having first obtained the Local Highway Authorities' consent.</p> <p>The Councils are therefore content with the substance of Article 44, with the exception of a minor drafting point as follows:</p> <p>Article 44(5) now states –</p> <p>“(5) Prior to any application for the consent of the traffic authority under paragraphs (1) and (2), the undertaker must</p>

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			<p>carry out 21 days consultation with affected highway users by means of site notices and local advertisement circulating in the area in which the traffic regulation measures are proposed and shall must include a consultation report presenting the results of that consultation as part of its application for consent”.</p> <p>The Councils assume the word “newspaper” should be inserted between “local” and “advertisement”. It would then be consistent with the regime under (7)(b), it is clearly desirable to have consistency within the article.</p>
Q3.10.5	The Applicant	Side agreement	
Q3.10.6	The Applicant, CCC, SCC	<p>Side agreement</p> <p>What account may or should be taken by the ExA in its recommendation report in the event of any proposed party to the side agreement failing without valid reason to make good progress to complete the same before the close of the Examination?</p>	<p>In the Councils’ view, good progress is being made on the highways side agreement between the LHAs and the Applicant. Several meetings have taken place in recent weeks, with further regular meetings programmed. The Councils are hopeful of concluding the highways side agreement before the close of the examination.</p> <p>In parallel, discussions are proceeding on highways protective provisions, which would apply in any event.</p> <p>The Councils considers it is currently premature to assume any failure on behalf of the applicant or the Councils in respect of the completion of the side agreement; however if by close of the examination the agreement has not been completed, the Councils will provide the ExA with its submissions on the same.</p>
Q3.10.7	The Applicant	Costs of damage to local highway network	

3.11 Water Resources, Flood Risk and Drainage			
Q3.11.1	The Applicant	Sustainable Drainage Systems	
Q3.11.2	The Applicant	Risk of Flooding	