

**Holmes & Hills LLP** Solicitors  
A12 Commercial Hub | London Road | Marks Tey | Essex | CO6 1ED  
T 01376 320456 | F 01376 342156 | DX 3610 Colchester  
E cmh@holmes-hills.co.uk

*also at*

Braintree, Halstead, Sudbury  
Tiptree, Coggeshall and Witham

The Planning Inspectorate  
Five Estuaries Offshore Wind Farm Case Team  
Temple Quay House  
Temple Quay  
Bristol  
BS1 6PN

**By Email: [FiveEstuaries@planninginspectorate.gov.uk](mailto:FiveEstuaries@planninginspectorate.gov.uk)**

Your ref  
Our ref CMH/KB/TABOR 000259.0092  
Date 21 October 2024

Dear Sirs,

**Application by Five Estuaries Offshore Wind Farm Limited for an Order Granting Development Consent for the proposed Five Estuaries Offshore Wind Farm (Five Estuaries Scheme).**

**WRITTEN REPRESENTATIONS ON BEHALF OF THE EXECUTORS OF THE ESTATE OF THE LATE MR CHARLES TABOR - INTERESTED PARTY NUMBER 5EST-AFP238.**

## 1. Introduction

- 1.1 Holmes & Hills LLP is instructed by Mr Michael Hughes and Ms Rebecca Mason who, together, are the Executors of the Estate of Mr Charles Tabor (The Estate).
- 1.2 The permanent acquisition of Estate land is proposed by both the Five Estuaries Scheme and the application by North Falls Offshore Windfarm Limited for an Order granting consent for the proposed North Falls Offshore Wind Farm (The North Falls Scheme) together 'the Schemes'; The North Falls Scheme also proposes the creation of new rights over additional Estate land.
- 1.3 The implications for the Estate of both Schemes are similar. This written representation relates to the Five Estuaries Scheme; a draft of the representation to be lodged in relation to the North Falls Scheme is attached at **Appendix F.**

## **2. Ownership**

- 2.1. The Estate owns land within a single agricultural unit 'Holly Lodge Farm' which includes approximately 424 acres of land shown edged red on the plan at Appendix A; this includes land known as Wormseywood Farm. Other remote land not shown on the map, namely Spinnells ( [REDACTED] ) and Bosco ( [REDACTED] ) is farmed as part of the same agricultural unit. The Holly Lodge Farm agricultural unit as a whole comprises approximately 722 acres of land.
- 2.2 Land owned by the Estate as part of Holly Lodge Farm includes two adjacent freehold titles registered under HMLR title numbers EX833610 and EX833989.
- 2.3 Part of Holly Lodge Farm falls within the draft Order limits of the Five Estuaries Scheme, namely Plot 17-0025, comprising 182,196 m<sup>2</sup> of agricultural land and verge east of Grange Road (permanent freehold acquisition proposed). This equates to approximately 75 acres of land.
- 2.4 The Book of reference notes that rights attaching to Wormsey Wood Farm at Manningtree may also be interfered with as a result of the Five Estuaries Scheme.

## **3. Agricultural Land Classification**

- 3.1 The Five Estuaries Scheme promoter accepts that the portion of Estate land which falls within the Order limits for Five Estuaries Scheme is classified as Grade 1 ALC (Five Estuaries APP-087 Fig 8.4).

## **4. Current use**

- 4.1 The portion of Estate land within the draft Five Estuaries Scheme Order limits is in established agricultural use for high yield crop production with opportunities for both combinable and root crops.
- 4.2 The Holly Lodge Farm agricultural unit is managed as a single enterprise by the Tabor Farm business on behalf of the Estate and the Tabor family.
- 4.3 Management of Holly Lodge Farm by the Tabor Farm business has continued without interruption following the passing of the Late Mr Charles Tabor.

## **5. Proposals**

### **5.1 The Five Estuaries Scheme**

- 5.1.1 The Five Estuaries Scheme envisages the permanent acquisition of Plot 17- 0025 for the substation area to provide a substation, fencing of it, creation of new access, drainage and landscaping (Work 15). It is envisaged that there will be a permanent change of use requiring the removal of this land from agriculture. The statement of reasons (APP-030) notes *that the degree of interference required and the need for the Applicant to control the land including existing access by anyone other than authorised persons to the substation mean that The Estate could not continue to use this land and freehold acquisition is appropriate and justified.*

5.1.2 The Work Plan 2.5 (Appendix B) shows the proposed location of the substation for the Five Estuaries Scheme alone. The majority of the footprint of the substation falls outside The Estate's ownership, with only a relatively small part of plot 17-0025 required specifically for delivery of the substation itself.

## 5.2 The North Falls Scheme

5.2.1 The North Falls Scheme proposes the permanent acquisition of the freehold interest in plot 16-001 in order to deliver the onshore substation (Work 11) and the onshore substation compound (Work 12). The North Falls Scheme proposals include an air insulated switchgear design for the substation where high voltage equipment is installed outdoors with some small buildings to house control equipment with associated ancillary works to include landscaping, temporary construction works, ducting, drainage etc. The majority of the North Falls substation footings falls within the boundary of Plot 16 - 001.

5.2.2 The Schemes have apparently been designed to provide a single cable route corridor and connection points capable of serving one or both schemes, albeit that separate trenching is proposed; if both Schemes are approved, it is understood that the two onshore substations will be constructed and owned separately by the respective operating companies but the option to coordinate on landscaping, environmental mitigation, access and drainage has been retained and will be set out in detailed design post-consent.

5.2.3 Five Estuaries proposes three scenarios, one of which involves both Schemes being consented and delivered at more or less the same time using an agreed substation co-location (non-technical Environment Summary statement APP-067 para 3.1.17).

5.2.4 A layout showing two substations in the event both Schemes are approved is provided at (Appendix C).

5.2.5 The Five Estuaries statement of reasons (APP-030) notes that the substation sites for Five Estuaries and North Falls have been co-located in one area designed to co-ordinate with the National Grid EACN proposals. While each project would retain the responsibility for separate substation builds, the following would be delivered jointly under build option 1 to reduce environmental impacts:

- Common access route to the substations from Bentley Road;
- Common permanent access point and bellmouth from Ardleigh Road; and
- Aligned screening principles and advance planting for both projects.

5.2.6 It is understood that both Schemes may have a limited lifetime, given the likelihood of new emerging technologies. Any landscaping scheme is arguably only required for the lifetime of the substations and should be required to mitigate landscape impacts flowing from the construction and use of the substation and associated works authorised by the relevant consent.

## 6. General objection

6.1 The Estate objects to the Five Estuaries Scheme on grounds that:-

6.1.1 Inadequate consideration has been given to possible alternative substation locations which would require less landtake/have less impact on individual landowner interests; site selection for the onshore substation appears to have been driven by reference to the proposed National Grid connection node which is yet to be consented under the Norwich to Tilbury National Grid proposal

and to visual impact, drainage, NPS Sensitivity, heritage and habitat and coordination between the two Schemes (Five Estuaries Doc APP-066). In particular it does not appear that any consideration has been given to having a single combined onshore facility (single substation and cabling route to serve the two proposed windfarms). Although the Scheme promoters are different legal entities they have common beneficial ownership; consideration of a single scheme involving just one substation would offer a more sustainable, effective use of resources and would minimise environmental impacts and the need for such extensive landtake in line with the advice in NPPF paras 7 and 8.

- 6.1.2 The implementation of the Five Estuaries Scheme would lead to the unacceptable and unnecessary loss of fertile Grade 1 agricultural land. Advice in the National Planning Policy Framework urges development to protect and enhance soils where possible in a manner commensurate with their quality. In other words, development should take place on lower grade soils where possible in order to safeguard use of the best class of such soil for future food production.
- 6.1.3 The implementation of the Five Estuaries Scheme in its current form (if consented) would have a detrimental and unacceptable impact on the Estate's farming operations as it would reduce the size of the relevant agricultural unit by a significant and disproportionate amount - see further details below.
- 6.1.4 The Estate requests the inclusion of appropriate safeguards to minimise negative impacts as part of any approved development consent order.

## **7. Objection to compulsory acquisition**

- 7.1 The Estate objects to the proposed to the compulsory acquisition of its land on grounds that:
  - 7.1.1 The proposed compulsory acquisition of Estate land for the purpose of the Five Estuaries Scheme alone does not meet the legal tests in s122 Planning Act 2008.
  - 7.1.2 It is not legitimate to seek the compulsory acquisition of Estate land to cover the uncertain eventuality that both the North Falls and Five Estuaries Schemes receive consent at the same time.
  - 7.1.3 Acquisition of land for the purposes of the Five Estuaries Scheme would have an unacceptable impact on the Estates' farming operations.

These grounds of objection are considered in more detail below.

### **7.2 Compulsory acquisition – the statutory framework.**

- 7.2.1 Section 122 of the Planning Act 2008 (PA) provides that a development consent order may only authorise compulsory acquisition if the Secretary of State is satisfied that:

*the land is required for the development to which the consent relates (PAs122(2)(a)), or is required to facilitate, or is incidental to, the development (PA s122(2)(b)); and*

*there is a compelling case in the public interest for the compulsory acquisition (PA s122(3)).*

7.2.2 *The Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land* (The Guidance) requires in general that:-

All reasonable alternatives to compulsory acquisition (including modifications to the scheme) should have been explored (para 8);

The proposed interference with the rights of those with an interest in land must be for a legitimate purpose and that it is necessary and proportionate (para 8);

The applicant must have a clear idea of how they intend to use the land which it is proposed to acquire (para 9);

7.2.3 The purposes for which the compulsory acquisition is required must be legitimate and sufficient to justify interfering with the human rights of those with an interest in the land. In particular, regard must be had to Art 1 of the First Protocol of the ECHR (Para 10);

*Article 1 of Protocol No. 1 – Right to property 1. Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. Possessions in this context includes property.*

7.2.4 In relation to the purpose for which compulsory acquisition is sought (PAs122(2)) The Guidance (para 11) provides that the Secretary of State will need to be satisfied that the land is needed for the development and is no more than is reasonably required for the purposes of development.

7.2.5 Where land is required to facilitate or is incidental to the proposed development (i.e. landscaping), the Secretary of State will need to be satisfied that the development could only be landscaped to a satisfactory standard if the land in question were to be compulsorily acquired and the land to be taken is no more than is reasonably necessary for that purpose and that what is proposed is proportionate.

7.2.6 In relation to the PA s122(3) test, The Guidance states at paras 13-16 that in order to demonstrate a compelling case in the public interest it must be shown that public benefit outweighs the private loss suffered by those whose land is acquired. Para 16 of the Guidance contemplates circumstances where a development consent order might be approved but excluding the compulsory acquisition of land which is demonstrably not necessary for the scheme purpose.

**7.3 The proposed compulsory acquisition of Estate land for the purpose of the Five Estuaries Scheme alone does not meet the legal tests in s122 Planning Act 2008.**

7.3.1 PA s122(2)(a) purpose test

Plot 17-0025 is in broad terms included in the Five Estuaries Scheme to deliver the substation for that scheme and associated works.

On its current layout, plot 17-0025 is not required in its entirety to deliver the Five Estuaries substation; only a very small portion of this parcel of land is included in the current substation footprint.

Moreover it would be possible to re-locate the substation wholly within adjoining plot 17-0024 so that it falls wholly outside of plot 17-0025.

The proposed compulsory acquisition of Estate land for the purposes of the Five Estuaries Scheme does not meet the purpose test at PA s122(2)(a).

### 7.3.2 PA s122(2)(b) ancillary development test

Apart from the substation, the remainder of plot 17-0025 is allocated for the substation work zone, i.e. it is required for land reprofiling, security fencing, utility connections, temporary and permanent drainage works, temporary and permanent access roads, temporary construction areas, buried cable ducts, cable crossings, landscaping works and creation permanent ecological and environmental mitigation.

The permanent acquisition of land required for temporary uses only is not justified.

Ignoring the substation and the temporary items of work/fencing, the majority of Plot 17-0025 would therefore be required for landscaping/environmental mitigation, i.e. to facilitate development or be incidental to the Five Estuaries Scheme.

The Guidance indicates that it is incumbent on the promoter to demonstrate that the development could only be landscaped to a satisfactory standard if the land in question were to be compulsorily acquired and that the land to be taken is no more than is reasonably necessary for that purpose and proportionate.

The outline landscape management plan for Five Estuaries can be seen at Appendix D. The area around the substations (on the basis that both Schemes are approved) is shown as being required in large part for lowland meadow/woodland. There is no justification provided as to why such a large area of Estate land is required to mitigate landscape impacts in the event that both Schemes are approved. Moreover, no information is offered as to why the whole of plot 17-0025 is required for landscape mitigation in the event that the Five Estuaries Scheme alone is approved.

The Five Estuaries Offshore Windfarm" Onshore BNG Indicative Design Stage Report (APP-149) confirms an intention to provide 10% BNG – preferably onsite. However, it does envisage that land ownership constraints may mean that this cannot be achieved and notes that discussions with several owners/ organisations within Essex are ongoing in respect of potential offset locations, in the event that 10% gain cannot be achieved within the Order Limits. It is also acknowledged that the option of buying statutory biodiversity credits is available as a last resort, where developers can demonstrate that they are unable to achieve BNG through the available on-site and off-site options. There is no absolute need to provide BNG on site – it can be provided elsewhere/ through the purchase of biodiversity credits offsite without the need for exercise of compulsory purchase powers. There is therefore no need to compulsorily acquire land for BNG. The BNG proposal is provided at Appendix E; it suggests that the land around the (two) substations on plot 17-0025 will be used for low level meadow, neutral grassland etc and some trees. There is other, less good quality agricultural land in the vicinity which could be considered.

The promoter has not demonstrated why or how plot 17-0025 is reasonably required in whole/part in order to deliver a satisfactory standard of landscaping and other ancillary work;

land for BNG does not have to be provided onsite. Accordingly the legal test at s122(2)(b) is not met. The proposed landtake is excessive and beyond what is reasonably required to deliver this Scheme.

The statement of reasons (APP-030) indicates that this plot is needed to ensure that access to the substation can be controlled. It is submitted that access could be controlled through use of appropriate fencing and other security measures rather than by acquisition of a land buffer.

Further, the landscaping mitigation scheme would only be required for the lifetime of the substation – as such there is no justification for permanent acquisition.

### 7.3.3 PA s122(3) compelling case in the public interest test

Contrary to Guidance, there is no evidence that the applicant has considered reasonable alternatives to the compulsory acquisition of plot 17-0025. These could include amending the proposed layout to avoid impact on Estate land; promoting a single substation to serve both Schemes; pursuing offsite BNG/BNG credits; negotiating licences allowing temporary use or negotiating an agreement for delivery of a landscaping scheme on relevant land for the lifetime of the project.

Assuming the Five Estuaries Scheme alone receives consent, the work plan at Appendix B provides minimal detail on how the whole of plot 17-0025 is to be used. The landscaping plan (Appendix D) does not explain why such a large area of land is reasonably required to deliver a scheme of landscaping mitigation which is commensurate and proportionate to the proposal.

There is no absolute need to deliver onsite BNG and compulsory acquisition of the whole of plot 17-0025 to provide onsite BNG is not necessary and would lead to negative impacts on the farming operation and the sterilisation of grade 1 agricultural land.

Despite any perceived public benefits of the Five Estuaries Scheme as a whole there is no compelling case in the public interest to support the acquisition of the whole of The Estates freehold interest in plot 17-0025 either to deliver the development itself or any works incidental to the proposed development; arguably, (if the applicant considers relocating the substation slightly) none of plot 17-0025 is required for the purposes of or to facilitate the Five Estuaries Scheme alone.

The Five Estuaries Scheme can be delivered without the permanent acquisition of our client's interest in plot 17-0025, or at the very least without the permanent acquisition of the whole of that plot. Any decision to confirm the compulsory acquisition of plot 17-0025 would represent a breach of the ECHR and notably Art 1 or protocol 1 which requires that no person should be deprived of his possessions (including land) except in the public interest.

The requirements of PA s122(3) are therefore not met.

## **7.4 It is not legitimate to seek the compulsory acquisition of Estate land to cover the uncertain eventuality that both the North Falls and Five Estuaries Schemes receive consent at the same time.**

### 7.4.1 On its current configuration, the only need for the compulsory acquisition of Estate land is in circumstances where both Schemes are confirmed at the same time. This is just one possibility

being pursued by the two Scheme promoters – and there is huge uncertainty around this, not least since the aspiration is to locate the substations to link into the node connection for the Norwich to Tilbury National Grid Scheme, in relation to which no formal DCO application has yet been submitted.

- 7.4.2 Compulsory purchase powers are being sought in relation to a much larger area of the Estate land than is required to deliver either of the Schemes alone.
  - 7.4.3 It is not legitimate to seek compulsory purchase powers in relation to Estate land in circumstances where the need for it is not yet certain, depending as it does upon the confirmation of the Norwich to Tilbury DCO in due course.
  - 7.4.5 The Estate submits that none of its land (or at least a significantly smaller parcel of its land than is proposed) is required for the purpose of (or to facilitate delivery of) the Five Estuaries Scheme.
  - 7.4.6 The Estate further submits that none of its land (or at least a significantly smaller parcel of its land than is proposed) is required for the purpose of (or to facilitate delivery of) the North Falls Scheme.
  - 7.4.7 The Secretary of State is duty bound to consider the evidence relating to each of these Schemes separately and to reach a conclusion based on the merits of each application alone.
  - 7.4.8 Any decision to confirm the development consent order for the Five Estuaries Scheme should not be influenced by considerations relating to need for the separate North Falls Scheme. It would not be legitimate to authorise the compulsory acquisition of land under the Five Estuaries Scheme where that land is only required in circumstances where the North Falls Scheme receives consent.
  - 7.4.9 There is no compelling case nor any justification in the public interest to justify the acquisition of such an extensive land grab for the purposes of PA s122(3).
  - 7.4.10 The applicant has not demonstrated that there are no reasonable alternatives to the proposed compulsory acquisition of Estate land. In particular, no attempt has been made to pursue a single substation to serve both Schemes which may have offered a more sustainable, less impactful option.
  - 7.4.11 The promoter has not demonstrated why the whole of 17-0025 is required to mitigate the immediate landscape impacts of the substation development; the compulsory purchase of land for use to deliver BNG will effectively sterilise grade 1 agricultural land unnecessarily; BNG can be delivered offsite or via the purchase of biodiversity credits.
  - 7.4.12 The Estate wants to retain as much of its property as possible in order to ensure it can make the best use of its resources, run its farming operations efficiently and to be able to participate in any future development opportunities which may arise.
- 7.5 Acquisition of land for the purposes of the Five Estuaries Scheme would have an unacceptable impact on the Estates' farming operations in this area.**
- 7.5.1 Plot 17-0025 is managed as part of the single Holly Lodge Farm agricultural holding by the Tabor Farm business; any reduction in acreage will result in a significant loss of income



which will in turn have knock on effects on the profitability and income generation potential for the land; some efficiencies of scale will be lost and profit margins will be reduced; fixed costs will stay the same but with less land to generate income; the landtake will have a disproportionate impact on the farm business.

- 7.5.2 Access will be interfered with both during construction and operation, and farm traffic which is currently able to make use of internal access through adjacent fields would be forced out onto the public highway (namely the single lane Grange Road) which will cause delay, loss and frustration for both the Estate and motorists.

## **8. Negotiations**

The Estate is willing to negotiate with the Five Estuaries Scheme promoter; whilst there were some preliminary meetings with the late Charles Tabor, there has been only one meeting with an engineer offered (2023); a draft set of Heads of terms was issued, but these was rejected as the commercial terms offered were unacceptable in the context of current market rates; there has been no willingness on the promoters part to actually negotiate on the proposed draft heads of terms. Presumably securing the land necessary to deliver the substation should be of key importance for the Five Estuaries Scheme and The Estate is hopeful that the promoter will be encouraged by the Examining Authority to embrace the concept of meaningful negotiations going forward.

## **9. Conclusion**

The Estate objects to the Five Estuaries Scheme on the following grounds;

- Inadequate consideration has been given to alternative substation locations which would have less impact on individual landowner interest; in particular no consideration has been given to a single substation to serve both Schemes.
- The Five Estuaries Scheme would lead to the unacceptable loss of grade 1 agricultural land
- The Five Estuaries Scheme would have an unacceptable detrimental impact on the Estate's farming operations.

The Estate objects to the compulsory acquisition of Estate land for the purpose of the Five Estuaries Scheme on the following grounds:-

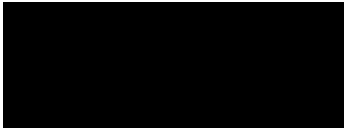
- There is no need for the purposes of the Planning Act 2008 to compulsorily acquire the whole/any part of Estate land to deliver the Five Estuaries Scheme alone;
- There is no need for the purposes of the Planning Act 2008 to acquire the whole/any part of Estate land to deliver land required to facilitate or ancillary to the Five Estuaries Scheme alone;
- There is no compelling case in the public interest for the purposes of the Planning Act 2008 to acquire the whole/part of any Estate land for the purposes of the Five Estuaries Scheme alone. In particular;
  - (i) Alternative solutions (which might avoid sterilisation of this grade 1 agricultural land) have not been considered
  - (ii) there is no need for the proposed extensive landtake in order to mitigate landscape impacts of the substation;
  - (iii) There is no need to compulsorily acquire land to deliver onsite BNG.

(iv) The farming operations on Estate land would be unnecessarily and unacceptably disrupted as a result of the construction and operation of the Five Estuaries Scheme.

- It is not legitimate for the purposes of the Planning Act 2008 to take into account considerations relating to the North Falls Scheme when considering whether to confirm the Five Estuaries Scheme.

On behalf of the Estate we thank you for your attention in this matter.

Yours sincerely

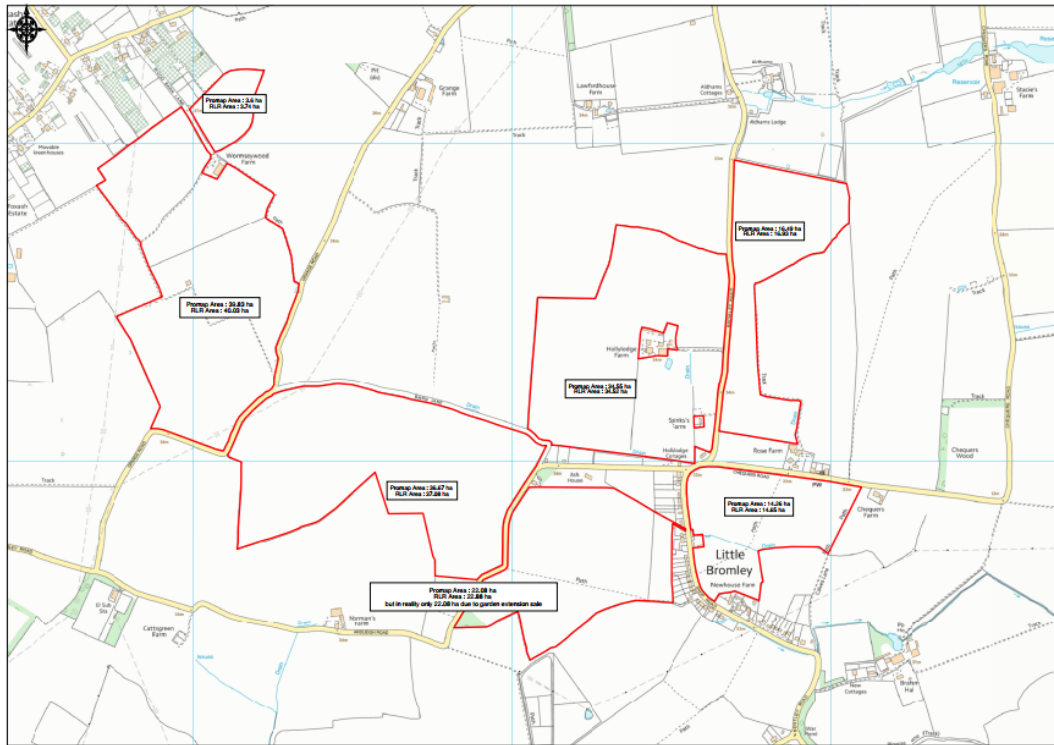


**CATHERINE HIBBERT**  
**For and on behalf of Holmes & Hills LLP**

Enc(s)

Appendix A – Holly Lodge Farm - parts of wider single agricultural unit

Land at Hollylodge Farm



1:10000 @A3



Appendix B  
 Five Estuaries Work Plan 2.5 – location of proposed substation

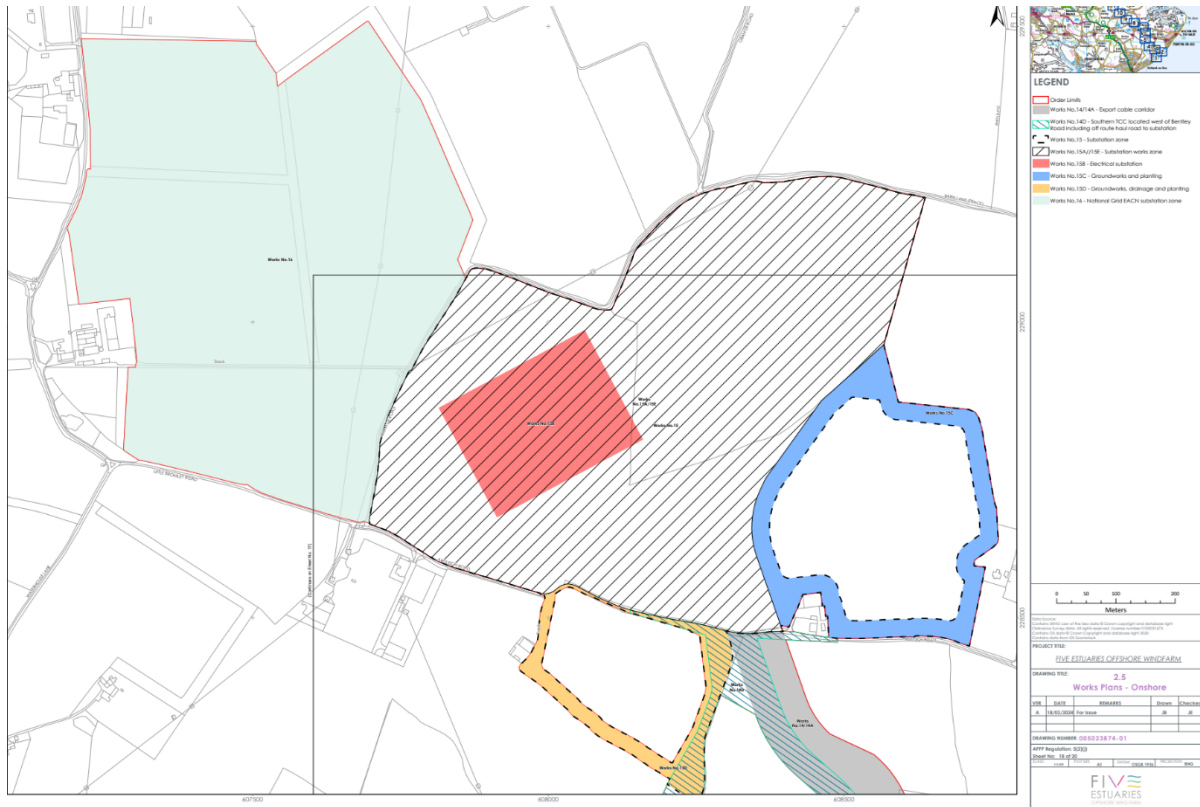






Figure 1 Outline Landscape and Ecological Management Plan: OnSS

Appendix E FIVE ESTUARIES OFFSHORE WIND FARM ENVIRONMENTAL STATEMENT VOLUME 6, PART 6, ANNEX 4.18:  
 FIVE ESTUARIES OFFSHORE WIND FARM ONSHORE BIODIVERSITY NET GAIN INDICATIVE DESIGN STAGE REPORT



**Application by North Falls Offshore Wind Farm Ltd for an Order Granting Development Consent for the proposed North Falls Offshore Wind Farm (The North Falls Scheme)**

**WRITTEN REPRESENTATIONS ON BEHALF OF THE EXECUTORS OF THE ESTATE OF THE LATE MR CHARLES TABOR – INTERESTED PARTY NUMBER TBC**

**1. Introduction**

- 1.1 Holmes & Hills LLP is instructed by Mr Michael Hughes and Ms Rebecca Mason who, together, are the Executors of the Estate of Mr Charles Tabor (The Estate).
- 1.2 The permanent acquisition of Estate land is proposed by both the application by Five Estuaries Offshore Windfarm for an order granting development consent for the Five Estuaries Scheme (The Five Estuaries Scheme) and the North Falls Scheme (together 'the Schemes'); The North Falls Scheme also proposes the compulsory creation of new rights over Estate land.
- 1.3 The implications for the Estate of both Schemes are similar. This representation relates to the North Falls Scheme; a copy of the representation lodged in relation to the Five Estuaries Scheme is attached at Appendix X.

**2. Ownership**

- 2.1 The Estate owns land within a single agricultural unit 'Holly Lodge Farm' which includes approximately 424 acres of land shown edged red on the plan at Appendix A; this includes Wormseywood Farm; other remote land not shown on the map, namely Spinnells ( ) and Bosco ( ) is farmed as part of the same agricultural unit. The Holly Lodge Farm agricultural unit as a whole comprises approximately 722 acres of land.
- 2.2 Land owned by the Estate as part of the Holly Lodge Farm includes two adjacent freehold titles registered under HMLR title numbers EX833610 and EX833989.
- 2.3 Part of Holly Lodge Farm falls within the Order limits of the North Falls Scheme, namely Plot 16-001 comprising 182,197m<sup>2</sup> of agricultural land and verge east of Grange Road; permanent freehold acquisition proposed. (This equates to approximately 75 acres).
- 2.4 The creation of rights over other land within Holly Lodge Farm is also sought, namely Plot 16-002 comprising 1387 square metres of public highway (Grange Road) and Plot 16-003 comprising 2528 m<sup>2</sup> of agricultural land hedgerow and verge (north of Grange Road) is also sought.

**3. Agricultural Land Classification**

- 3.1 The North Falls Scheme promoter accepts that those portions of Estate land which fall within the Order limits for the North Falls Scheme are classified as Grade 1 ALC (North Falls APP-067 Fig 3.2.18).



## 4. Current use

- 4.1 The portion of Estate land within the draft North Falls Scheme Order limits is in established use for high yield crop production with opportunities for both combinable and root crops.
- 4.2 The Holly Lodge Farm agricultural unit is managed as a single enterprise by the Tabor Farm business on behalf of the Estate and the Tabor Family.
- 4.3 Management of Holly Lodge Farm by the Tabor Farm Business has continued without interruption following the passing of the late Mr Charles Tabor.

## 5. Proposals

### 5.1 The Five Estuaries Scheme

- 5.1.1 The Five Estuaries Scheme envisages the permanent acquisition of Plot 17-0025 of that scheme for the substation area to provide a substation, fencing of it, creation of new access, drainage and landscaping (Work 15). It is envisaged that there will be a permanent change of use requiring the removal of this land from agriculture. The statement of reasons (APP-030) notes *that the degree of interference required and the need for the Applicant to control the land including existing access by anyone other than authorised persons to the substation mean that The Estate could not continue to use this land and freehold acquisition is appropriate and justified.*
- 5.1.2 The majority of the footprint of the Five Estuaries substation falls outside The Estate's ownership, with only a relatively small part of plot 17-0025 required specifically for delivery of the substation itself.

### 5.2 The North Falls Scheme

- 5.2.1 The North Falls Scheme proposes the permanent acquisition of the freehold interest in plot 16-001 (broadly equivalent to plot 17-0025 in the Five Estuaries Scheme) in order to deliver the onshore substation (Work 11) and the onshore substation compound (Work 12). The North Falls Scheme proposals include an air insulated switchgear design for the substation where high voltage equipment is installed outdoors with some small buildings to house control equipment with associated ancillary works to include landscaping, temporary construction works, ducting, drainage etc. The location of the substation for the North Falls Scheme is shown on (Appendix B - sheet 16 onshore work plan); the majority of the substation footings falls within the boundary of Plot 16-001.
- 5.2.2 The Schemes have apparently been designed to provide a single cable route corridor and connection points capable of serving one or both schemes, albeit that separate trenching is proposed; if both Schemes are approved, it is understood that the two onshore substations will be constructed and owned separately by the respective operating companies but the option to coordinate on landscaping, environmental mitigation, access and drainage has been retained and will be set out in detailed design post-consent.
- 5.2.3 The North Falls Scheme proposes three options, the second of which involves co-locating onshore substations with the Five Estuaries Scheme (North Falls non-technical Environmental Summary APP-013 para 8).
- 5.3 A layout showing two substations in the event both Schemes are approved is provided at (Appendix C).

- 5.4 It is understood that both Schemes may have a limited lifetime, given the likelihood of new emerging technologies. Any landscaping scheme is therefore arguably only required for the lifetime of the substation(s) and should be required to mitigate landscape impacts flowing from the construction and use of the substation and associated works authorised by the relevant consent.

## **6. General objection**

- 6.1 The Estate maintains a high level objection to both the Schemes on grounds that:-

6.1.1 Inadequate consideration has been given to possible alternative substation locations which would require less landtake/generate less impact on individual landowner interests; site selection for the onshore substation appears to have been driven by reference to the proposed National Grid connection node which is yet to be consented under the Norwich to Tilbury National Grid proposal and to visual impact, drainage, NPS Sensitivity, heritage and habitat and coordination between the two Schemes (North Falls APP-018 doc 3.1.6). In particular it does not appear that any consideration has been given to having a single combined onshore facility (substation and cabling to serve the two proposed windfarms). Although the Scheme applicants are different legal entities they have common beneficial ownership; consideration of a single scheme involving just one substation would offer a more sustainable, effective use of resources and would minimise environmental impacts and the need for such extensive landtake in line with the advice in NPPF paras 7 and 8.

6.1.2 The implementation of the North Falls Scheme alone would lead to the unacceptable and unnecessary loss of fertile Grade 1 agricultural land. Advice in the National Planning Policy Framework urges development to protect and enhance soils where possible in a manner commensurate with their quality. In other words, development should take place on lower grade soils where possible in order to safeguard use of the best class of such soil for future food production.

6.1.3 The implementation of the North Falls Scheme in its current form (if consented) would have a detrimental and unacceptable impact on the Estate's farming operations as it would reduce the size of the relevant agricultural unit by a significant and disproportionate amount see further details below.

6.1.4 The Estate requests the inclusion of appropriate safeguards to minimise impacts on their interests as part of any approved development consent order(s).

## **7. Objection to compulsory acquisition**

- 7.1 The Estate objects to the proposed to the compulsory acquisition of its land on grounds that;

7.1.1 The proposed compulsory acquisition of Estate land for the purpose of the North Falls Scheme alone does not meet the legal tests in s122 Planning Act 2008.

7.1.2 It is not legitimate to seek the compulsory acquisition of Estate land to cover the uncertain eventuality that both the North Falls and Five Estuaries Schemes receive consent at the same time.

7.1.3 Acquisition of land for the purposes of the North Falls Scheme would have an unacceptable and disproportionate impact on the Estates' farming operations in this area.

These grounds of objection are considered in more detail below.

## **7.2 Compulsory acquisition – the statutory framework.**

7.2.1 Section 122 of the Planning Act 2008 (PA) provides that a development consent order may only authorise compulsory acquisition if the Secretary of State is satisfied that:

*the land is required for the development to which the consent relates (PA s122(2)(a)), or is required to facilitate, or is incidental to, the development (PA s122(2)(b)); and*

*there is a compelling case in the public interest for the compulsory acquisition (PA s122(3)).*

7.2.2 *The Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land* (The Guidance) requires in general that:-

All reasonable alternatives to compulsory acquisition (including modifications to the scheme) should have been explored (para 8);

The proposed interference with the rights of those with an interest in land must be for a legitimate purpose and that it is necessary and proportionate (para 8);

The applicant must have a clear idea of how they intend to use the land which it is proposed to acquire (para 9);

7.2.3 The purposes for which the compulsory acquisition is required must be legitimate and sufficient to justify interfering with the human rights of those with an interest in the land. In particular, regard must be had to Art 1 of the First Protocol of the ECHR (Para 10);

*Article 1 of Protocol No. 1 – Right to property 1. Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. Possessions in this context includes property.*

7.2.4 In relation to the purpose for which compulsory acquisition is sought (PA s122(2)) The Guidance (para 11) provides that the Secretary of State will need to be satisfied that the land is needed for the development and is no more than is reasonably required for the purposes of development.

7.2.5 Where land is required to facilitate or is incidental to the proposed development (i.e. landscaping), the Secretary of State will need to be satisfied that the development could only be landscaped to a satisfactory standard if the land in question were to be compulsorily acquired and the land to be taken is no more than is reasonably necessary for that purpose and that what is proposed is proportionate.

7.2.6 In relation to the PA s122(3) test, The Guidance states at paras 13-16 that in order to demonstrate a compelling case in the public interest it must be shown that public benefit outweighs the private loss suffered by those whose land is acquired. Para 16 of the Guidance contemplates circumstances where a development consent order might be approved but excluding the compulsory acquisition of land which is demonstrably not necessary for the scheme purpose.

**7.3 The proposed compulsory acquisition of Estate land for the purpose of the North Falls Scheme alone does not meet the legal tests in s122 Planning Act 2008**

7.3.1 PA s122(2)(a)

7.3.1.1 The promoter must show that the permanent freehold acquisition of plot 16-001 and creation of permanent rights over plots 16-002 and -003 are required to deliver the purpose of this Scheme.

7.3.1.2 The plan at **Appendix B** shows the substation for the North Falls development sitting largely within the boundary of plot 16-001, with additional land around the perimeter to be used for Work 12 (inc Work 12A and 12B) which comprises cable circuits and associated ducting, onshore substation compound including cable circuits and ducting, land reprofiling, landscaping, drainage works, temporary and permanent means of access, temporary compounds, temporary and permanent ecological and environmental mitigation.

7.3.1.3 The Guidance requires that applicants must show that all reasonable alternatives have been explored and further that there are clear intentions for how land to be acquired is to be used.

7.3.1.4 On its current proposed configuration, part only of plot 16-001 is required to deliver the substation. No justification is provided as to why the outline landscape management plan proposed (See Appendix E) is needed to mitigate landscape impacts from the North Falls Scheme alone – see further below.

7.3.1.5 The promoter should give consideration to re-locating the substation entirely onto adjacent plot 15-016, an area which is already within the draft Order limits. This land is closer to the proposed access and the adjoining proposed National Grid connection node and therefore better suited to house the substation if the North Falls Scheme alone is approved. Relocation of the substation in this way would avoid the need to compulsorily acquire any Estate land to deliver the substation for this Scheme alone and does not appear to have been considered.

7.3.1.6 In summary part only of plot 16-001 is required to deliver the substation itself; if the substation is relocated completely onto the adjoining plot then none of plot 16-001 is required at all.

7.3.1.7 At the very least, the legal test in PA s122(2)(a) is not met in relation to part of Plot 16-001. If the substation can be relocated to the adjoining plot then the legal test is not met in relation to the whole of Plot 16-001.

7.3.2 PA s122(2)(b) ancillary development test

7.3.2.1 There is no need for the applicant to acquire land permanently where it is only required for temporary purposes.

7.3.2.2 It is understood that the development may expect to have a limited lifetime only as new technology emerges. As such, any approved landscaping mitigation is only required for the lifetime of the facility and permanent acquisition is not necessary.

7.3.2.3 The Guidance indicates that it is incumbent on the promoter to demonstrate that the development could only be landscaped to a satisfactory standard if the land in question were to be compulsorily acquired and that the land to be taken should be no more than is reasonably required for the purpose and is proportionate. The outline landscaping proposal are shown on the plan at Appendix E(APP-249).

- 7.3.2.4 The area around the substations (on the basis that both the Schemes are approved) is shown as being required in large part for lowland meadow/ woodland. There is no justification provided as to why such a large area of Estate land is required to mitigate landscape impacts from the substations. Where North Falls alone receives consent then presumably much less land will be needed to mitigate landscape impacts created by a single substation – and yet there is no proposed reduction in land take. If the location of the substation is shifted to the neighbouring plot as suggested above – arguably none of the Estate land would be required for any landscaping mitigation in any event.
- 7.3.2.5 There is doubt that the full extent of Plot 16-001 (excluding land required for the substation/temporary uses only) which is largely required for landscaping/mitigation work is required to deliver a reasonable standard of landscaping. As such the legal test at PA s122(2) (b) is not satisfied.
- 7.3.2.6 The North Falls Scheme does aim to provide 10% BNG (Biodiversity Net Gain Strategy APP-257). However there is no absolute need for this to be provided onsite – it can be provided elsewhere/ through the purchase of biodiversity credits without the need to exercise compulsory purchase powers. There is no need to compulsorily acquire land for BNG. There is other less good quality agricultural land in the vicinity which should be considered in the alternative.
- 7.3.3 PA s122(3) Compelling case in the public interest test
- 7.3.3.1 Contrary to Guidance, there is no evidence that the applicant has considered reasonable alternatives to the compulsory acquisition of plots 16-001-003 such as amending the layout to avoid impact on Estate land, promoting a single substation to serve both Schemes; seeking offsite BNG/ purchase of BNG credits, negotiating licences allowing temporary uses, negotiating an agreement for delivery of landscaping on relevant land for the lifetime of the project.
- 7.3.3.2 Despite any perceived public benefits of the North Falls Scheme as a whole there is no compelling case in the public interest to acquire the whole of The Estates’ freehold interest in plot 16-001 and rights over plots 16-002&003 either to deliver the development itself or any works necessary to facilitate the proposed development; arguably, none of these areas need to be compulsorily acquired/subject to the creation of new rights– if the applicants are able to relocate the substation in its entirety onto the neighbouring plot. At the very least a smaller part only of the Estate’s interest in plot 16-001 is required for the purposes of this scheme alone or to facilitate such purpose.
- 7.3.3.3 There is no absolute need to deliver BNG onsite and compulsory acquisition of the whole of plot 16-001 to provide onsite BNG is not necessary and would lead to negative impacts on the Estate farming operation and the sterilisation of Grade 1 agricultural land.
- 7.3.3.4 The North Falls Scheme can be delivered without the permanent acquisition of any of our client’s interests in plots 16-001-003, or at the very least without the permanent acquisition of part of plot 16-001. Any decision to confirm the compulsory acquisition of/ creation of rights over plots 16-001/3 would represent a breach of the ECHR and notably Art 1 or protocol 1 which requires that no person should be deprived of his possessions (including land) except in the public interest.
- 7.3.3.5 The requirements of PA s122(3) are not met.
- 7.4 It is not legitimate to seek the compulsory acquisition of Estate land to cover the uncertain eventuality that both the North Falls and Five Estuaries Schemes receive consent at the same time**

7.4.1 On its current configuration, the only need for the compulsory acquisition of Estate land is in circumstances where both Schemes are confirmed at the same time. This is just one possibility being pursued by the two Scheme promoters – and there is huge uncertainty around this, not least since the aspiration is to site the substations to link into the node connection for the Norwich to Tilbury National Grid Scheme, in relation to which no formal DCO application has yet been submitted.

Compulsory purchase powers are being sought in relation to a much larger area of land (including the Estate's interests) than is required to deliver either of the Schemes alone.

7.4.2 It is not legitimate to seek compulsory purchase powers in relation to Estate land in circumstances where the need for it is not yet certain, depending as it does upon the confirmation of the Norwich to Tilbury DCO in due course.

7.4.3 The Estate submits that none of its land (or at least a significantly smaller parcel of its land than is proposed) is required for the purpose of (or to facilitate delivery of) the North Falls Scheme alone.

7.4.4 The Estate further submits that none of its land (or at least a significantly smaller parcel of its land than is proposed) is required for the purpose of (or to facilitate delivery of) the Five Estuaries Scheme alone.

7.4.5 The Secretary of State is duty bound to consider the evidence relating to each of these Schemes separately and to reach a conclusion based on the merits of each application alone.

7.4.6 Any decision to confirm the development consent order for the North Falls Scheme should not be influenced by considerations relating to the separate Five Estuaries Scheme. It would not be legitimate to authorise the compulsory acquisition of land under the North Falls Scheme where that land is only required in circumstances where the Five Estuaries Scheme receives consent.

7.4.7 There is no compelling case nor any justification in the public interest for the purposes of PA s122(3) to support such an extensive land grab.

7.4.8 The applicant has not demonstrated that there are no reasonable alternatives to the proposed compulsory acquisition of Estate land. In particular, no attempt has been made to pursue a single substation to serve both Schemes which may have offered a more sustainable, less impactful option.

7.4.9 The promoter has not demonstrated why the whole of plot 16-001 is required to mitigate the immediate impacts of the substation development; there is no need to compulsorily acquire land for BNG – it can be delivered offsite or through the purchase of BNG credits; use of plot 16-001 for BNG will effectively sterilise grade 1 agricultural land unnecessarily as well as harming the Estates' farming operations.

7.4.10 The Estate wants to retain ownership of as much of its land as possible in order to ensure that it can make the best use of its resources, run its farming operations efficiently and not be denied the opportunity to be able to participate in any future development opportunities which may arise.

**7.5 Acquisition of land for the purposes of the North Falls Scheme would have an unacceptable impact on the Estates' farming operations in this area.**

- 7.5.1 Plot 16-001-3 is managed as part of the single Holly Lodge Farm agricultural holding by the Tabor Farm business; any reduction in acreage will result in a significant loss of income which will in turn have a knock-on effect on the profitability and income generation potential for the land. Some efficiencies of scale will be lost and profit margins will be reduced; Fixed costs will stay the same but there will be less income generating land available; the land take will have a disproportionate and significant impact on the farm business.
- 7.5.2 Access will be interfered with both during construction and operation and farm traffic which is currently able to make use of internal access through adjacent field boundaries will be forced out onto the public highway (the single lane Grange Road) which will cause delay, loss and frustration to both the Estate and motorists in general.

## **8. Negotiations**

- 8.1 The Estate is willing to negotiate with the North Falls Scheme promoter; whilst there were some preliminary meetings with the late Charles Tabor, an engineer has only been made available at one meeting in 2023; a draft set of Heads of terms was issued, but was rejected as the commercial terms were pitched at a level significantly less than the current market rate; the promoter has not been willing to negotiate as to the terms since then. Presumably securing the land necessary to deliver the substation should be of key importance for the North Falls Scheme and The Estate is hopeful that the promoter will be encouraged by the Examining Authority to embrace the concept of meaningful negotiations going forward.

## **9. Conclusion**

The Estate objects to the North Falls Scheme on the following grounds;

- Inadequate consideration has been given to alternatives which would have less impact on individual landowners; in particular there has been no consideration of a single substation to serve both Schemes which would presumably minimise landtake.
- The North Falls Scheme would lead to the unacceptable loss of Grade 1 agricultural land.
- The implementation of the North Falls Scheme would have an unacceptable and disproportionate impact on the Estate's farming operation.

The Estate objects to the compulsory acquisition of its land on the following grounds;-

- There is no need for the purposes of the Planning Act 2008 to compulsorily acquire the whole/any part of Estate land to deliver the North Falls Scheme alone; consideration should instead be given to relocating the substation onto the neighbouring land within the order limits which is closer to access and the connection node.
- There is no need for the purposes of the Planning Act 2008 to acquire the whole/any part of Estate land to deliver land required to facilitate or ancillary to the North Falls Scheme alone;
- There is no compelling case in the public interest for the purposes of the Planning Act 2008 to acquire the whole/part of any Estate land for the purposes of the North Falls Scheme alone. In particular,

- (v) Alternative solutions (which might avoid sterilisation of this grade 1 agricultural land) have not been considered;
  - (vi) there is no need for the proposed extensive landtake to mitigate landscape impacts of the substation;
  - (vii) There is no need to compulsorily acquire land to deliver onsite BNG.
  - (viii) The farming operations on Estate land would be unnecessarily, disproportionately and unacceptably disrupted as a result of the construction and operation of the North Falls Scheme.
- It is not legitimate for the purposes of the Planning Act 2008 to take into account considerations relating to the Five Estuaries Schemes Scheme when considering whether to confirm the North Falls Scheme.

Yours sincerely

[signature]

**CATHERINE HIBBERT**  
**For and on behalf of Holmes & Hills LLP**

Enc(s)

DRAFT



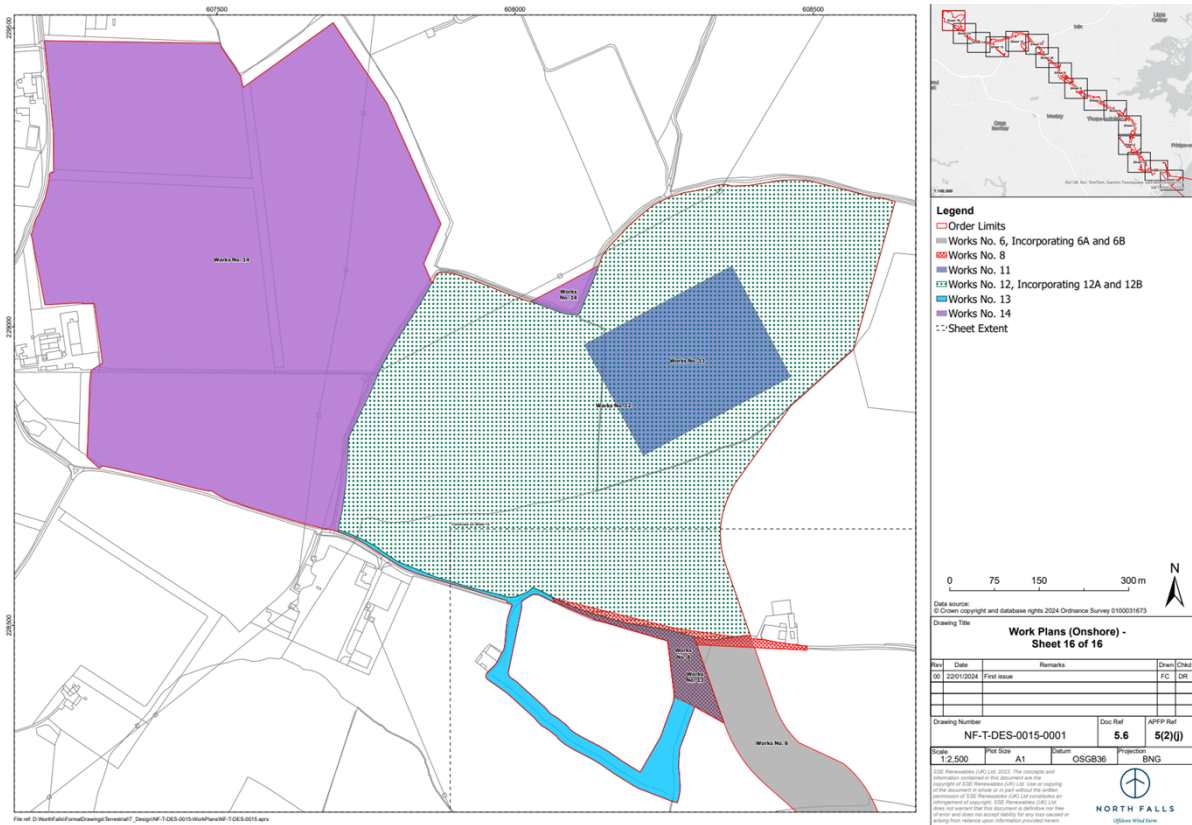
Appendix A Holly Lodge Farm – part of wider single agricultural unit

[picture/image to follow]

DRAFT

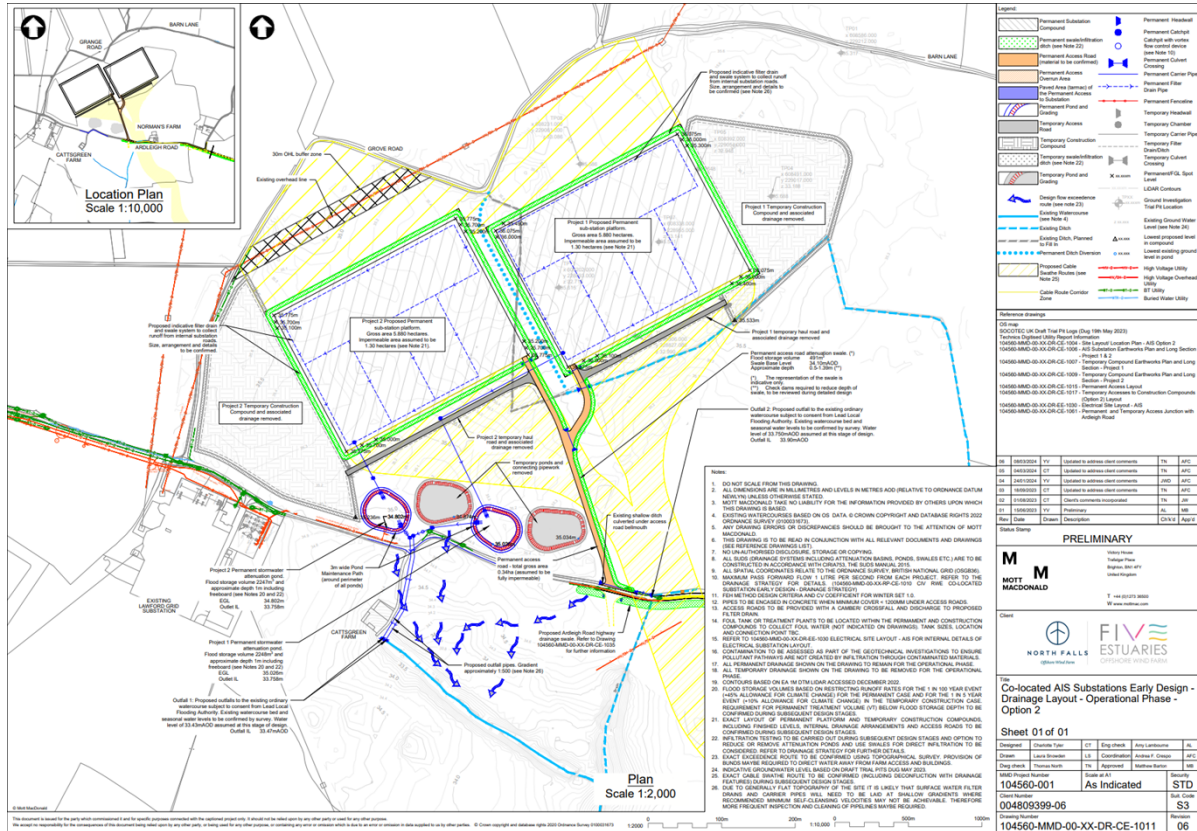
Appendix B  
 North Falls work plan 16 - proposed location of substation

**DRAFT**

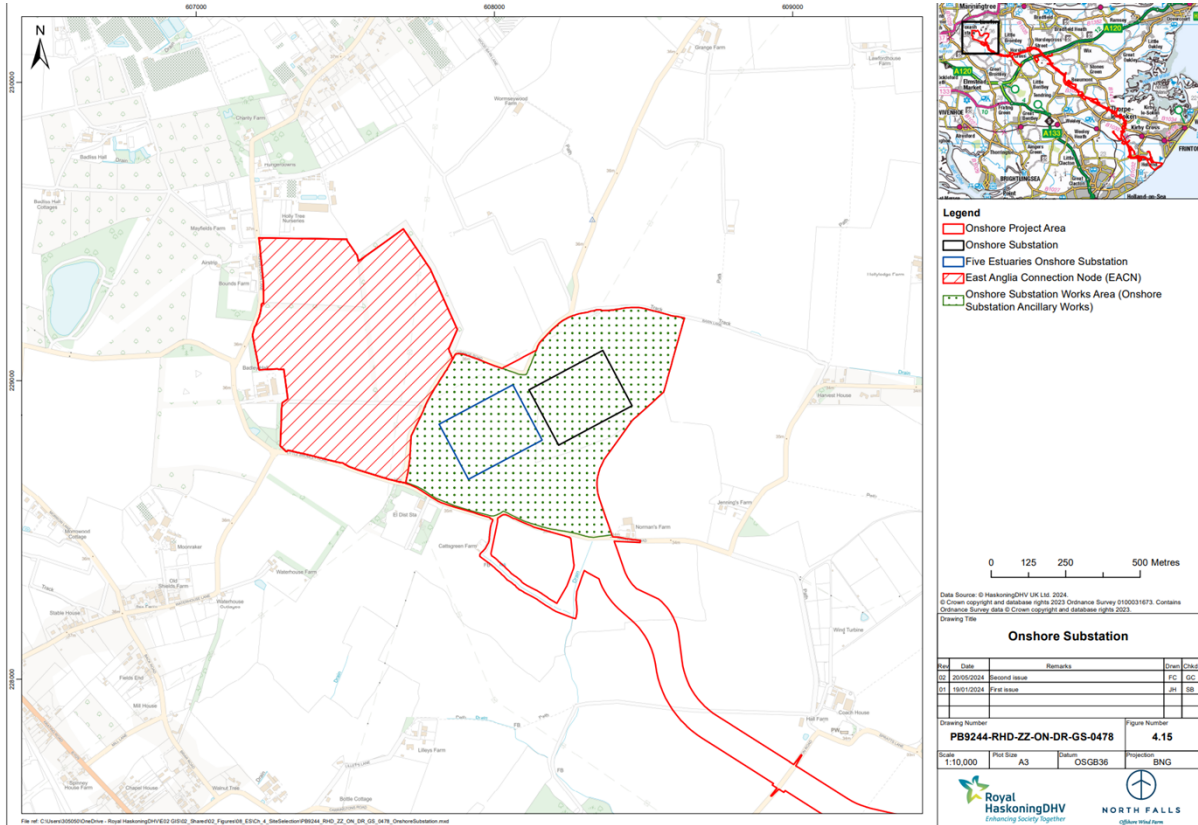


Appendix C Co located AIS substations early design

**DRAFT**



**DRAFT**



# DRAFT

