



NORTH LINCOLNSHIRE GREEN ENERGY PARK

Planning Act 2008

Infrastructure Planning
(Applications: Prescribed
Forms and Procedure)
Regulations 2009

Regulation 5(2)(q)

North Lincolnshire Green Energy Park

Volume 5

5.13 Draft Deed of Development Consent
Obligations

PINS reference: EN010116

May 2022

Revision number: 0



20[●]

Deed of Obligation pursuant to section 1 of the Localism Act 2011 and
section 111 of the Local Government Act 1972
relating to
North Lincolnshire Green Energy Park, North Lincolnshire

North Lincolnshire Council ⁽¹⁾ and
The North Lincolnshire Green Energy Park Limited ⁽²⁾

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DATE

PARTIES

- (1) **North Lincolnshire Council** of Church Square House, 30-40 High Street, Scunthorpe, North Lincolnshire DN15 6NL (**Council**); and
- (2) **The North Lincolnshire Green Energy Park Limited** (Company No. 10949653) of Regent's Court, Princess Street, Hull, East Yorkshire, HU2 8BA (**Developer**).

BACKGROUND

- (A) The Developer submitted the Application to the Secretary of State for development consent to construct and operate the Project. The Secretary of State is responsible for determining the Application.
- (B) The Council is the local planning authority for the area in which the Site is situated.
- (C) It is intended that the Developer will be the undertaker for the purposes of the Development Consent Order. The Developer intends to construct, operate and maintain the Project as authorised by the Development Consent Order.
- (D) The parties have agreed to enter into this Deed in order to secure the performance of the obligations contained in it.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 In this Deed the following expressions shall have the following meanings:

1990 Act	the Town and Country Planning Act 1990.
2008 Act	the Planning Act 2008.
Application	the application for a development consent order under section 37 of the 2008 Act in relation to the Site, submitted to the Planning Inspectorate on [●] May 2022 and given reference EN010116.
Commencement of Development	the date upon which the Development is begun by the carrying out of a material operation as specified in section 155 of the 2008 Act comprised in the Project other than operations consisting of Preliminary Works and Commence Development shall be construed accordingly.
Development Consent Order	the development consent order to be made pursuant to the Application.
Expert	a person of at least 10 years post qualification continual and continuing experience in the subject matter of the dispute.
Junction Improvements Contribution	the sum of [●] ¹ to be used towards improvements to the junction in the vicinity of Neap House.
Plan 1	the plan appended hereto at Schedule 1.
Preliminary Works	means works consisting of:

¹ Amount to be confirmed by Council before start of examination

- (a) site clearance;
- (b) environmental surveys;
- (c) investigations for the purpose of assessing ground conditions;
- (d) erection of any temporary means of enclosure;
- (e) temporary display of notices; or
- (f) installation of a site compound

Secretary of State the Secretary of State for Business, Energy and Industrial Strategy.

Site all that land shown edged red on Plan 1.

Undertaking means the benefit of the Development Consent Order to construct or operate Works Nos. 1, 1A-1D and 2-15 as set out in Schedule 1 to the Development Consent Order.

Working Day any day from Monday to Friday inclusive which is not Christmas Day, Boxing Day, Good Friday, Easter Monday or a Statutory Bank Holiday.

- 1.2 Reference in this Deed to any enactment shall be construed as a reference to that enactment as amended extended or re-enacted or repealed by or under any other enactment and shall include all instruments orders and regulations for the time being made, issued or given under that enactment.
- 1.3 Words importing one gender shall be construed as importing any gender and words importing the singular shall be construed as importing the plural and vice versa.
- 1.4 Any words denoting natural persons shall include legal persons and vice versa.
- 1.5 References to clauses paragraphs and schedules are references to clauses paragraphs and schedules to this Deed.
- 1.6 References to the Developer shall include any entity who takes a transfer or grant of all of the Undertaking pursuant to the Development Consent Order.
- 1.7 The expression **Council** shall include any successor authority to its statutory functions under the 1990 Act.
- 1.8 Where a party includes more than one person any obligations of that party shall be joint and several.
- 1.9 Clause headings shall not affect the construction of this Deed.
- 1.10 Any phrase introduced by the terms 'including' 'include' 'in particular' or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2. LEGAL EFFECT

- 2.1 This Deed is made pursuant to section 1 of the Localism Act 2011, section 111 of the Local Government Act 1972 and all other powers so enabling.

3. CONDITIONALITY

- 3.1 This Deed is conditional upon and does not become effective unless and until the Development Consent Order comes into force.
- 3.2 Provided that Commencement of Development has not taken place in relation to the Project, where the Development Consent Order is granted and becomes the subject of any judicial review proceedings under section 118 of the 2008 Act:
- 3.2.1 until such time as such proceedings including an appeal have been finally determined, the terms and provisions of this Deed will remain without operative effect unless Commencement of Development takes place in relation to the Project; and
- 3.2.2 if following the final determination of such proceedings the Development Consent Order is quashed and, in the event that the court orders the Application to be remitted to the Secretary of State, the Application is subsequently refused and no appeal or further appeal may be made in respect of such refusal, this Deed will cease to have any further effect and any money paid to the Council pursuant to the Schedule and not spent or committed by the Council shall be repaid in full within 20 Working Days of the final determination of such proceedings.

4. COVENANTS & DECLARATIONS

- 4.1 The Developer covenants with the Council to perform the obligations contained in Schedule 2.
- 4.2 The Council covenants with the Developer to comply with the covenants contained in Schedule 3.

5. RELEASE

- 5.1 The Developer shall, upon transfer of the entirety of its benefit of the Development Consent Order, be released from all obligations in this Deed but without prejudice to the rights of the parties in relation to any antecedent breach of those obligations.

6. EXPIRY

- 6.1 If the Development Consent Order expires or is revoked prior to Commencement of Development then this Deed shall forthwith determine and cease to have effect and the Council shall forthwith cancel any entries made in the register of local land charges in respect of this Deed.

7. NON-FETTER AND WAIVER

- 7.1 Nothing in this Deed restricts or is intended to restrict the proper exercise at any time by the Council of any of its statutory powers, functions or discretions.
- 7.2 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission granted before or after the date of this Deed.

8. SEVERANCE

If any provision in this Deed shall in whole or in part be held to be invalid, illegal or unenforceable under any enactment or rule of law such provisions shall to the extent required be severed from this Deed and shall not affect the validity or enforceability of the remaining provisions of this Deed.

9. NOTIFICATION

- 9.1 Any notice, request, demand or other written communication to be given or served under this Deed must be in writing and must be:
- 9.1.1 delivered by hand; or

- 9.1.2 sent by pre-paid first class post or other next working day delivery service.
- 9.2 Any notice, request, demand or other written communication to be given or served under this Deed must be sent to the relevant party as follows:
- 9.2.1 to the Council at the address above; and
- 9.2.2 to the Developer at the address above;
- or as otherwise specified by the relevant party by notice in writing to each other party whether or not in accordance with Clause 9.
- 9.3 Any notice, request, demand or other written communication given or served in accordance with Clause 9.1 or Clause 9.2 shall be deemed to have been received:
- 9.3.1 if delivered by hand, on signature of a delivery receipt provided that if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice shall be deemed to have been received at 9.00 am on the next Working Day; or
- 9.3.2 if sent by pre-paid first class post or other next working day delivery service, on the Working Day after posting.
- 9.4 A notice, request, demand or other written communication given under this deed shall not be validly given if sent by e-mail.
- 9.5 This Clause 9 does not apply to the service of any proceedings or other documents in any legal action.

10. DISPUTE RESOLUTION

- 10.1 Where the agreement, approval, consent or expression of satisfaction is required by any party under the terms of this Deed such agreement, approval, consent or expression of satisfaction shall not be unreasonably withheld or delayed.
- 10.2 Any dispute or disagreement arising under this Deed which has been identified by notice in writing by one party to the other(s) and which has not been resolved within 20 Working Days (or such lesser period as may be agreed) of the date of receipt by the other party(s) of such written notice may be referred at the instance of any party for determination by an Expert whose decision (except in cases of manifest error or fraud) shall be final and binding on the parties.
- 10.3 The following provisions and terms of appointment shall apply to such disputes or disagreements:-
- 10.3.1 the Expert shall be agreed between the parties or, in default of agreement within 10 Working Days of receipt of the notice in Clause 10.2 above, shall be appointed or identified by the following persons:
- (a) in the case of disputes relating to land or valuation matters the President of the Royal Institution of Chartered Surveyors;
 - (b) in the case of disputes relating to planning or design matters the President of the Royal Town Planning Institute; or
 - (c) in the case of any other dispute the President of the Bar Council.
- 10.3.2 the Expert shall act as an expert and not as an arbitrator
- 10.3.3 the Expert shall be required to give notice of their appointment to each of the parties (**Expert's Notice**) and thereafter:

- (a) the persons calling for the determination shall make written submissions to the Expert and the other parties within 20 Working Days of receipt of the Expert's Notice;
 - (b) the other parties shall have 20 Working Days from the receipt of such written submission (or such extended period as the Expert shall allow) to respond;
 - (c) the Expert shall disregard any representations made out of this time; and
 - (d) the Expert may request further information or documentation and the parties shall comply with any requests by the Expert for further information or documentation within a reasonable time;
 - (e) to the extent not provided for by this clause the Expert may in their reasonable discretion determine such other procedures to assist with the conduct of the determination as they consider just or appropriate including (to the extent considered necessary) instructing professional advisers to assist them in reaching their determination
- 10.3.4 the Expert shall make his decision within 20 Working Days of the close of the period for submissions of written representations;
- 10.3.5 the Expert's decision shall be in writing and shall give reasons for the decision; and
- 10.3.6 each party shall bear its own costs and the Expert's costs will be payable in the determination of the Expert.
- 10.4 If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this clause then:
- 10.4.1 either party may apply to the relevant body as per Clause 10.3.1 to discharge the Expert and appoint a replacement Expert with the required expertise; and
 - 10.4.2 Clause 10.3 shall apply to the new Expert as if they were the first Expert appointed.

11. THIRD PARTY RIGHTS

No person who is not a party to this Deed may enforce any terms hereof pursuant to the Contracts (Rights of Third Parties) Act 1999 **PROVIDED THAT** this clause shall not affect any right of action of any person to whom this Deed has been lawfully assigned.

12. JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

SCHEDULE 1

Plan

North Lincolnshire Green Energy Park

Title Figure 3
Site Boundary

Client Information

Client North Lincolnshire Green Energy Park Ltd
PINS Proj No EN010116
Date 17/03/2022
Drawn by MTC
Checked by NW
Version P0

Map Information

CRS EPSG 27700
CRS Name British National Grid

Scale 25,001

ArcMap File \\UKSSMBNAF-

PROJECT_DESCRIPTION_ES_SiteBoundary_A01

Legend

Order Limits



*Not all laydown areas are shown on the plan. Where laydown areas would be located within the footprint of the the building to be constructed, they have been omitted from the plan to improve clarity.

Layer Source Information

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community



DO NOT SCALE THIS DRAWING

SCHEDULE 2

Financial Contributions

1. NOTICE

- 1.1 The Developer will give the Council not less than 5 days prior written notice of Commencement of Development.

2. JUNCTION IMPROVEMENTS CONTRIBUTION

- 12.1 Prior to Commencement of Development the Owner shall pay the Junction Improvement Contribution to the Council.
- 12.2 The Owner shall not cause or permit the Commencement of Development unless and until it has paid the Junction Improvement Contribution to the Council.

SCHEDULE 3

Council's Covenants

1. The Council shall place the Junction Improvement Contribution in an interest bearing account.
2. The Council shall not to apply the Junction Improvement Contribution for any purpose other than for the purposes set out within Clause 1.1 of this Deed.
3. In the event that the Junction Improvement Contribution (or any part or parts thereof) is not expended within 5 (five) years of the date of payment then the sum or sums not expended plus interest accrued shall be repaid to the party that paid it or their nominee.
4. The Council shall respond to any request to account for the sums expended within 20 (twenty) Working Days of that request being made provided that request was made within two years from the expiration of the relevant period mentioned in paragraph 3 above and repay any unexpended sums to the person who made the payment (or to that persons nominee) within 20 (twenty) Working Days of such response.

Executed as a deed by affixing the common seal of **North Lincolnshire Council** in the presence of a duly authorised signatory:

Insert Common Seal of Company

.....
Signature

.....
Print Name

Executed as a deed by **The North Lincolnshire Green Energy Park** acting by a Director, in the presence of a witness:

.....
Director

Signature (Witness)

Print Name

Address

.....

.....

Occupation