



Planning Act 2008

Infrastructure Planning  
(Applications  
Prescribed Forms and  
Procedure) Regulations  
2009

# North Lincolnshire Green Energy Park

Volume 9

9.32 Applicant's responses to ExAs  
recommended amendments to the  
dDCO

PINS reference: EN010116

April 2023

Revision number: 0



## Contents

<b>1.</b>	<b>INTRODUCTION .....</b>	<b>3</b>
1.1	Overview.....	3
1.2	The Proposed Development .....	3
1.3	Structure of the Responses to Written Questions .....	4
<b>2</b>	<b>RESPONSES TO EXAMINING AUTHORITY RECOMMENDED AMENDMENTS.....</b>	<b>6</b>

## Acronyms and Abbreviations

Name	Description
AGI	Above Ground Installations
CBMF	Concrete Block Manufacturing Facility
CCUS	Carbon Capture, Utilisation and Storage
CO <sub>2</sub>	Carbon Dioxide
CoCP	Code of Construction Practice
COMAH	Control of Major Accident Hazards
DAS	Design and Access Statement
dDCO	Draft Development Consent Order
DHPWN	District Heat and Private Wire Networks
EIA	Environmental Impact Assessment
ERF	Energy Recovery Facility
ES	Environmental Statement
EV	Electric Vehicle
ExA	Examining Authority
H <sub>2</sub>	Hydrogen
IEMA	Institute of Environmental Management and Assessment
LAQM	Local Air Quality Management
MW	Megawatt
NE	Natural England
NLC	North Lincolnshire Council
NLGEP	North Lincolnshire Green Energy Park
NSIP	Nationally Significant Infrastructure Project
OEMP	Outline Environmental Management Plan
PRF	Plastic Recycling Facility
RDF	Refuse Derived Fuel
RHTF	Residue Handling and Treatment Facility
SMP	Soil Management Plan
SoCG	Statement of Common Ground
SSSI	Site of Special Scientific Interest
SUDs	Sustainable Drainage System

---

# 1. INTRODUCTION

## 1.1 Overview

- 1.1.1 This report responds to the Examining Authority's (ExA) recommended amendments to the Applicants draft DCO Revision 5 (PD-013), issued on 6 April 2023.
- 1.1.2 The report responds to each of the recommended amendments that were included within the report.
- 1.1.3 Where there were questions addressed to specific Interested Parties, the Applicant has not responded directly. However, once these responses have been made available for review then a review will be conducted.

## 1.2 The Proposed Development

- 1.2.1 The North Lincolnshire Green Energy Park (NLGEP), located at Flixborough, North Lincolnshire, comprises an ERF capable of converting up to 760,000 tonnes of residual non-recyclable waste into 95 MW of electricity and a CCUS facility which will treat a proportion of the excess gasses released from the ERF to remove and store CO<sub>2</sub> prior to emission into the atmosphere. The design of the ERF and CCUS will also enable future connection into the Zero Carbon Humber pipeline to be applied for, when this is consented and operational, to enable the possibility of full carbon capture in the future.
- 1.2.2 The NSIP incorporates a switchyard, to ensure that the power created can be exported to the National Grid or to local businesses, and a water treatment facility, to take water from the mains supply or recycled process water to remove impurities and make it suitable for use in the boilers, the CCUS facility, concrete block manufacture, hydrogen production and the maintenance of the water levels in the wetland area.
- 1.2.3 The Project will include the following Associated Development to support the operation of the NSIP:
  - A bottom ash and flue gas residue handling and treatment facility (RHTF);
  - A concrete block manufacturing facility (CBMF);
  - A plastic recycling facility (PRF);
  - A hydrogen production and storage facility;
  - An electric vehicle (EV) and hydrogen (H<sub>2</sub>) refuelling station;

- 
- Battery storage;
  - A hydrogen and natural gas above ground installations (AGI);
  - A new access road and parking;
  - A gatehouse and visitor centre with elevated walkway;
  - Railway reinstatement works including, sidings by Dragonby, reinstatement and safety improvements to the 6km private railway spur, and the construction of a new railhead with sidings south of Flixborough Wharf;
  - A northern and southern district heating and private wire network (DHPWN);
  - Habitat creation, landscaping and ecological mitigation, including green infrastructure and 65-acre wetland area;
  - New public rights of way and cycle ways including footbridges;
  - Sustainable Drainage Systems (SuDS) and flood defence; and,
  - Utility constructions and diversions.

1.2.4 Additional information regarding the proposed development can be found in Chapter 1 and Chapter 3 of the submitted Environmental Statement (APP-049 and APP-051).

### **1.3 Structure of the Responses to Schedule of ExA's recommended amendments to the Applicant's draft DCO Revision 5**

1.3.1 The remainder of this report has been structured to set out clearly all responses to the ExA's recommended amendments to the dDCO..

## 2 RESPONSES TO EXAMINING AUTHORITY RECOMMENDED AMENDMENTS

NO.	ARTICLE / SCHEDULE	EXA'S RECOMMENDED AMENDMENT	REASON AND NOTES	APPLICANT'S RESPONSE
1.	Article 2	<p>“the 1991 Act” means the New Roads and Street Works Act 1991(j);</p> <p><b>“the 2003 Act means the Communications Act 2003”</b></p> <p>“the 2008 Act” means the Planning Act 2008(k);</p> <p>“statutory undertaker” means any person falling within section 127(8) of the 2008 Act and <b>a public communications provider as defined in section 151 of the 2003 Act</b> (statutory undertakers’ land);</p>	<p>Statutory undertaker is referred to in Part 1 and Part 2 but this does not currently include public communications providers</p>	<p>The Applicant has made this change in the latest revision of the dDCO submitted at Deadline 8.</p>
2.	Article 24	<p>24.—(1) After the end of the period of <b>5</b> years beginning on the day on which this Order is made—</p> <p>(a) no notice to treat may be served under Part 1 (determination of questions of disputed compensation) of the 1965 Act; and</p> <p>(b) no declaration may be executed under section 4 (execution of declaration) of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 27 (application of the 1981 Act).</p> <p>(2) The authority conferred by article 31 (temporary use of land for carrying</p>	<p>Having considered the Applicant’s submissions and in particular the Phasing Strategy Work Book [APP-061] Appendix C of Traffic and Transport Chapter, Indicative Phasing Plan [APP-023] both of which indicate works should be complete by year 4 apart from the District Heating Private Wire Network (DHPWN). While the ExA appreciates the complications cited in reference to the carbon capture and hydrogen injection to the grid.</p>	<p>The Applicant has made this change in the latest revision of the dDCO submitted at Deadline 8.</p>

		<p>out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.</p>	<p>The justification of an extended period to exercise Compulsory Acquisition (CA) powers is not supported as both elements are intended to be included in earlier phasing of the development and the Carbon capture, utilisation and storage facility (CCUS) is required to be commissioned and operational in line with Requirement 18.</p>	
3.	Article 27	<p>27.—(1) The 1981 Act applies as if this Order were a compulsory purchase order.  (2) The 1981 Act, as so applied, has effect with the following modifications.  (3) Section 5 (earliest date for execution of declaration) is omitted.  (4) Section 5A (time limit for general vesting declaration) is omitted(a).  (5) In section 5B (extension of time limit during challenge)(b)—  (a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent)”; and ( b) for “the three year period mentioned in section 4” substitute “the <b>five</b> year period mentioned in article 24 (time</p>	As per Article 24	The Applicant has made this change in the latest revision of the dDCO submitted at Deadline 8.

		<p>limit for exercise of authority to acquire land compulsorily) of the North Lincolnshire Green Energy Park Order 202[X]”.</p> <p>(6) In section 7 (constructive notice to treat), in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” are omitted.</p> <p>(7) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration)(c), omit paragraph 1(2).</p> <p>(8) References to the 1965 Act in the 1981 Act must be construed as references to that Act as applied by section 125 of the 2008 Act (as modified by article 28 (application of Part 1 of the 1965 Act) to the compulsory acquisition of land under this Order.</p>		
4.	Article 31 (2)	<p>(2) Not less than <b>28</b> days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.</p>	<p>14 days is considered a very short notice period and is not consistent with the notice period under Article 32</p>	<p>The Applicant has made this change in the latest revision of the dDCO submitted at Deadline 8.</p>
5.	Article 43	<p>43. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land) in relation to the land</p>	<p>Operational land associated with a statutory undertaker should properly relate to the generating station facilitating permitted development rights, additional</p>	<p>The Applicant has accepted the ExA’s proposed deletion of Work No. 2 and has reflected this in the latest revision of the dDCO submitted at Deadline 8.</p>



		in respect of which Work Nos. 1, 1A, [ ]1D, [ ] 10, 11 and 14 are authorised.	land beyond this has not been fully justified or explained. Work No. 1B is a Carbon Capture Facility, and Work No. 2 comprises (a) a bottom ash and flue gas residue handling and treatment facility; (b) a concrete block manufacturing facility; and (c) offices and elevated walkway connected to Work Nos 1, 1C and 6.  The ExA do not consider appropriate justification or reasoning has been provided which would warrant these elements being included in the 'operational land'.	Work No. 1B is part of the NSIP, rather than associated development, and so the Applicant considers that it is reasonable that this should also benefit from permitted development rights in the same way as Work Nos. 1, 1A and 1D. The CCUS is more integral than Work No. 2 and will become a more typical feature of a generating station development going forwards.
6.	Authorised Signatory	Signed by authority of the Secretary of State for <b>Energy Security and Net Zero</b>	Following the Cabinet reshuffle and the realignment of Government Departments the authorising Secretary of State would now be the Secretary of State for Energy Security and Net Zero.	The Applicant has made this change in the latest revision of the dDCO submitted at Deadline 8.
7.	Government Department	Department for <b>Energy Security and Net Zero</b>	As above	The Applicant has made this change in the latest revision of the dDCO submitted at Deadline 8.

8.	Schedule 1 Part 1	<p>Work No. 1D – a cooling system consisting of air-cooled condensers or air blast chillers.</p> <p><b>Associated Development</b> Work No. 2 comprising <b>associated development</b>—</p> <p>(a) a bottom ash and flue gas residue handling and treatment facility;</p> <p>(b) a concrete block manufacturing facility; and</p> <p>(c) offices and elevated walkway connected to Work Nos 1, 1C and 6.</p>	<p>Insert the Title ‘Associated Development’ prior to the work number as a heading above Works No.2 – Work15B to clarify each of these elements are considered to be Associated Development, and delete the same phrase from the description of part of Work No.2</p>	<p>The Applicant has previously considered making an amendment along these lines, however Work No. 1C is also associated development, and so if this approach was taken Work No. 1C would fall outside of the associated development “section” (as to move it to that section would mean Work No. 1C would be out of chronological order).</p> <p>The Applicant’s approach follows that taken in the South Humber Bank Energy Centre Order 2021, which does not include a separate heading/section for associated development, with each work that is associated development explicitly stating so within the description of that work.</p>
9.	<p>Part 3 Parameters Table</p> <p>Work No.3 Rail Infrastructure</p>	<p>Insert <b>Component -Rail Infrastructure (Work No. 3)</b> <b>Footbridge No.1,</b> <b>Footbridge No.2</b> <b>Maximum height AOD (m)</b> <b>55.385</b> <b>48.561</b></p>	<p>To ensure the footbridges remain within the maximum parameters assessed.</p>	<p>The Applicant has made this change in the latest revision of the dDCO submitted at Deadline 8.</p>
10.	Schedule 2 Requirement 3	<p>3.—(1) In relation to any part of the authorised development no development of that part may</p>	<p>Chapter 19 of the Environmental Statement (ES) currently only</p>	<p>The Applicant has removed Tables A and B from the noise chapter and mitigation chapter of the ES, on the</p>

		<p>commence, save for any preliminary works, until details of the following have been submitted to and approved by the relevant planning authority-</p> <p>(a) the siting [ ], design, external appearance and dimensions of all buildings and structures comprising the authorised development which are to be retained;</p> <p>(b) the colours, materials and surface finishes of all new permanent buildings and structures referred to in sub-paragraph (a);</p> <p>(c) the permanent circulation roads, vehicle parking and hardstanding; and</p> <p>(d) grounds levels and heights of all permanent buildings and structures.</p> <p>(2) The details submitted and approved under sub-paragraph (1) must be in accordance with the design process and codes set out in the design principles and codes [ ], the noise limits relating to fixed plant in noise tables <b>1</b> and <b>2</b> of chapter 19: mitigation of the environmental statement and the flood risk assessment and must take into account any results of preliminary ground investigations, including ongoing archaeological investigations, topographical surveys and ground gas monitoring.</p>	<p>has Tables No. 1 and 2 not A and B.</p> <p>Tables A and B have currently only been provided within Appendix 3 to [REP6-034] 9.26 Written summaries of oral submissions at Issue Specific Hearing 4 (ISH4). The correct Table Reference/Document Reference will need to be included in the final dDCO.</p> <p>Typos – additional spaces not required</p>	<p>basis that they have been replaced by the noise limits in the new requirement the ExA requires. The Applicant has therefore deleted the references to Tables A and B in the latest revision of the dDCO submitted at Deadline 8.</p>
--	--	--	--	---

		(3) The authorised development must be carried out in accordance with the details approved under sub-paragraph (1) for the relevant part of the authorised development.		
11.	Requirement 4 (extract)	(7) The detailed operational environmental management plan in respect of the energy park works must also be in accordance with any conditions in the environmental permit and incorporate the following (to the extent such matters are not covered in the environmental management system required under the environmental permit)- (a) noise management plan in accordance with the relevant noise limits relating to operational noise in noise table 2 of chapter 19: mitigation of the environmental statement; (b) waste management plan; and (c) surface water discharge strategy.	Chapter 19 of the ES currently only has Tables No. 1 and 2 not A and B  Tables A and B have currently only been provided within Appendix 3 to [REP6-034] 9.26 Written summaries of oral submissions at Issue Specific Hearing 4 (ISH4). The correct Table Reference/Document Refence will need to be included in the final dDCO.	The Applicant has removed Tables A and B from the noise chapter and mitigation chapter of the ES, on the basis that they have been replaced by the noise limits in the new requirement the ExA requires. The Applicant has therefore deleted the references to Tables A and B in the latest revision of the dDCO submitted at Deadline 8.
12.	Requirement 10	10.—(1) No part of the authorised development may commence, save for the preliminary works, until a construction traffic management plan and a construction workers travel plan for that part has been submitted to and approved by the relevant planning authority. (2) The construction traffic management plan submitted and	To ensure consistency throughout the dDCO and that the scheme submitted under sub-paragraph (1) is the one to be implemented.	The Applicant has made this change in the latest revision of the dDCO submitted at Deadline 8.

		<p>approved under sub-paragraph (1) must be in accordance with the CLP.</p> <p>(3) The construction traffic management plan and construction workers travel plan <b>approved under sub-paragraph (1)</b> must be implemented as approved throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.</p>		
13.	Requirement 14	<p>14. —(1) The undertaker must not commence development of the energy park works or railway reinstatement works, excluding any preliminary works, until the new access road (Work No. 5) has been constructed to base course level and connected to the public highway.</p> <p>(2) As part of constructing the new access road to base course level under sub-paragraph (1), the undertaker must carry out such parts of Work Nos. 10 and 11 as fall within the land in respect of which Work No. 5 is authorised.</p> <p><b>Insert (3) Before the ERF first comes into operation the new access road (Work No. 5) will be completed to the satisfaction of the relevant planning authority and be available for public use.</b></p>	<p>While the ExA understands that Article 13(2) prevents the closure of Stather Road in the event an appropriate replacement is not in place, this does not explicitly require the completion of the new highway access required to serve the development. The provision and completion of the new access road is an important consideration in not only meeting the highway requirements, to serve the needs of the site but to ensure the access in place during operation is 200metres (m) away from the River Trent.</p>	<p>The Applicant does not consider this change is necessary, as article 13(2)(a) provides that the stopping up of Stather Road (which is necessary for the development to proceed) may not take place unless the new street to be provided in substitution has been completed to the reasonable satisfaction of the relevant street authority and is open for use. Therefore, as the stopping up is required, the article does also explicitly require the completion of the new highway access.</p> <p>That said, as the Applicant is committed to doing this in any event, the Applicant has therefore amended requirement 14 in the latest revision of the dDCO submitted at Deadline 8 to reflect the position in article 13.</p>

14.	Requirement 15	<p>Replacement Requirement.  <b>Fuel Type</b></p> <p><b>(1) Only refuse derived fuel comprising of processed waste from municipal, household, commercial and industrial sources may be used in the combustion system in Work No. 1(b), except for purposes of start-up or support firing when gas or fuel oil may be used.</b></p>	<p>Requirement 15 as drafted does not meet the tests of precision, necessity, or enforceability in the ExA's view.</p> <p>Fuel Type</p> <p>The requirement as drafted at the outset of the examination made it explicit that the Energy Recovery Facility (ERF) could only utilise refuse derived fuel as the energy source except during start up, the ExA consider this to be necessary, clear and precise.</p>	<p>The Applicant has made this change in the latest revision of the dDCO submitted at Deadline 8.</p>
15.	Requirement 19	<p>19.—(1) Once commissioned Work No. 1B (CCUS) must capture a minimum quantity of CO2 which equates to the lesser of 54,387 tonnes per annum <b>or</b> 8.37% of the weight of the ERF waste throughput per annum from the date that the CCUS is commissioned until the energy park works are decommissioned.</p> <p>(2) Within 28 days of the date which is one calendar year from the date Work No. 1B comes into operation, the undertaker must submit a report to the relevant planning authority confirming the amount of CO2 captured during the previous year of operation and must continue to submit such reports annually until the energy park works are decommissioned.</p>	<p>By replacing 'and' with 'or' the ExA are of the view this makes the Requirement clearer to understand.</p>	<p>The Applicant has made this change in the latest revision of the dDCO submitted at Deadline 8.</p>

16.	New Requirement	<p>The rating level of noise from the operation of the authorised development shall not exceed:45 dB LAeq for any fifteen-minute period between 2300 and 0700, and 50 dB LAeq for any one-hour period between 0700 and 2300 determined one metre free-field external to any window or door of any existing permanent residential premises using the methods described in 'Methods for rating and assessing industrial and commercial sound' British Standards Institution BS4142 2014+A1:2019</p>	<p>The detailed design of the various components of the proposed development and how they will operate are yet to be carried out hence it is considered that an appropriate approach to securing the noise control measures required to avoid a likely significant adverse noise effect, consistent with policy NPS-EN1 5.11.9, is to include a requirement that sets noise limits for the proposed development based on the guidance in both BS 8233:2014 Guidance on sound insulation and noise reduction for buildings (British Standards Institute) and BS 4142:2014+A1:2019 Methods for rating and assessing industrial and commercial sound (British Standards Institute)</p>	<p>The Applicant has added a noise requirement (requirement 22) in the latest revision of the dDCO submitted at Deadline 8. This is based on that proposed by the ExA, although has been amended to reflect a different daytime noise limit in respect of Charmaine at Amcotts, on the basis of the noise assessment in the ES.</p> <p>At Charmaine in Amcotts, the noise assessment includes a predicted level of 51 dB, LAeq for the noisiest activity (RDF loading and unloading at the Wharf) and adds a 3 dB penalty (i.e. a rating level of 54 dB, LAr in Table 15), to account for the potential for audible impulsive noise (although it is expected that noise mitigation could avoid this). This is higher than the limit suggested by the ExA, of 50 dB(A). BS 8233:2019 states:</p> <p>“For traditional external areas that are used for amenity space, such as gardens and patios, it is desirable that the external noise level does not exceed 50 dB LAeq,T, with an upper guideline value of 55 dB LAeq,T which would be acceptable in noisier environments.”</p> <p>The baseline sound level at this location, as used in the construction</p>
-----	-----------------	---	---	---

				noise assessment and reported in Table 12, is already above 50 dB (53 dB, LAeq,12h). It is therefore considered that, for this location, a noise limit of 55 dB is appropriate. It is noted that the limits are proposed in terms of a rating level in accordance with BS 4142:2019 (LAr) because whilst BS 8233 quotes values in LAeq it also notes that distinctive character needs to be taken into account and using LAr provides a method of doing this.
17.	New Requirement		Waste stream for plastics into the Plastics Recycling Facility to be limited to that which would be delivered through to the ERF as per [REP5-007] the Explanatory Memorandum and to ensure the Plastic Recycling Facility remains subordinate to the ERF and can be properly regarded as associated development.	The Applicant has included a new requirement (requirement 23) to address this point.
18.	Schedule 4 – Column 3 – Extent of stopping up	Reference A1 to A2 from point A1 located 40 metres north of Neap House to point A2 located at the junction between Stather Road and Bellwin Drive, a distance of 1200 metres	The distance specified 120 metres appears to be an error	The ExA is correct that this was an error and should in fact be 1020 metres. The Applicant has made this change in the latest revision of the dDCO submitted at Deadline 8.