Wiston Estate

Deadline 6 Submissions

1. Introduction

1.1 This is a written submission made on behalf of the Wiston Estate in respect of the Deadline 5 submissions. It is also the Wiston Estate's Closing Statement.

1.2 The Wiston Estate confirms that it maintains its objection to the scheme, for the reasons set out below. It also maintains its previous representations to the Examination – see RR-307 (Relevant Representation); REP1-172 (Written Representation); REP3-142 and REP3-144 (Deadline 3 submissions); REP4-135 (Post-hearing submissions following CAH1); REP4-136 (Deadline 4 submissions including Avison Young Report on Cable Route Alternatives and Mineral Sterilisation); REP5-184 and REP5-185 (Deadline 5 submissions).

1.3 The Wiston Estate is one of the largest landowners affected by the onshore cable route. Approximately 10% of the cable's length passes through the Estate.

1.4 The Estate has significant concerns about certain aspects of the scheme and the way in which the promoter has approached the DCO application. This has forced the Estate to object to the DCO application.

1.5 During the examination there has been back-and-forth between the Estate and the promoter, both publicly via extensive written submissions and hearings and in private meetings and correspondence. This has not however led to the Estate's concerns being resolved. In fact, in some cases the Estate's concerns have been exacerbated by statements from the promoter. The Estate has therefore been forced to maintain its objection.

1.6 The two key issues for the Estate are:

(a) **The failure of the scheme to comply with key paragraphs of EN1, the NPPF and local policy due to the long-term sterilisation of minerals and the availability of alternatives which sterilise less mineral.** These alternatives have been overlooked due to a failure to take proper account of the presence of the minerals within the Estate's landholding in the option selection process, including those within the Mineral Safeguarding Area ('MSA'). The promoter has failed to properly consider and assess reasonable alternatives, including those put forward by the Estate to reduce the impact of the scheme on minerals and has, at the end of the examination, fallen back on trying to shift responsibility for assessing these reasonable alternatives onto the Estate rather than doing what it should have done, which is properly considering and assessing a cable route which avoided the unnecessary sterilisation of minerals during the pre-application stage. The Estate has submitted evidence that demonstrates that the impact on minerals could have been reduced if it had been given proper consideration during the pre-application stage.

(b) The fact that the promoter has not demonstrated a compelling case in the public interest for compulsory acquisition. This is due to (i) the fact that there are feasible alternatives available to the applicant which would have a much less onerous impact upon the Wiston Estate. These are alternatives which sterilise much less mineral and have a lesser impact upon fields which are suitable for growing vines and therefore particularly important to the Estate; and (ii) The promoter's lack of effort to acquire the land and rights it needs for the scheme by agreement. This relates not just to a lack of effort in engaging with the Estate but also more broadly. The promoter is trying to paint an inaccurate and optimistic picture of its efforts to acquire land and rights by

agreement. The reality is that it has done very little in this regard and what it has done, it has done at a very late stage. For a long time now the Estate has been deeply frustrated with the lack of progress both during the pre-application stage, when the promoter could and should have done much more than it has, and also (and even more remarkably) since the submission of the DCO application. The Estate has repeatedly expressed this frustration to the promoter on several occasions. The promoter's failures are so acute in this regard that the Estate is of the firm view that the promoter has not satisfied the tests for compulsory acquisition and accordingly should not be granted compulsory acquisition powers in respect of the land owned by the Estate.

1.7 The remainder of this submission takes the following format:

2. Policy and Legal Submissions on behalf of the Wiston Estate;
3. Mineral Sterilisation and localised alternatives in the vicinity of the Wiston Estate;
4. The issue of the impact upon potential vineyards and alternatives;
5. Discrete points on the Ninfield alternative, in response to the Applicant's representations;
6. Responses to the Applicant on engagement and land-take;
7. Points on the Extent of the land-take;
8. Discrete points on the draft DCO; and
9. A brief summary of the Wiston Estate's position at the close of the Examination.

2. Policy and Legal Submissions on behalf of the Wiston Estate

Introduction

2.1 As set out above, the Wiston Estate considers that the proposals conflict with key paragraphs of EN1, the NPPF and Local Policy and for this reason the proposal conflicts with s104 Planning Act 2008. The Estate separately considers that there is not a compelling case in the public interest and powers of compulsory acquisition ought not be granted to the Applicant. Representations on law and policy in relation to those two issues are set out in sequence below.

Failure to comply with EN-1, NPPF and Local Policy with regards to mineral sterilisation and alternatives

2.2 It is common ground between the parties that the scheme will sterilise a significant amount of mineral (sand) during construction and operation. Some of these minerals are within the MSA. This will have a deleterious impact on the Estate, but it also raises questions of compliance with relevant law and policy.

Mineral policy

2.3 EN-1 para 5.11.19 states: "*Applicants should safeguard any mineral resources on the proposed site as far as possible, taking into account the long-term potential of the land use after any future decommissioning has taken place.*" (also found at paragraph 5.10.9 of EN1-2011)

2.4 If there are alternatives which either (a) avoid the sterilisation of materials or (b) sterilise less mineral than the proposed scheme then the applicant will not have safeguarded mineral resources 'as far as possible'. As set out further below and in the Estate's previous representations, there are feasible alternatives available which would sterilise less mineral than the proposed scheme. It is therefore clear that the Applicant has not safeguarded mineral resources 'as far as possible'.

2.5 The Applicant now seeks to argue that the sterilisation would not be 'permanent'. However, there is nothing in the current draft DCO securing the decommissioning and removal of the relevant part of the onshore cable at the end of the 30-year period that represents the operational lifetime of the scheme. Absent such a requirement the sterilisation of minerals should be treated as permanent as there is nothing to ensure that any sterilisation would be temporary.

2.6 In any event, it can be noted that the various policy tests (both local and national) are directed at sterilisation *per se*. They apply to the sterilisation of minerals for a number of decades (as well as in perpetuity).

2.7 The Applicant now also argues that this paragraph of EN-1 is to be treated as only being concerned with sterilisation within the proposed red line boundary (see e.g. p371 of REP5-122). Such an interpretation makes a nonsense of what the policy is trying to achieve, which is the avoidance of mineral sterilisation. The Applicant is wrong. Applying an objective interpretation of the policy, if there is an alternative option which meets the objectives of the proposal which will sterilise less mineral then an applicant will not have safeguarded any mineral resources on the proposed site as far as possible.

2.8 On the Applicant's view, if a DCO promoter was faced with two options for a site for its project which were equal in all respects save that, only one sterilised mineral, that applicant would be able to draw its red line such that it encompassed the mineral and would have to have no regard to mineral sterilisation in its option appraisal. Such an interpretation is clearly illogical and wholly contrary to the purpose of the policy.

2.9 The Applicant goes on to seek to pray in aid paragraphs 4.4.1 and 4.4.2 of EN-1 2011 in support of its interpretation (at para 2.31.18 of Rep 5-122). However, these paragraphs acknowledge that there may be policy requirements for alternatives to be considered. That is exactly the effect of paragraph 5.11.19 EN-1 when applied to these circumstances – i.e. the proposal would sterilise a significant amount of mineral and there are available alternatives which would have a much lesser impact. The alternatives demonstrate that the applicant has not safeguarded the minerals on site as far as possible. Those minerals could be safeguarded through the promotion of an alternative route.

2.10 EN-1 para 5.11.28 is also relevant, it states: "*Where a proposed development has an impact upon a Mineral Safeguarding Area (MSA), the Secretary of State should ensure that appropriate mitigation measures have been put in place to safeguard mineral resources.*" (as also set out at paragraph 5.10.22 EN1-2011)

2.11 Again, if there are routes which involve the sterilisation of less mineral within a mineral safeguarding area then the applicant will not have mitigated the impact upon mineral resources. Equally, the applicant must demonstrate that it has put in place measures to further mitigate such as prior extraction. Prior extraction would be feasible for at least a significant proportion of the minerals. The Applicant has not demonstrated otherwise.

2.12 Accordingly, the scheme does not comply with these policies of EN-1.

2.13 There is also local Policy M9 of the Joint Minerals Local Plan and NPPF paras 215 and 216.

2.14 NPPF para 215 states: "*It is essential that there is a sufficient supply of minerals to provide the infrastructure, buildings, energy and goods that the country needs. Since minerals are a finite natural resource, and can only be worked where they are found, best use needs to be made of them to secure their long-term conservation.*" This supports the view that minerals should not be subject to long-term or permanent sterilisation, as will be the case here if the scheme proceeds.

2.15 NPPF para 216 lists eight points that planning policies should contain or otherwise take account of. This includes that they should provide for the extraction of mineral resources of local and national importance; safeguard mineral resources by defining MSAs and Mineral Consultation Areas, adopting appropriate policies so that known locations of specific mineral resources are not sterilised by non-mineral development where this should be avoided; and set out policies to encourage the prior extraction of minerals, where practicable and environmentally feasible, if it is necessary for non-mineral development to take place. Again, all these points support the view that minerals should not be subject to long-term or permanent sterilisation. There is nothing to suggest that they only apply to prevent or discourage permanent sterilisation.

2.16 Policy M9 (Safeguarding Minerals) of the Joint Minerals Local Plan states: "*(a) Existing minerals extraction sites will be safeguarded against non-mineral development that prejudices their ability to supply minerals in the manner associated with the permitted activities. (b) Soft sand (including potential silica sand, sharp sand and gravel, brick-making clay, building stone resources and chalk reserves are safeguarded against sterilisation. Proposals for non-mineral development within the Minerals Safeguarded Areas…will not be permitted unless: (i) Mineral sterilisation will not occur; or (ii) it is appropriate and practicable to extract the mineral prior to the development taking place, having regards to the other policies in this Plan; or (iii) the overriding need for the development outweighs the safeguarding of the mineral and it has been demonstrated that prior extraction is not practicable or environmentally feasible.*"

2.17 It is important to note that Policy M9 does not refer to permanent sterilisation. The Estate would again point to the confirmation from West Sussex County Council that soft sand is a scarce and heavily constrained material and that there are limited reserves permitted at this time (REP3-072). With that in mind, the long-term or permanent sterilisation of sand is clearly contrary to the terms of Policy M9.

2.18 The Applicant states at p373 of REP5-122 that there is an overriding need for the development. However, this wholly ignores the existence of alternatives which would sterilise less mineral but meet the same need. Further, the Applicant has not demonstrated that prior extraction is not practicable or environmentally feasible.

2.19 The conclusion is that policies in EN-1, the NPPF and the JMLP require the Applicant to safeguard minerals as far as possible. It has not done so. The policies clearly discourage the long-term sterilisation of minerals, particularly where it is avoidable, but that is precisely what will happen if the scheme is allowed to proceed in its current form. The proposal is therefore contrary to relevant mineral policies.

2.20 The fact remains that there are a number of alternatives which would lead to significantly less mineral sterilisation. Those alternatives would lead to the same level of benefits (crucially, including the production of renewable energy). This has been set out in the Estate's previous representations and the response of the Applicant, principally in REP5-122, is responded to below. The consequence of the availability of such alternatives is that the Applicant has not safeguarded minerals and its scheme is leading to a wholly unnecessary level of sterilisation. The proposal therefore breaches key policies of EN-1 (5.10.9 of EN1-2011 and 5.11.19 of EN1-2023 and 5.10.22 EN1-2011 and para 5.11.28 of EN-1 2023). It also breaches NPPF paragraphs 215 and 216 as well as local policy M9. Consent should therefore be refused under s104 Planning Act 2008 either on the basis that the scheme does not accord with the relevant NPS or because the adverse impacts of this proposal outweigh the benefits.

Compelling case in the Public Interest

2.21 Section 122 of the Planning Act 2008 requires there to be a compelling case in the public interest for the compulsory acquisition of land. Here, there is no compelling case in the public interest by virtue of (a) the unnecessary sterilisation of minerals and also (b) the failure to take reasonable steps to acquire the land necessary for the project to proceed. This is a separate legal test from that which is provided by s104 Planning Act 2008.

2.22 On this point the Applicant mischaracterises the judgment in *R (oao FCC Environment (UK) Ltd) v SSECC* [2015] WWCA Civ 55 (at p369 of REP5-122). The judgement is authority for the fact that it is perfectly possible for a decision maker to find that there is no compelling case for compulsory acquisition despite there being a case for the scheme under s104 of the Planning Act 2008. The examples given of where this might occur in paragraph 11 are non-exhaustive. In any event, one of the examples which the Court cited at paragraph 11 was an 'example of an NPS which did not require consideration of alternative sites for the purpose of deciding whether to grant a development consent for a particular kind of infrastructure development, but where the existence of an alternative site or sites would be relevant for the purpose of deciding whether there was a compelling case in the public interest for compulsory acquisition'.

2.23 Here, there are preferable alternative sites. In particular, ones which lead to the sterilisation of less mineral. This is an issue which is patently relevant to each of the tests under s104 and s122 Planning Act 2008. Here the availability of less onerous alternatives for the Wiston Estate, which sterilise less mineral and also have a lesser effect on land suitable for growing vines, means that there is no compelling case in the public interest. It also means that there is a failure to comply with EN1 (s104(3)) and that the adverse impacts of the proposal outweigh the benefits (s104(7)) as the same benefits can be delivered in a less harmful manner, as summarised above.

2.24 Contrary to the Appellant's characterisation at p370 of REP5-122, the Wiston Estate is not of the view that any preferable alternative must mean that compulsory powers cannot be granted. Rather, here the particular harm of this scheme, which is the **unnecessary** sterilisation of minerals on the Wiston Estate's land and **unnecessary** severance of fields which are suitable for growing vines (and owned by the Wiston Estate, and therefore attracting the protections of article 1 of the first protocol) means that the availability of less harmful and impactful alternatives should lead to the withholding of powers of compulsory acquisition (as well as a refusal of the DCO).

2.25 Indeed, it can be noted that all of the alternatives put forward by the Wiston Estate, save for that at Ninfield, would cross the estate. The Estate is not adopting a position that it is unwilling for the cable to route through its land. Rather, it simply seeks a less harmful and onerous alternative.

Inadequate efforts to acquire land and rights by agreement

2.26 As noted above, section 122 of the Planning Act 2008 requires there to be a compelling case in the public interest for the compulsory acquisition of land.

2.27 Throughout the DCO process, which has now been ongoing for some 10 months, the Estate has clearly and repeatedly expressed its dissatisfaction with the efforts by the Applicant to seek the acquisition of the land and rights it needs for the scheme by agreement. The Applicant's efforts to acquire the necessary land rights have been wholly inadequate and they fall a long way short of the standard that is expected of applicants, as set out in the CA Guidance.

2.28 Paragraph 25 of the CA Guidance states: "*Applicants should seek to acquire land by negotiation wherever practicable. As a general rule, authority to acquire land compulsorily should only be sought*

as part of an order granting development consent if attempts to acquire by agreement fail. Where proposals would entail the compulsory acquisition of many separate plots of land (such as for long, linear schemes) it may not always be practicable to acquire by agreement each plot of land. Where this is the case it is reasonable to include provision authorising compulsory acquisition covering all the land required at the outset."

2.29 Paragraph 45 of the CA Guidance makes it clear that further guidance is to be found in the Crichel Down Rules (now contained in *Guidance on Compulsory purchase process and The Crichel Down Rules*, DLUHC, July 2019). This states in Part 2 that: "*The confirming authority will expect the acquiring authority to demonstrate that they have taken reasonable steps to acquire all of the land and rights included in the Order by agreement. Where acquiring authorities decide to/arrange to acquire land by agreement, they will pay compensation as if it had been compulsorily purchased, unless the land was already on offer on the open market.*

Compulsory purchase is intended as a last resort to secure the assembly of all the land needed for the implementation of projects. However, if an acquiring authority waits for negotiations to break down before starting the compulsory purchase process, valuable time will be lost. Therefore, depending on when the land is required, it may often be sensible, given the amount of time required to complete the compulsory purchase process, for the acquiring authority to:

- *plan a compulsory purchase timetable as a contingency measure; and*
- *initiate formal procedures*

This will also help to make the seriousness of the authority's intentions clear from the outset, which in turn might encourage those whose land is affected to enter more readily into meaningful negotiations."

2.30 As we have previously highlighted, there have been recent high profile appeal decisions where the Secretary of State has refused to confirm CPOs at least in part due to lack of meaningful engagement. Two examples of this are:

(a) Vicarage Field – London Borough of Barking and Dagenham. This was a proposed regeneration scheme over c. 32,000m² of land. The Inspector noted largely ineffective attempts to acquire by agreement, including on the basis that offers were not market value.

(b) Nicholsons Shopping Centre – Royal Borough of Windsor & Maidenhead. Here the Inspector found no 'proper degree of constructive engagement'. The CPO was found not to be being pursued as a measure of last resort.

The Applicant seeks to distinguish these at p382 of REP5-122. However, these are simply highlighted by the Estate as examples where a failure to make sufficient efforts to acquire land was material to the decision not to confirm a CPO. The same applies here.

2.31 Here there has been a clear lack of meaningful engagement and CA is not being sought as a last resort. The Estate's previous written representations provide detail of this and further responses to the Appellant's latest submissions are set out in the relevant section below.

2.32 Overall, what can be clearly seen is that CA powers have not been sought as a last resort and there has been no real attempt to acquire the land by agreement. As such, the Estate invites the ExA to find that due to the clear breaches of the guidance, there is no compelling case in the public interest for CA powers over the Estate's land to be confirmed.

3. Mineral Sterilisation and Alternatives

3.1 We refer to the Applicant's response (Table 2-30 REP5-122) to our Deadline 4 submission (REP4-136 – Rampion 2 Cable Route Alternatives & Mineral Sterilisation). We do not fully repeat the Applicant's response here, instead we respond in relation to the key areas of disagreement.

3.2 The Applicant argues that any sterilisation of mineral will be temporary. As set out above, there is nothing in the DCO which would require the applicant to remove the cable and return the land to its current condition after the thirty-year design life of the project. Without such a legal obligation the sterilisation must be considered to be permanent. We note the Applicant's response to the ExA's Recommended Change No 14 as set out in the Applicant's Comments on the Examining Authority's Schedule of Changes to the DCO (REP5-121). The Applicant's view is that the ExA's proposed amendment, to secure the removal of the cable following cessation of operation, is neither necessary nor reasonable. This clearly demonstrates the Applicant's entrenched position and its unwillingness to incorporate measures to reduce sterilisation of the Estate's minerals.

3.3 In any event, as also set out above, even if the sterilisation were to be limited to a number of decades, that is long term. The policy provisions do not apply only to sterilisation in perpetuity. Indeed, it could be argued that all development which might sterilise minerals is technically temporary. Any building will have a design-life of a number of decades.

3.4 The Estate highlighted the issues relating to the presence of and resulting sterilisation of minerals before the Landowner surgery on 23 July 2021 (RWE agents confirmed they had records of the Estate minerals map at this point) and an alternative route to avoid these was provided in September 2021 in its formal consultation response. It is clear the Applicant has not taken the information provided by the Estate into consideration.

3.5 The Applicant has made a number of comments which relate to whether planning permission would be granted to extract sand on land owned by the Estate (see para 2.30.20 of REP-5-122). However, these are generalised points, none of which would prevent the grant of planning permission for mineral extraction. Indeed, it can be noted that Rock Common Quarry and the chalk quarry have been granted permission in the immediate locale of the areas of mineral to be sterilised by the scheme. The chalk quarry is within the SDNP and Rock Common Quarry is situated right on the boundary of the SDNP. This clearly demonstrates that being within the SDNP or immediately adjacent to it is not a showstopper to permission, particularly given the importance of extracting the scarce sand resource.

3.6 The potential need to divert a footpath is a common occurrence in relation to many planning permissions, including Windmill Quarry immediately north of Rick Common. It is not a reason why permission would not be granted. Further the need to protect amenity applies to all uses. There is no reason why amenity could not be protected. The same is true of landscape impact which can clearly be ameliorated through mitigation measures.

3.7 Finally, there is no reason to believe that any hydrogeology issues in Area 1 are not surmountable through the commissioning of technical work and employment of appropriate mitigation measures.

3.8 What the Applicant has failed to acknowledge or draw attention to are parts of the Development Plan which would lend clear support to an application on any of the areas of mineral found on the Wiston Estate.

3.9 Paragraph 6.2.13 of the West Sussex Joint Minerals Local Plan (WSJMLP) states that land-won soft sand is of a particular quality that cannot be substituted by other minerals. It notes that soft sand resource is heavily constrained due to its location within or adjacent to the South Downs National Park (SDNP).

3.10 The WSJMLP sets out that Policy M2 will be used to determine planning applications for soft sand extraction in West Sussex including extensions of time and physical extensions on allocated and unallocated sites.

3.11 This states that proposals for land-won soft sand extraction will be permitted, provided that:

- The proposal is needed to ensure a steady and adequate supply of soft sand and to maintain at least a 7-year land bank, as set out in the most recent local aggregates assessment; and
- The site is allocated within Policy M11 of the Plan, or if the proposal is on an unallocated site, it can be demonstrated that the need cannot be met through the sites allocated for that purpose; and
- Where transportation by rail or water is not practicable or viable, the proposal is well related to the lorry route network.

3.12 The policy also notes that proposals located outside of the SDNP must not adversely impact on its setting; whilst proposals within the SDNP and which constitute major development will be refused other than exceptional circumstances and where it can be demonstrated to be in the public interest.

3.13 It is clearly possible for a site to be worked within or adjoining the SDNP without adversely affecting the SDNP to such a degree that permission should be refused. This is demonstrated by the extant permissions and extant allocations within and adjoining the SDNP.

3.14 It is of particular note that two out of three allocated sites for sand extraction in policy 11 of the WSJMLP are within the SDNP whilst the third, Ham Farm, is located immediately to the north of the park boundary.

3.15 Appendix 6 of the West Sussex County Soft Sand Sites Selection Report January 2020 ('SSSSR') sets out the work that was undertaken by WSCC in seeking to identify potential sites to allocate land for soft sand extraction outside of the South Downs National Park. This concluded that:

"A review of the three areas of soft sand that lie outside of the SDNP has revealed that there is very little remaining unconstrained resource that lies outside settlement areas that has not been, or is currently being, worked."

3.16 The plan period for the WSJMLP lasts until 2033. The Council will therefore need to prepare a new Minerals Local Plan to allocate additional land for soft sand mineral extraction for the period after that date.

3.17 Given the finite amount of the soft sand resource in the area and the fact that the Council has previously allocated sites within and adjoining the SDNP, there is clearly a good prospect that sites within the Wiston Estate would be allocated in a future plan (assuming that they are not sterilised by this proposal).

3.18 Overall, there is no reason why sites would not be allocated and/or planning permission would not be granted for mineral extraction in the areas of mineral on the Estate. Indeed, many of the issues which the Applicant seeks to raise against the potential for planning permission for mineral development are exactly the issues it is facing with its own scheme – for example adverse impact

upon the SDNP and impacts upon amenity. If the Applicant can overcome these issues then there is no reason why the Estate could not in the promotion of a new quarrying activity.

3.19 The Applicant, in its Comments on Deadline 4 Submissions [REP5-122], has sought to undermine the calculations provided by the Estate's Cable Route Alternatives & Mineral Sterilisation Report provided at Deadline 4 (REP4-136). In short, the Estate's calculation applied an assumed depth of mineral over an area of assumed sterilisation resulting from the presence of the Applicant's cables and applied a density factor to convert volume to tonnage of sterilised minerals.

3.20 The assumed depth has been informed by known depths of sand at the operational Rock Common Quarry and BGS borehole information referenced in the report. The approach taken by the Estate is consistent with the approach adopted by the Applicant when they assessed the potential sterilisation of minerals in Area 2b (please refer to the Applicant's comments at paragraph 2.30.34 of [REP5-122]).

3.21 In fact if anything the Wiston Estate could be criticised for using an overly conservative approach. In Area 1, the Estate could have reasonably used an estimate of over 2,000,000 tonnes but adopted a conservative figure of 400,000 tonnes based on an estimate previously provided by Tarmac. The details of the Tarmac calculation are not available but it is likely the Tarmac estimate did not include the full area of potential extraction or covered only part of the potential mineral reserve which would have been sufficient to provide sand for quarrying operations for a number of years.

3.22 The Applicant, in its responses provided at paragraph 2.30.21 of REP5-122, has attempted to 'reverse engineer' the Estate's conservative approach to provide a substantially reduced estimate of mineral depth of 4.7m. This does not stand up to scrutiny when it is known there is a workable depth of approximately 50m of mineral just 100m further north at the operational Rock Common Quarry. The operational work face is visible in the quarry. In its response at paragraph 2.30.22, the Applicant has utilised the same approach to propose an assumed depth of mineral of 9.2m. The Applicant also adopts this approach in its response at paragraph 2.30.27 when BGS borehole data (REF. 578124, TQ11SW10) at Lower Chancton Farm shows a minimum depth of sand of 33m. We specifically state this is a minimum as the borehole finished at a depth of 33m when it was still in the sand layer and did not drill further.

3.23 The Estate has now found additional borehole records from Tarmac. These have been summarised by our professional advisor, Avison Young, in the table below along with the existing BGS borehole records[1]. A plan showing the location of the boreholes is also provided. As is evident from the summary, there is a substantial depth of sand with each of the respective boreholes terminating in sand.

Reference	Area of Sterilisation	Borehole Total Depth	Overburden	Depth of Sand	Did borehole terminate in sand?
RC05/95	2a	18m	3.2m (Gault Clay)	14.8m	Yes
RC06/95	2a	27m	0.4m (Topsoil)	26.6m	Yes
RC07/95	2a	27m	0.5m (Topsoil)	26.5m	Yes
BGS 578124	2b	33.5m	N/A	33.5m	Yes

[1] Copies of these records can be provided on request.

BGS 578164	1	44.5m	N/A	44.5m	Yes

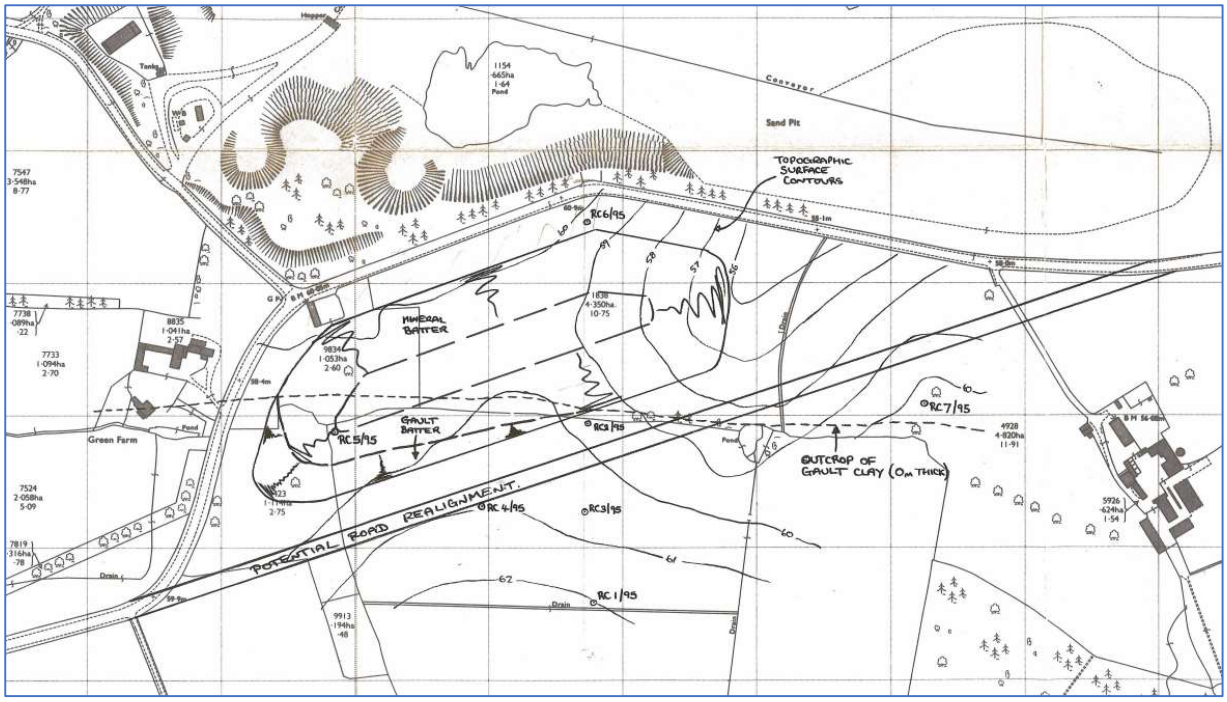
Plan showing Borehole Locations

3.24 As such, it is clear that there are significant depths of sand in this area. As every single borehole terminated in sand we know that the sand is, in places, at least 44.5m deep but could well be deeper.

3.25 All in all, the Applicant's submissions on the depth of sand are simply unreasonable and do not stand up to scrutiny. They fail to assess the evidence objectively and are simply designed to counter anything put forward by the Wiston Estate.

3.26 The Applicant is incorrect to state that 'inconsistencies in potential site areas and sand thicknesses raise queries around the accuracy of the provided figures…' Rather, all the Applicant has shown is that the Estate has been extremely conservative in its estimate of mineral volumes. It was highly conservative to take the Tarmac value of 400,000 tonnes for Area 1 and the Tarmac volume for Area 2a. It is frankly disingenuous for the Applicant to seek to use this conservatism to try and undermine the Estate's figures.

3.27 At paragraph 2.30.32 the Applicant states Tarmac's view that extraction could 'only' proceed with a diversion of the A283. The Wiston Estate has found further details of the potential scheme which was assessed at the time, this includes a plan which accompanied Tarmac's representations. It shows that there was a proposal at the time for the re-alignment of the A283. That context explains the representations made by Tarmac. Further, whilst the scheme was focused on the road realignment, as shown in the plan below, it clearly identifies the area south of the A283 between the existing road and the proposed realigned road as an area for sand extraction. This includes the buffers required from the existing road as well as a stand off from the proposed realigned road. As is visible from the plan, Tarmac were of the view there was a substantial sand deposit which was capable of being excavated.



Extract from Tarmac Plan assessing mineral extraction south of the A283

3.28 Irrespective of whether a diversion of the A283 would take place or not, the Estate's professional advisors, Avison Young, have advised there is no reason why a deposit of the depth indicated by the BGS Borehole data at Lower Chancton Farm could not be extracted and that a deposit of this size and quality would be likely to attract significant market interest. Particularly given the scarcity of the sand resource.

3.29 We now go on to respond to the Applicant's comments on the various alternatives which have been proposed by the Wiston Estate.

The Modified Washington B Alternative Route

3.30 It can be noted at the outset that the Applicant does not deny that this route would sterilise less mineral. Further, none of the issues which it has raised are showstoppers such that this alternative route should be discounted. Indeed, the Applicant's reasons for why this route may not be suitable are based upon vague assertion. This underlines the fact that, having failed to consider the need to minimise the sterilisation of minerals in its options appraisal, the Applicant is now stuck with making vague assertions for why alternatives are not preferable (i.e. to reverse engineer the reasons for the scheme it is promoting).

3.31 The Applicant references National Policy Statement (NPS) EN-1 (Department for Energy Security and Net Zero (DESNZ), 2024) paragraph 4.3.29 which states: 'It is intended that potential alternatives to a proposed development should, wherever possible, be identified before an application is made to the Secretary of State (so as to allow appropriate consultation and the development of a suitable evidence base in relation to any alternatives which are particularly relevant). Therefore, where an alternative is first put forward by a third party after an application has been made, the Secretary of State may place the onus on the person proposing the alternative to provide the evidence for its suitability as such and the Secretary of State should not necessarily expect the applicant to have assessed it.' (para 2.30.46 of Rep 5-122). First it is noted that the Applicant has confirmed that its application should be decided according to EN1 2011. But in any event, here the Estate expressly

raised the issue of minerals with the Applicant in 2021. There is a clear policy requirement for minerals to be safeguarded. In short, the Applicant must show that it has safeguarded minerals and mitigated its impact upon the MSA. If there are alternatives which sterilise less mineral, it will not have done this. It is therefore for the Applicant to show that it meets the terms of the NPS and that these routes are not feasible and that mineral is not being unnecessarily sterilised. It has not done so.

3.32 The Applicant has made a number of suggestions as to why this alternative is not feasible. These are summarised below along with input from the Estate.

3.33 The Applicant states that 'The route requires approximately 2.25km of additional length of cable and construction works within the South Downs National Park compared to the Applicant's proposals' (para 2.30.44 of Rep 5-122). On page 11 of the Estate's Cable Route Alternatives & Mineral Sterilisation report provided by the Estate at Deadline 4 (REP4-136), we calculate the Modified Washington B Alternative Route would result in an increase in the length of the cable route of approximately 700m, which equates to less than 2% of the overall onshore cable route length. We note this would require additional cable route installation within the SDNP, however, the installation of the cable route within the SDNP is not a firm constraint. Otherwise the Applicant would have avoided the SDNP instead of routing a significant proportion of their cable route through the SDNP. Clearly there are trade-offs between different routes and resulting impacts and the Applicant has chosen a route which includes an unnecessary level of sterilisation of minerals, contrary to the policies of EN-1 and the NPPF, rather than seeking to avoid or minimise the impact upon the minerals and mitigate their impacts of installation elsewhere.

3.34 The Applicant states that: 'The route proposed by Wiston Estate does not reduce or minimise impacts within the South Downs National Park (SDNP), and there is no assessment on its Special Qualities, nor does it demonstrate any attempt to seek to further the purposes of the SDNP' (para 2.30.44 of Rep 5-122). It was the role of the Applicant, not the Estate, to design a cable route which recognises constraints and reduces impacts. As per the comment provided above, there are trade-offs between different impacts of difference options and the Applicant has decided on a route which does not take mineral sterilisation into account and, as a result, does not comply with policy on the safeguarding of minerals as per EN-1 and the NPPF. In any event, the same can be said of the Applicant's proposed route which is strongly objected to by the SDNP. It is submitted that overall these alternatives would not have a materially worse impact on the SDNP than the proposed route.

3.35 The Applicant states that: 'There is no acknowledgement that the route requires approximately 2km additional cable route through Archaeological Notification Areas: 'Prehistoric Features on Barnsfarm Hill and Highden Hill, Storrington and Sullington and Washington' that is unaffected by the Applicant's proposals'. (para 2.30.44 of Rep 5-122). The Applicant does not recognise that this alternative would remove the need for cable installation over 3.5km between Sullingdon Hill and Washington, an area where there The Sussex Archaeological Society has raised concerns about the project.

3.36 The Applicant states that: 'There is also no acknowledgement in the assessment that approximately 1km of the route runs immediately to the north of Chanctonbury Hill Site of Special Scientific Interest, nor any assessment of whether this might act as a constraint on this alternate route'. (para 2.30.44 of Rep 5-122). The area in question would be located north of the Chanctonbury Hill Site of Special Scientific Interest and the alternative route is at an elevation approximately 150m below that of Chanctonbury Hill. There would also be a temporary impact on Estate operations during installation but the permanent impacts of the project would be significantly reduced given the

significant reduction in mineral sterilisation. It is correct that there would be a temporary visual impact from cable installation activities though Combe Holt and other woodland and vegetation would have the effect of shielding the temporary impacts of installation in this area from the Chanctonbury Hill Site of Special Scientific Interest and the route proposed would have a sufficient stand off from Combe Holt to mitigate any temporary impacts on it. As noted above, the Applicant has opted for the permanent sterilisation of the Estate's minerals over the temporary impacts from construction on the area further south where the Modified Washington B route could be installed.

3.37 The Applicant states that: 'The impact on the users of the South Downs Way is not recognised nor are there any measures proposed to address the issues for users, with the proposals requiring shared use with construction traffic and additional crossings'. (para 2.30.44 of Rep 5-122). The Estate recognises there would be an impact on the South Downs Way, however this would be a temporary effect during installation whereas the route proposed by the Applicant has a much more significant impact through the sterilisation of minerals in the long term.

3.38 The Applicant states at para 2.30.50 of REP5-122 that Washington Chalk Quarry is operational and that this would restrict its operational use. However, the last time that chalk was extracted from the quarry was in 2017/18. There is no reason why the quarry could not operate as a temporary construction area. The Appellant alleges that the area available would be unsuitable for use as a construction compound but this does not go beyond mere assertion. No evidence or analysis has been produced by the Applicant. Finally, the need for the temporary diversion of a PROW and the upgrading of existing tracks is obviously not a reason why this alternative should be discounted. Indeed there is already a permissive bridleway that has been resurfaced, which keeps users away from the access to the chalk quarry. It also takes users on the bridge over the A24 to the south, this is already a safer alternative than crossing the A24 directly.

The Wiston Estate Southern Route

3.39 Again, the Applicant does not deny that this route would sterilise less mineral. Again, the Applicant's reasons for why this route is not preferable are vague and based upon mere assertion.

3.40 At paragraph 2.30.54 of REP05-122, the Applicant states 'there is no acknowledgement in the assessment of any potential impacts on Tilley's Farm which is a residential property and a listed building that would be close to the proposed alternate route'. There is sufficient space to the east of Tilley's Farm for the construction corridor (our measurements show this would be approximately 70m from Tilley's Farm) and whilst there may be impacts on access to Tilley's Farm, these are likely to be temporary. It should be noted the Applicant's proposed cable route will have the same impact on Lower Chancton Farm, which is also listed. The Applicant also states 'There is also no acknowledgement in the assessment that a substantial length of the alternate route runs immediately to the north of Chanctonbury Hill Site of Special Scientific Interest, nor any assessment of whether this might act as a constraint on this alternate route.' The Applicant raised the same concern in relation to the Modified Washington B Route proposed by the Estate and we have provided our response to this point in paragraph 3.37 above.

3.41 The main argument proposed by the Applicant as to why this route is not feasible is based on the impacts on the public open spaces at Washington Recreation Ground and Jockeys Meadow. At paragraph 2.30.55 the Applicant refers to Paragraph 5.11.32 of the National Policy Statement (NPS) EN-1 (Department for Energy Security and Net Zero, 2024) which states '*The Secretary of State should not grant consent for development on existing open space, sports and recreational buildings and land unless an assessment has been undertaken either by the local authority or independently,*

which has shown the open space or the buildings and land to be surplus to requirements or the Secretary of State determines that the benefits of the project (including need), outweigh the potential loss of such facilities, taking into account any positive proposals made by the applicant to provide new, improved or compensatory land or facilities.' The Estate notes the Applicant readily references policy when it suits them but does not address the policy requirements of EN-1 and the NPPF in relation to the safeguarding of minerals in this regard.

3.42 The Applicant further notes that any disruption of the recreation ground would be temporary. The relevant paragraph of the NPS is clearly directed at permanent development which prevents recreational use. The proposed development would not do that.

3.43 Even if the Applicant were correct about the interpretation of this paragraph then it would be possible for the Applicant to HDD to the Wet Pools Complex, immediately south of Rock Common Quarry (as currently proposed) and for the cable route to then join up with the Wiston Estate Southern Route, picking up the route of the existing gas pipeline to avoid further sterilisation, thereby reducing impacts on the public open spaces and also minimising mineral sterilisation substantially compared to the proposed route.

The Yellow Route

3.44 Again, the Applicant does not deny that this route would sterilise less mineral. Its reasons for rejecting the alternative do not hold water.

3.45 At paragraph 2.30.58 of REP05-122 the Applicant states: 'Taking into account the actual Order Limits corridor and the Indicative Route Centreline proposed within the DCO Application, the Applicant's view is that there are some similarities between the Proposed Scheme and the alternate Yellow Route suggested' and goes on to state 'Subject to final pre-construction surveys, the Applicant can seek to position the onshore cable corridor as close as possible to the A283 within the proposed DCO Order Limits.' The Yellow Route is the less preferred of the alternative routes provided by the Estate given its effect on the sterilisation of minerals and Estate operations, but the Estate is of the view that the Applicant should have undertaken the assessments necessary to be able to commit to a route at this stage of the application process rather than basing their decision on final pre-construction surveys.

The Sawyer Copse Pinch Point

3.46 At paragraph 2.30.60 of REP05-122 the Applicant states its commitment to a 25m Ancient Woodland buffer and it does not agree to watering down this commitment. The Applicant also refers to there being insufficient space available to accommodate the 40m construction corridor. The Applicant also states 'the actual position of the gas pipeline would need to be confirmed via surveys' and 'Given these spatial constraints and prevailing uncertainty around the ability to determine a construction design that would be acceptable to the gas pipeline operator, the Applicant has concluded this would present a high risk to deliverability of the scheme'. The Estate contends that rather than seeking to investigate a feasible alternative, the Applicant has disregarded a route which provides the ability to reduce sterilisation of the Estate's minerals as well as reducing impacts on its estate operations. It is clear the Applicant would prefer to avoid undertaking detailed assessments of feasibility so it can rely on maximum flexibility. Unfortunately, this is to the detriment of the mineral resource which is protected by policy. It is therefore not a reasonable approach for the Applicant to take.

3.47 In relation to construction in proximity to the gas pipeline, the Environmental Statement - Volume 4 Appendix 4.1 Crossing schedule [APP-122] identifies seven areas where the Applicant will need to cross SGN pipelines. We also note that Schedule 10 of the draft DCO provides for Protective Provisions. At paragraph 2.31.51 of REP05-122, the Applicant states 'During the development of the cable route, Southern Gas Networks confirmed the requirement of crossing angles to be 90 degrees with an allowable tolerance of crossing angle of 15 degree to the Applicant. For such perpendicular crossings, a peer review process for the design and construction methods is undertaken by Southern Gas Network Engineers. Typically, cable construction in close proximity to the gas pipeline(s) is undertaken via hand-dig methods to reduce the construction risk'. It appears to the Estate that there is an established process in place for crossing SGN infrastructure. The Applicant goes on to state: 'A deliberate construction choice to construct the cable in parallel to existing high-pressure gas infrastructure would conflict with the regulatory requirements of the Construction Design and Management (CDM) Regulations 2015 and therefore the Health and Safety at Work Act 1974, which requires the project designer to eliminate avoidable construction risks during the design process'. The Applicant has not justified this. It is simply assertion. There would clearly be a stand off between the construction corridor and the gas main. There is no reason why the construction corridor can be close to and even cross the gas main in some places but somehow cannot in this location.

3.48 The Applicant's claims regarding Sawyer's Copse do not stand up to scrutiny.

3.49 Overall, it is clear that there are a number of viable alternative proposals which would sterilise less mineral. The Applicant has not provided any substantive reasons why these routes cannot be progressed. The availability of these feasible routes means that the Applicant has not minimised minerals sterilisation (either permanent or long term). Nor has it mitigated against such sterilisation. Its proposal is therefore contrary to polices in EN-1, the NPPF and local policy.

4. Vineyards and alternatives

4.1 It is the case that the alternatives addressed above (together with the Ninfield Alternative addressed below) would have a much less onerous effect on the Estate in terms of their impact upon fields which are suitable for growing vines.

4.2 The following comments are made in response to the Applicant's recent representations on vines (REP5-122 Table 2-31 – 2.31.47).

4.3 The Estate has been approached by third parties (including major international wineries) to grow vines on its land. As part of this the Estate has engaged with various viticultural consultants and climate specialists to assess the most suitable fields across the estate. The proposed cable route goes through a number of the fields identified as suitable for growing high quality grapes.

4.4 Plans showing the affected fields are below. The vineyard fields are hatched green and the 20m easement is shown in red.

4.5 Vineyard Field A: This field extends to approx. 3.16ha. The easement width extends to approximately 1.47ha (over 46% of the total field area). Because of the way the route crosses the north south planting of the vines at the perpendicular, it would not be viable to plant fields in the remaining 1.69ha due to the shortness of the split rows.

4.6 Vineyard Field B: This field extends to approx. 9.98ha. The easement width extends to approximately 1.78 ha. Due to the cable route's orientation of east to west it will result in land being severed either side of the cable, making the field unviable for vines. We note the Applicant's response (REP5-122 Table 2-31 – 2.31.47) that vines are planted north to south for optimal solar exposure but can be planted east to west where the topography suits it. Although this would be possible in this location the vines would be better planted on an angle north west to south east and north east to south west, both coming down into the central part of the field. The cable route would therefore still sever the vine rows and dramatically reduce the economic viability of this area for growing grapes.

4.7 The Applicant states that there is significant land within the wider area which is suitable for growing vines. This does not detract from the value of the land identified by Wiston for vineyard expansion. This land was identified prior to the Rampion project and is the Estate's preference for its

vineyard expansion. One of the key reasons for this is that the land is in-hand and available, whilst the majority of the other identified land is subject to long term farm tenancies and is not available.

5. Ninfield Alternative

5.1 At pages 374-5 of REP05-122 the Applicant has set out its response to the Estate's submissions with regards to Ninfield. It is notable that the Appliant's response is extremely weak and simply confirms that this option has not been properly assessed by the Applicant. There is no reason why it is not feasible.

5.2 In relation to the disregarding of Ninfield substation as an option for the Rampion 2 connection, on page 275 of REP5-122, the Applicant states 'This assessment process resulted in the definition of a subset of technically feasible grid connection locations for further consideration and inclusion in the Connection and Infrastructure Options Note (CION). NG Ninfield substation was not presented as a feasible grid connection point by NGESO following these studies.' The Applicant also states 'It is simply not economically rational to connect Rampion 2 to Ninfield, nor was it an available grid connection option presented by NGESO.' The Estate reasserts its position that merely because something costs more does not mean it is unviable. There is no evidence that additional cost would make the proposal unviable. The fact that an option is more expensive is not a reason to dismiss it, particularly where it has the potential to avoid mineral sterilisation and would avoid the SDNP in its entirety. We request that a copy the Connection and Infrastructure Options Note (CION) Process assessment undertaken by National Grid ESO is submitted by the Applicant to provide full transparency of the assessment undertaken at the time.

5.3 Indeed, it is notable that the Applicant does not positively state that National Grid confirmed that Ninfield was not feasible, rather it was not presented as an option. That clearly depends on what the terms of reference were for the study. It is therefore essential that the Applicant releases the CION study and any other relevant correspondence from National Grid.

5.4 In relation to the Estate's comments provided on feasibility of a cable route to Ninfield in REP3-144 and, in particular, the ability to use HDD to bring the marine cables onshore, the Applicant states 'that the feasibility evaluation of a cable landfall must consider several factors including geotechnical, electrical, logistical and environmental aspects. The additional length of circa 750m to cross underneath the SSSI and the Cooden Beach Golf Club would present an engineering challenge as this would be in addition to the distance required to exit below the LAT mark'. The Estate recognises the complexity of HDD and bring cables onshore but notes the cables would have to be brought onshore at the location proposed by the Applicant in any case. The Estate's choice of location as proposed in REP3-144 was based on a logical decision to locate the landing where impacts are minimised and a technological solution is available.

5.5 At paragraph 2.31.37 of REP5-122, the Applicant states that 'When considering the whole export system lengths which takes into account the offshore export lengths as well as the onshore cable route, the Ninfield connection results in a significantly longer export cable route approaching >90km in total length. The additional cable length required to reach the western parts of the Western Extension Area could increase this to >100km and thereby reaching the limits of what HVAC technology can deliver'. The Estate's research shows there are HVAC cables operating at lengths >100km such as the Peloponesse to Crete Interconnector which is 174km in length, including 132km on the seabed. This was also installed at depths of >1000m, significantly deeper than would be required off the south coast for a cable to Ninfield. It would appear this is far more challenging to install than a HVAC cable to the coast south of Ninfield substation.

5.6 The Applicant also states 'An HVDC export system was not considered for Rampion 2 as it is a new technology, which involves operational risks and significantly increased construction CAPEX.' HVDC technology is in fact tried and tested technology. As an example, the IFA1 Interconnector between the UK and France has been operational since 1986. As such, we are not confident the Applicant has assessed the various technological solutions which appear to be available to minimise the impacts of the Proposed Development as they Applicant appears to be solely driven by cost reduction. Ninfield has been inappropriately ruled out as a feasible option for the proposal.

6. Engagement and Heads of Terms

6.1 Although a meeting was held with Rampion and their agents on 23 July 2024 and commercial discussions regarding potential Heads of Terms are ongoing, due to the lack of meaningful engagement at the early stage of the project, the Applicant is unable to demonstrate that they have taken reasonable steps to acquire the land and rights included in the DCO by voluntary agreement.

6.2 The latest submissions by the Applicant seek to insinuate that it is the Wiston Estate who is refusing to enter into an agreement (see e.g. p381 of REP5-122). This is simply false. The Wiston Estate has spent a number of years trying to engage with the Applicant but to no avail. The Applicant has wholly failed to make meaningful efforts to acquire the rights over the Wiston Estate's land by voluntary agreement.

6.3 We refer to the Applicant's Wiston Engagement Report (REP5-020). Whilst this document lists the various communication between the Applicant and the Estate it does not provide an accurate picture of the negotiations, or lack of, towards a voluntary agreement.

6.4 Initial discussions with the Applicant commenced in 2020 and left much to be desired. We refer to previous submissions on this point (including REP1-172 para 3 p28-30).

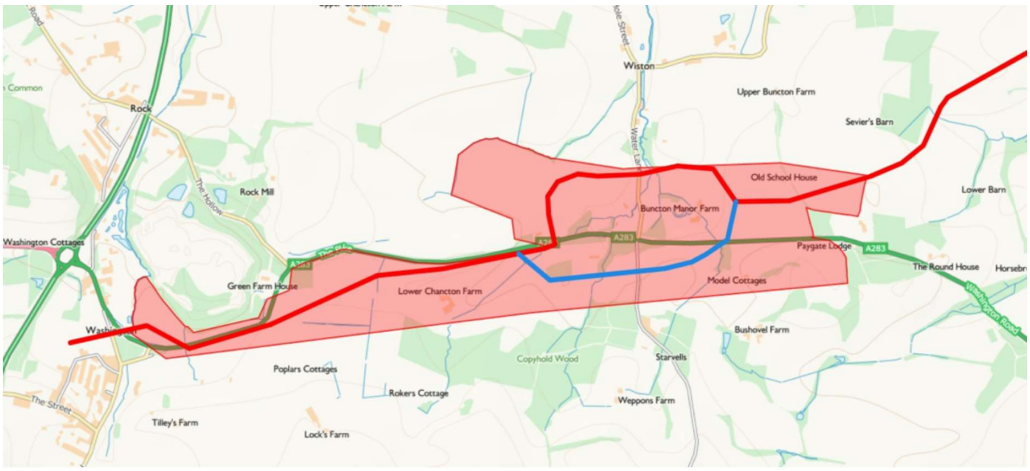
6.5 The Estate received an email from Vaughan Weighill (Rampion) on 24 March 2021 stating "As mentioned we are just in the process of seeking approval from our Board for a comprehensive package which we expect to be able to send to you fairly soon, with proposed commercial terms (including support for advisors fees), which we then look forward to discussing in more detail with you." No proposal was received until the standard Heads of Terms were received in March 2023.

6.6 In fact, in the same email Vaughan acknowledged the Applicant's failings: "Finally, I appreciate the initial communications and first impression did not come across the way we'd hoped. The project team and I are committed to do what we can to try and repair any initial misgivings, and I hope we can build a productive and fruitful relationship together."

6.7 Rather oddly the Applicant refers to this email within their Wiston Engagement Report (REP5-020): "Richard Goring chases Vaughan on the 'comprehensive package' to create the foundations going forwards. No idea what this refers to but email is saved on DMS." But there is no reference to the email from the Applicant dated 24 March 2021. To be clear it was a further **24 months** until Heads of Terms were received from the Applicant.

6.8 Wiston Estate made Rampion aware of the minerals concerns at an early stage. This included at a meeting on 23 July 2021 between Richard Goring (Wiston Estate), James D'Alessandro (Rampion) and Simon Mole (Carter Jonas). In the meeting notes provided by Carter Jonas it states: "*JDA confirmed the Deed of Grant would provide a Diversion Clause in the event the landowner achieved planning permission for certain development activities including housing and working of minerals".*

6.9 In addition, Wiston made formal consultation responses on the minerals impact, see below extract from the consultation document submitted 16 September 2021. This clearly identified the areas of minerals on the Wiston Estate, which extended outside of the Mineral Safeguarding Area.



Map from Wiston Consultation response of 16th September 2021 – Mineral area identified in pink

6.10 Despite being informed of the minerals issue by the Wiston Estate at an early stage, the Applicant did not give the mineral sterilisation any consideration until forced to by the ExA as part of this DCO process. Indeed, this is clearly demonstrated by the fact that the Wiston Estate requested that the Applicant cover the costs of some specialist mineral advice prior to the DCO submission which was refused by the Applicant.

6.11 The Applicant has provided a long list of emails and communication between the parties (REP5-020). However, it important to note that several key emails have been omitted which paint a different picture of the level of engagement experienced by the Wiston Estate.

6.12 For example, an email sent to Lucy Tebbutt at Carter Jonas dated 11 January 2024 stating: 'Dear Lucy, I would be grateful for a response. My client is attempting to engage with Rampion with respect of the draft documents. I am surprised we have not had the courtesy of a response.' This was sent in respect of a detailed response sent to the Applicant on 14 December, attempting to progress the HOT.

6.13 Having met on 23 January 2023 in person with Ms Tebbutt we were told the written notes would be sent on but nothing was received. There was a meeting with farm tenants in mid-May but we then did not meet again until 19 March 2024.

6.14 It is also important to note that the first draft of the Heads of Terms issued in March 2023 were so lacking in detail (such as basic plans) and unreasonable (such as seeking rights over the entirety of the Grantors Title), significant time was wasted trying to resolve these key and basic issues (Wiston Estate previous submissions REP1-172, REP3-142, REP4-135, REP5-184).

6.15 These basic issues were not resolved until after the submission of the DCO by the Applicant and some are still to be resolved such as detailed plans which match the definitions within the draft legal documents.

6.16 Indeed, no progress was made in between the HOT being sent in March 2023 and the DCO application being submitted in August 2023. This is further proof that the Applicant was not truly trying to reach a voluntary agreement and has been relying on receiving Compulsory Acquisition powers.

6.17 It is also highly relevant to note that most of the meetings which the Applicant has apparently held with the Wiston Estate did not include anyone from the Applicant who had any authority to either make decisions or to indicate what the Applicant's position was. Both Vaughan Weighill (Rampion) and James D' Alessandro (Rampion) who had engaged at the beginning of the project and expressed they had authority to engage with the Estate on behalf of the Applicant ceased any engagement after September 2021 (the Estate later found out that they had stepped away from the project). It was not until February 2024 that the Estate met Rob Miller (Rampion) who said he had authority to give decisions on behalf of the Applicant and therefore could have meaningful discussions around the HOTs and a legally binding agreement.

6.18 Wiston Estate's experience is not in isolation, and it is noted from the Land Rights Tracker (REP5-011b) from July 2024, that at the closing of the hearing only 11 Heads of Terms have been agreed out of 157 entries.

6.19 Overall, and as set out above, the failure of the Applicant to engage and to make genuine and reasonable efforts to acquire the land rights for its proposal, including over the Wiston Estate, means that the Secretary of State should not grant compulsory acquisition in this case, even if the Applicant's case for the DCO is made out.

7. Extent of Land Take

7.1 The Applicant is trying to minimise the impact on the Wiston Estate within their submissions (REP5-122 Table 2-31 – 2.31.6) by stating that the area impacted amounts to 1.80% of the area of the estate. This does not consider the severed land and the impact on the estate's own businesses and those of their tenants. The Applicant's proposal will affect the estate in-hand farming operations, 3 farm tenants, 3 residential properties and 2 commercial businesses.

7.2 As well as permanently sterilising minerals and vineyard potential, as previously submitted, there is the significant resource of the Wiston Estate management team which has been taken up by the Applicant's proposals and this DCO process. There will also be the impact during construction, of additional traffic, noise and dust, loss of land and impact on farming businesses.

7.3 We note the Applicant's proposal within the Draft Development Consent Order (REP4-004) to confirm *the cable construction corridor location and its width through the relevant stage including that the width through treelines and areas of woodland is narrowed to no more than 30 metres* and we look forward to receiving amended plans for this. It is surprising that the draft Heads of Terms still refer to a 40m construction width.

8. Draft Development Consent Order

8.1 We refer to REP5-086 (Applicant's Comments on the ExA's Schedule of Changes to the DCO) and the Estate's previous submissions (REP5-185). The Applicant is attempting to justify that the

sterilisation of minerals is only temporary due to the fact that the cable will be decommissioned within its 30-year lifespan (APP-045).

8.2 However, the ExA request to amend the draft DCO to remove the cable within the MSA following decommissioning has been rejected by the Applicant as being unnecessary. Therefore it is clear that the mineral sterilisation would be permanent.

9. Conclusion

9.1 The Estate therefore requests that the Secretary of State (a) refuses the DCO and (b) refuses to grant compulsory acquisition.

9.2 The Estate does not deny the benefits of the renewable energy which the proposal would bring. However, it remains the case that the proposal is leading to unnecessary harm. The proposal is failing to safeguard or mitigate its impact upon minerals. It is striking that the need to safeguard minerals played no role in the Applicant's options assessment, despite being on notice of the presence of minerals long before it submitted its application. The Applicant's approach means that it is now left with making vague and unsubstantiated assertions to try and knock down the Estate's suggested alternatives. However, those assertions are unevidenced and do not stand up to scrutiny. There are a number of feasible alternatives which are local to the current route (i.e. still crossing the Estate). There is also an alternative which connects to Ninfield.

9.3 The failure to safeguard minerals and to mitigate the impact of the proposal on minerals means there is a failure to comply with EN1, the NPPF and local policy. The scheme should be refused either on the basis that it fails to comply with the relevant NPS or the harms outweigh the benefits (noting that exactly the same benefits could be achieved in a less harmful manner).

9.4 The availability of alternatives which are less onerous for the Wiston Estate (both in terms of impact upon the mineral resource and fields which are suitable for growing vines) also means that there is no compelling case in the public interest for compulsory acquisition.

9.5 Compulsory acquisition also ought to be refused due to what has been an extraordinary failure by the Applicant to make reasonable efforts to seek to acquire land rights. The Applicant's approach to this scheme (which has been to rely upon being granted compulsory acquisition powers) is wholly contrary to the relevant guidance. It is imperative that applicants should not be allowed to behave in such a manner and there should be clear and real consequences for not following the relevant guidance. Compulsory acquisition powers should not be awarded.

9.6 The Estate therefore respectfully requests that both the DCO and the compulsory acquisition powers be refused.