



Longfield Solar Farm

Written Summary of Longfield Solar Energy Farm Limited's Oral Submissions at the Development Consent Order Issue Specific Hearing on 27 September 2022

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Longfield Solar Energy Farm Ltd

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1. Introductory remarks

1.1 Introduction

- 1.1.1 The Issue Specific Hearing ("ISH") regarding the draft Development Consent Order ("DCO") was held at 10:00am on 27 September 2022 using the virtual platform of Microsoft Teams.
- 1.1.2 The Development Consent Order Hearing took the form of running through the items listed in the agenda published by the Examining Authority ("**The ExA**") on 16 September 2022 (the "**Agenda**"). The discussion on DCO matters predominantly focused on the:
 - 1.1.2.1 structure of the Order, the extent of the works, provisions and powers sought, and brief introduction each of the Schedules and their purpose;
 - 1.1.2.2 a brief summary of the changes made at Deadlines 1 and 2;
 - 1.1.2.3 Article 28 and 29 regarding temporary possession and Neighbourhood Planning Act 2017;
 - 1.1.2.4 Article 43 regarding timescale for deemed consent;
 - 1.1.2.5 Schedule 1 – 'Further Associated Development';
 - 1.1.2.6 Operational lifetime/duration of consent;
 - 1.1.2.7 Requirement 20 – Decommissioning and restoration;
 - 1.1.2.8 Schedule 2 – Requirements identifying any additional requirements that it proposes to include in the dDCO and respond to any further queries from the ExA;
 - 1.1.2.9 Schedule 15 – an update on the protective provisions.

2. Agenda Item 1 – Introduction of the Participants

2.1 The Examining Authority

2.1.1 Rory Cridland.

2.2 The Applicant

2.2.1 **SPEAKING ON BEHALF OF THE APPLICANT:** Alexis Coleman (Senior Associate at Pinsent Masons LLP).

2.2.2 Present from the Applicant: Carly Vince (Chief Planning Officer at EDF Renewables) and Matt Bussey (Assistant Project Manager at Pershing Consultants – the Applicant’s project managers for the application).

2.2.3 The Applicant’s legal advisors: Richard Griffiths (Partner at Pinsent Masons LLP) and Alice Hayward (Apprentice Solicitor at Pinsent Masons LLP).

2.3 Host Authorities

2.3.1 Braintree District Council (BDC): Tim Havers (Planning Lead), Julie O’Hara (Senior Planning Policy Officer), Carol Wallis (Senior Planning Officer, BDC) and Ms Rowley (Policy Officer, BDC).

2.3.2 Ruth Mabbutt – Planning Lead at Chelmsford City Council (CCC).

2.3.3 Essex County Council (ECC): Rachael Donovan (Lead Planning Officer) and Matthew Bradley (Strategic Development Manager, representing the Highway Authority).

2.4 Interested Parties

2.4.1 Katherine Evans – Chairperson of Essex Local Access Forum.

2.4.2 Alan Swash – Boreham Conservation Society.

3. Agenda Item 2 – Structure of the Order

3.1 Summary of the structure of the Order

- 3.1.1 The ExA invited the Applicant to talk through the structure of the Order and changes made to it since submission.
- 3.1.2 Alexis Coleman on behalf of the Applicant explained that the Order has been drafted having regard to PINS' guidance, best practice and precedents established in other made DCOs, in particular solar DCOs and other energy DCOs. It includes 45 articles, divided into 6 Parts, and then 16 Schedules, which are given effect by, or tie into, the articles.
- 3.1.3 The draft Order is proposed to be called the Longfield Solar Farm Order, and is drafted to consent the construction, operation and maintenance and decommissioning of the authorised development, as described in **Schedule 1**.
- 3.1.4 **Article 2** of the Order sets out the definitions of terms used within the Order.
- 3.1.5 **Part 2** of the Order sets out the Principal Powers – including granting the undertaker consent for the authorised development, as constrained by the Order limits and numbered areas shown on the Works Plans. This part of the Order also authorises the operation of the generating station making up the authorised development, and maintenance of the authorised development.
- 3.1.6 **Article 6** disapplies various statutory provisions – including the Neighbourhood Planning Act 2017.
- 3.1.7 **Article 6(4)** addresses the overlap between the Order limits and an extant planning permission relating to works to, and the restoration of, Park Farm, which is part of a consented quarry located at and near to the existing Bulls Lodge Substation.
- 3.1.8 **Part 3 of the Order** provides a suite of powers in relation to street works, including carrying out street works within streets, altering the layout of streets, creating accesses, temporarily stopping up public rights of way, entering into agreements with street authorities and traffic regulation measures (relating to traffic signs and signals, speed limits, direction of traffic, restricting use of a road). These provisions give effect to Schedules 4 to 8.
- 3.1.9 **Part 4** contains supplemental powers, relating to discharge of water, removal of human remains, protective works to buildings and giving the authority to survey and investigate land.
- 3.1.10 **Part 5 of the Order** are the powers of acquisition or temporary possession. These include powers to compulsorily acquire land or rights in land, to extinguish rights in land, or to take temporary possession of land. These articles relate only to the Order land, as shown on the land plans. There are also standard provisions relating to compensation payable to affected

persons, and powers in relation to land and apparatus of statutory undertakers. These articles give effect to Schedules 9 to 11.

3.1.11 **Part 6** includes various miscellaneous or general provisions. These cover:

3.1.11.1 Giving the benefit of the Order to the Undertaker (Longfield Solar Energy Farm Limited), and additionally, with respect to specific work numbers, giving the benefit of the Order to National Grid (Bulls Lodge substation works) and UK Power Networks Limited (Work Number 6k – undergrounding of the OHL).

3.1.11.2 **Article 34** covers how the powers in the DCO can be transferred from those who have the benefit of the Order.

3.1.11.3 **Articles 35 and 36** provide for how landlord and tenant law applies in relation to the Order and that the Order Land will be "operational land" for the purposes of the TCPA 1990.

3.1.11.4 **Articles 37 and 38** provide powers in relation to trees which need to be removed or lopped and for hedgerows to be removed in relation to the Scheme and in relation to trees subject to tree preservation orders.

3.1.11.5 **Articles 39 to 45** include provisions relating to the certification of plans and documents relevant to the Order; arbitration; protection for statutory undertakers through the protective provisions (set out in **Schedule 15**); service of notices under the Order; procedure in relation to approvals required under the Order; guarantees in respect of the payment of compensation; and the incorporation of the mineral code.

3.1.12 The Order then has a series of **Schedules**, 1 through to 16 – each Schedule identifies its operative article in the Order, in the top right of the Schedule.

3.1.12.1 **Schedule 1** – sets out the authorised development. The works numbers align with the numbered areas on the Works Plans.

- a. **Work No. 1** is the NSIP, being a ground mounted photovoltaic generating station with gross electrical capacity in excess of 50MW.
- b. **Work Nos. 2 to 10** are associated development, comprising –
 - i. **WN2 – battery energy storage facility;**
 - ii. **WN3 – the onsite substation;**
 - iii. **WN4 – electrical cabling**, including the 400kV cable circuit connecting the solar farm site to the Bulls Lodge substation extension;
 - iv. **WN5 – extension to the existing Bulls Lodge substation;**
 - v. **WN6 – various works across the site** including cabling, fencing, security measures, landscaping and other mitigation or enhancements, works relating to internal access tracks and footpaths, earthworks, SuDs ponds and

related drainage works, temporary construction compounds, and undergrounding of the existing UKPN OHL;

- vi. **WN7 – temporary construction and decommissioning laydown areas** – in connection with both the solar site and grid connection, and the Bulls Lodge substation extension;
- vii. **WN8 – office, warehouse and plant storage building;**
- viii. **WN9 – works to facilitate access to all other works nos.;**
- ix. **WN10 – areas of habitat management;** and
- x. **Further associated development** including boundary treatment, drainage works, utilities, watercourses, site preparation works, works to maintain streets, tunnelling and boring works, and any other necessary works, that are unlikely to give rise to any materially different environmental effects from those already assessed in the ES.

3.1.13 **Schedule 2 – sets out the requirements.** The requirements are divided into 3 parts; Part 1 being General Requirements that apply to the authorised development as a whole, Part 2 being requirements relating only to the solar farm works and grid connection works, and Part 3 being requirements relating only to the Bulls Lodge substation works.

3.1.14 This approach has been taken to reflect that there are requirements that are relevant only to distinct parts of the authorised development. The approach to divide the requirements for the solar farm works and the Bulls Lodge substation works was also taken in consultation with National Grid, as they would take the benefit of the Bulls Lodge substation works and be responsible for discharging the relevant requirements – so having distinct parts was considered a practicable approach to assist both National Grid and the local planning authorities with the discharge of those requirements.

3.1.15 The requirements relate to construction, operation and decommissioning.

3.1.16 **Schedule 3 – sets out Legislation to be disapplied**, in relation to railways, electric supply, rivers and other watercourses in the vicinity of the Order Limits.

3.1.17 **Schedule 4 (Streets subject to street works)** - sets out the streets that are to be subject to street works by reference to the Streets, Access and Rights of Way Plans. The Schedule relates to Article 8 (Street works).

3.1.18 **Schedule 5 (Alteration of streets)** - sets out the streets that are to be permanently altered and maintained by the highway authority (Part 1), permanently altered and maintained by the street authority (Part 2) and temporarily altered (Part 3) by reference to the Streets, Access and Rights of Way Plans. This Schedule relates to Articles 9 (Power to alter layout, etc., of streets) and 10 (Construction and maintenance of altered streets).

3.1.19 **Schedule 6 (Public rights of way)** - sets out the locations of the public rights of way to be temporarily stopped up and diverted (Part 1), the public rights of way to be temporarily stopped up (Part 2), the public rights of way over which

the undertaker seeks authorisation to use motor vehicles permanently (Part 3) and the public rights of way to be managed temporarily (Part 4). It references the Streets, Access and Rights of Way Plans. This Schedule relates to Article 11 (Temporary stopping up of public rights of way).

- 3.1.20 **Schedule 7 (Access to works)** sets out the permanent means of accesses to works (Part 1) and temporary means of accesses (Part 2) to the authorised development. It references the Streets, Access and Rights of Way Plans. The Schedule relates to Article 12 (Access to works).
- 3.1.21 **Schedule 8 (Traffic regulation measures)** - contains details of the streets that are subject to temporary traffic regulation measures pursuant to Article 14, and contains details of the nature of the measures for each affected street.
- 3.1.22 **Schedule 9 (Land in which only new rights etc. may be acquired)** - sets out the areas of land over which only new rights may be acquired by the undertaker and the nature of the rights that may be acquired. The plot numbers in column 1 of that table correlate with the relevant plot numbers shaded blue and brown on the Land Plans and the nature of the rights in column 2 explains the purposes for which rights over land may be acquired and restrictive covenants imposed. The Schedule relates to Article 21 (Compulsory acquisition of rights).
- 3.1.23 **Schedule 10 (Modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants)** - modifies existing compensation legislation including the Land Compensation Act 1973 and the Compulsory Purchase Act 1965.
- 3.1.24 **Schedule 11 (Land of which temporary possession may be taken)** - sets out the land of which only temporary possession may be taken, pursuant to Article 28 (Temporary use of land for constructing the authorised development). This land is shown green on the Land Plans, and the purpose for the temporary possession is described by reference to the relevant work numbers and corresponding Works Plans.
- 3.1.25 **Schedule 12 (Hedgerows to be removed)** - sets out the hedgerows to be removed pursuant to Article 37, listing in Column 2 the number of hedgerow and extent of removal, and in Column 3 the purpose of removal.
- 3.1.26 **Schedule 13 (Documents and plans to be certified)** - lists the documents that the undertaker must have certified as true copies by the Secretary of State pursuant to Article 39 (Certification of plans and documents, etc.).
- 3.1.27 **Schedule 14 (Arbitration rules)** - relates to Article 40 (Arbitration), setting out the rules by which disputes will be resolved fairly and within set timeframes.
- 3.1.28 **Schedule 15 (Protective provisions)** - sets out protective provisions for the benefit of statutory undertakers whose equipment may be affected by the authorised development. This schedule contains: protective provisions for the benefit of defined classes of service undertakers (electricity, gas, water and sewerage undertakers at Part 1, and electronic communications code operators at Part 2), and in addition, each of Parts 3 - 9 contain provisions for the benefit of:
- 3.1.28.1 Eastern Power Networks plc and UK Power Networks Limited

- 3.1.28.2 National Grid as Electricity Undertaker
 - 3.1.28.3 The Environment Agency
 - 3.1.28.4 Drainage Authorities
 - 3.1.28.5 Railway Interests
 - 3.1.28.6 Essex County Council
 - 3.1.28.7 Essex And Suffolk Water
- 3.1.29 **Schedule 16 (Procedure for discharge of requirements)** - provides a bespoke procedure for dealing with an application made to the Relevant Planning Authority for any consent, agreement or approval required by the Requirements in Schedule 2 of the Order.

3.2 Changes made to the Order at Deadlines 1 and 2

- 3.2.1 Alexis Coleman informed the hearing that changes have been made to the Order in response to the **ExA's First Written Questions ("FWQs") [EN010118/EX/8.9]**, for example, to the definitions of "Order Land", "Authorised Development" and "Permitted Preliminary Works". Other examples include amendments to Article 6(4) in relation to the overlap with the Park Farm consent, and Article 19 in relation to the extent of powers of compulsory acquisition, and Article 29 in relation to temporary possession.
- 3.2.2 A new certified document has been included – the "**Overarching Written Scheme of Investigation**" [EN010118/EX/8.11(A)], to reflect that that document has been prepared and secured via a requirement.
- 3.2.3 There are some amendments to ensure powers provided for during the construction period are also available during the decommissioning of the authorised development.
- 3.2.4 **Article 6** has been amended to remove the disapplication of legislation that was not agreed with the Environment Agency.
- 3.2.5 **Article 12** was amended to ensure the undertaking restores any temporary accesses.
- 3.2.6 **Schedule 2, requirement 6** in relation to the community liaison group has been amended in response to ExA's FWQ. And other amendments to requirements have also been made in response to FWQs, for example –
- 3.2.6.1 To **requirement 9** on Biodiversity Net Gain and to confirm where permitted preliminary works are included in the definition of "commence"; and
 - 3.2.6.2 **Requirement 17** in terms of making permissive paths accessible throughout operation of the scheme.
- 3.2.7 Amendments were made to **Schedules 9 & 11** – to refer to sheets of the land plans, in response to ExA's FWQs.
- 3.2.8 Amendments were made to **Schedule 12 (hedgerows to be removed)** to fully reflect the vegetation removal plan.

- 3.2.9 **Schedule 13 (documents and plans to be certified)** has been updated to reflect further revisions to certified documents.
- 3.2.10 **Schedule 15** has been amended to reflect negotiations on the protective provisions with statutory undertakers, and to include protective provisions for Network Rail (railway interests), Essex County Council and Essex and Suffolk Water.
- 3.2.11 **Schedule 16 (discharge of requirements)** has been amended to change the decision period from 6 to 8 weeks in response to ExA's FWQs and feedback from the councils.

4. Agenda Item 3 – Main Discussion Points

4.1 Articles 28 and 29: Temporary Possession / Neighbourhood Planning Act 2017

- 4.1.1 **The ExA** thanked the Applicant for its detailed response to the written question on this point.
- 4.1.2 **The ExA** highlighted that the notice period that will be required under NPA 2017 is 3 months, substantially longer than the 14 days required under Article 28(3).
- 4.1.3 **Alexis Coleman** referred to **the Applicant's response to FWQ 1.5.17 [EN010118/EX/8.9]**, and in addition highlighted that a longer period would potentially lead to land being compulsory acquired earlier than it is required or the Applicant serving notice in relation to more land than is ultimately required, on a precautionary basis and therefore resulting in more disruption for the landowners / occupiers than necessary.
- 4.1.4 **The ExA** highlighted that it is about striking the correct balance and queried whether an earlier notice period could be included. The ExA noted this may not be a 3 month notice period, and pointed to the example of HS2 where 28 days has been adopted.
- 4.1.5 **Ms Coleman** agreed that the Applicant would review this point. **Post hearing note:** The Applicant can confirm that the draft DCO submitted at Deadline 3 has amended the 14 day period in Article 28(3) to 28 days.
- 4.1.6 **The ExA** queried whether Article 28(4) could allow the Applicant to remain in temporary possession of land for longer (for example if the land ceased to be required ahead of the timescales in Article 28(4)), and if notifying a timeframe in advance would resolve this point. The Applicant agreed to consider this point further.
- 4.1.7 **Post hearing note:** The Applicant has reflected further on the drafting of Article 28. Article 28(1) only allows temporary possession to be taken in connection with the construction of the authorised development and more specifically (where temporary possession of land only is sought) for the purpose identified in Schedule 11 of the Order. Therefore, if that purpose for which temporary possession could be taken ceased to exist, the Applicant would no longer be able to remain in possession. Article 28 therefore has measures already built in to ensure temporary possession is limited to the purpose as set out in sub-paragraph (1). The Applicant therefore does not propose further changes to Article 28.

4.2 Article 43 – Timescale for deemed consent

- 4.2.1 **The ExA** proposed that Article 43(4) be amended from 6 weeks to 8 weeks.
- 4.2.2 **Alexis Coleman** confirmed that the Applicant would amend the timeframe in Article 43(4) from 6 weeks to 8 weeks at Deadline 3.

- 4.2.3 **Tim Havers** on behalf of Braintree District Council (“BDC”), requested that for more complex requirements 13 weeks be allowed (in relation not the timescales allowed in Schedule 16). Additionally that a Memorandum of Understanding be entered into as a moving forward mechanism, to govern when or how parties could agree an extended timescale.
- 4.2.4 **Ruth Mabbutt** on behalf of Chelmsford City Council (“CCC”), reiterated support to Mr Havers point.
- 4.2.5 **Rachael Donovan** on behalf of Essex County Council (“ECC”), also reiterated support for the position set out by BDC and CCC, stating that whilst the flexibility is in place to agree longer time limits, there is a concern regarding the prescribed timescales and resourcing within the council. Ms Donovan confirmed that the Council is not seeking any specific edits, however, would like confidence that the flexibility within the article regarding extending time frames can work in practice.
- 4.2.6 **Ms Coleman** confirmed that for the timescales in both Article 43 and Schedule 16, there is a mechanism in place to allow the Applicant to agree an extended timescale with the relevant authority. Ms Coleman explained that in practice, if the relevant authority were to come to the Applicant and request an additional 2-3 weeks, the Applicant would be highly likely to agree that extension rather than having the application refused. It is in the interests of the Applicant to act pragmatically in this respect. Ms Coleman noted discussions with the Councils on this point were ongoing.
- 4.2.7 **The ExA** requested to be kept informed.
- 4.2.8 **The ExA** raised a concern regarding whether 43(7) applies to the Secretary of State within the deemed consent provision and indicated that this needs to be made quite clear.
- 4.2.9 **Post hearing note:** The Applicant has further considered the point raised by the ExA, and considers that the drafting is sufficiently clear. This is because “consenting authority” is defined in Article 43(7). The only authority listed in Article 43(7) which could potentially include the Secretary of State is “relevant planning authority”, however this term is defined in Article 2 and it is clear it does not include the Secretary of State.
- 4.2.10 In response to a query from **Katherine Evans** on behalf of Essex Local Access Forum, **Ms Coleman** clarified where the amendment would be made to the 6 week timeframe.
- 4.2.11 **Ms Donovan** highlighted that in Article 43(7) the Lead Local Flood Authority should be included as a consenting authority. Post hearing note: the Applicant has considered this further. The Local Lead Flood Authority is required to give consent under the protective provisions, and is therefore already included as a “consenting authority” by reference in that definition to “or the beneficiary of any of the protective provisions contained in Schedule 15”. No amendment is therefore proposed.

4.3 Schedule 1 – Further Associated Development

- 4.3.1 **The ExA** raised the fact that the current wording in Schedule 1 adopts a different approach to the wording of that in Cleve Hill Solar Park and Little Crow Solar Park and queried why the different wording was chosen.
- 4.3.2 **Alexis Coleman** explained as per response to **FWQ 1.5.24 [EN010118/EX/8.9]**, the Applicant has adopted the term “unlikely” in Schedule 1 and Requirement 5(2), which is used here to reflect the language adopted with respect to such assessments in the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017, being the requirement to assess the “likely” significant effects of a development on the environment.
- 4.3.3 **The ExA** highlighted concern regarding whether this approach introduces an element of objectivity, regarding assessment of something that will happen in the future.
- 4.3.4 **Ms Coleman** confirmed that the Applicant would review this point, indicating that the Drax Re-Power Order has been used as a precedent and a further review of more recent solar precedents will be undertaken.
- 4.3.5 **Post hearing note:** The Applicant has amended the drafting in Schedule 1 of the draft DCO being submitted at Deadline 3 to more closely reflect the wording in the Cleve Hill DCO, that the ExA directed the Applicant to.

4.4 Operational lifetime / duration of consent

- 4.4.1 **The ExA** highlighted the lack of timescale on the operation of the Scheme, pointing to the made orders for Little Crow Solar Park and Cleve Hill Solar Park which both contain a time limit on the consent.
- 4.4.2 **Alexis Coleman** confirmed that the Applicant intends to amend Requirement 20 in the dDCO submitted for Deadline 3, so that the authorised development is required to have started the decommissioning process after 40 years of full commissioning.
- 4.4.3 **Ms Coleman** also noted that the Applicant intended to reduce the timeframe in requirement 20 from 12 months to 3 months, so that within 3 months of the decision to decommission, the undertaker must submit the decommissioning environmental management plan and traffic management plan for approval.

4.5 Requirement 20 – Decommissioning and restoration – trigger for decommissioning; financing

- 4.5.1 **The ExA** confirmed that the point around the trigger for decommissioning had already been covered and the ExA will await the amended DCO to raise any further questions in this respect.
- 4.5.2 With respect to financing of the decommissioning, **Alexis Coleman** explained that the Applicant’s position is set out in its response to ExA’s FWQ 1.5.44 **[EN010118/EX/8.9]** and in summary the Applicant does not consider any additional guarantee or security is required with respect to decommissioning because:

- 4.5.2.1 The DCO includes requirements around decommissioning which are enforceable by the relevant planning authority, and it is a criminal

offence for the undertaker to be in breach of the obligation. The amendments proposed above for Requirement 20, requiring decommissioning after 40 years, make the obligation to decommission even clearer or stronger, from an enforcement perspective.

- 4.5.2.2 The Applicant is aware of its responsibilities under the DCO, and of the criminal liability attaching to any breach of the Order. The Proceeds of Crime Act 2002 also acts as a further deterrent to such a breach.
- 4.5.2.3 The Applicant has an option for a lease with the Landowner of the solar farm site – the lease will require the Applicant to return the land to the Landowner, with the solar farm having been decommissioned.
- 4.5.2.4 The elements of the installed solar farm represent a valuable asset for the Applicant, so it would be in its interests financially, to decommission the site in order to recycle or sell those components.
- 4.5.2.5 It is not routine for DCOs to incorporate decommissioning bonds.
- 4.5.3 **Ms Coleman** highlighted that similar arguments were made in the Cleve Hill examination, and were accepted by the ExA in its report, with which the SoS agreed. In particular para 12.3.50 –
- “We were informed [REP2-006], [REP3-015] and [REP5-010] that, although the Applicant intended to follow good commercial practice to set aside funds during the operational life of the project, it was not necessary to provide a financial bond as guarantee as the enforcement mechanisms in the PA2008 were rigorous, criminal liability would be a possible consequence of a breach of the Requirement, and The Proceeds of Crime Act 2002 added further deterrent to a breach. Moreover, it was not routine practice for DCOs to incorporate decommissioning bonds. Without clear precedent or Government guidance, we see no basis to justify a financial bond secured by requirement in the DCO. Moreover, we do not believe that such a requirement would meet the relevant law and policy on the drafting of requirements.”*
- 4.5.4 **Post hearing note:** There was some discussion at the hearing (with questions raised by **Alan Swash**) that the 40 years may run separately for different phases if they were commissioned at different stages. For simplicity and clarity for all parties, the Applicant has amended Requirement 20 so that the 40 years runs from full commissioning of the first phase of the solar PV, so that the 40 year limit will apply across the Scheme and will not be staggered if some phases are commissioned after the first phase is commissioned.
- 4.5.5 **Ruth Mabbutt** on behalf of CCC, asked whether the Applicant could include a requirement to notify the local authorities within 10 days of full commissioning.
- 4.5.6 **Ms Coleman** indicated that she felt this was sensible suggestion and would be useful from the local planning authority’s perspective. **Post hearing note:** In the draft DCO submitted at Deadline 3, the Applicant has included this notification requirement.

- 4.5.7 **Katherine Evans** on behalf of Essex Local Access Forum, queried what would happen if the organisation that owns the solar farm were to go bust in 39 years, referring to a planning case that she is aware of.
- 4.5.8 **Ms Coleman** informed that if the undertaker went into liquidation, its assets would be sold off to fund the decommissioning under the legal requirement. Ms Coleman further noted that the DCO is different to a planning permission as it is a statutory instrument (piece of legislation) and so its requirements are legally enforceable and have criminal implications.

4.6 Schedule 2 – Requirements

- 4.6.1 **The ExA** highlighted that he is aware that some additional requirements have been raised by BDC and queried whether there are any further requirements to be added.
- 4.6.2 **Alexis Coleman** confirmed that no further requirements are to be added but the following amendments are proposed by the Applicant-
- 4.6.2.1 The Applicant has been discussing with the Councils the obligation on the Councils to consult with other parties before approving documents submitting under requirements. To assist the Councils with this, the Applicant proposes amending the procedure in Schedule 16 to put an obligation on the Applicant to provide a copy of the documents submitted for approval to the relevant consultee. **Post hearing note:** the Applicant has made these amendments at Deadline 3.
- 4.6.2.2 Requirements 15 and 27 – the Applicant will include National Highways as a consultee on the Construction Traffic Management Plan, reflecting discussions with National Highways.
- 4.6.2.3 Requirement 20 – proposed amendments to the decommissioning requirement as set out above.
- 4.6.3 **The ExA** highlighted how Braintree have raised two requirements with respect to monitoring of ecological mitigation and enhancements.
- 4.6.4 **Ms Coleman** confirmed that the Applicant is happy to agree to the principle of those requirements, but considers the proposed measures are better achieved via amendments to the Outline Landscape and Ecology Management Plan. Ms Coleman confirmed this would include the Ecological Advisory Group.
- 4.6.5 **Tim Havers** on behalf of BDC confirmed that he is happy with the approach and wanted to ensure that there is a mechanism in place.
- 4.6.6 **Ruth Mabbutt** on behalf of CCC, raised concerns relating to the workability and practicality of the 8 week period (as previously discussed).
- 4.6.7 **Katherine Evans** on behalf of Essex Local Access Forum, asked for clarity on who is able to access the permissive paths. Additionally querying whether there is a plan.
- 4.6.8 **Post hearing note:** the Applicant responded to various points about the permissive paths during the hearing, however, it then provided further detail in response to Mrs Evans' concerns in the second Issue Specific Hearing on EIA matters. At Deadline 3 the Applicant has also produced a note to set out the

position with respect to both public rights of way and permissive paths, which is appended to the Oral Summary of the Environment, and at the second Issue Specific Hearing the Applicant has also offered to talk through that note with Mrs Evans, if that would be of assistance.

- 4.6.9 In response to a query as to why the permissive paths could not remain in place after the operation of the Scheme, **Ms Coleman** explained that the permissive paths are in place as an enhancement and are only designed to be in place during the lifetime of the Scheme. The Applicant will be returning the land to the landholder after decommissioning, and therefore it is out of the Applicant's control to be able to provide the permissive paths at that point. It is expected that the land will be returned to agricultural use which may not be compatible with the ongoing use of the permissive paths.
- 4.6.10 **Mrs Evans** queried whether the cable route connecting into to Bulls Lodge Farm will remain in the Applicant's control permanently.
- 4.6.11 **Ms Coleman** confirmed that the Applicant will not own the land but will have permanent rights there for the cable to remain in place and to be maintained. The Applicant does not have powers to provide permissive paths along the cable route.

4.7 Schedule 15 – Protective Provisions

- 4.7.1 **Alexis Coleman** provided an update on the Protective Provisions since Deadline 2, as set out below –

Statutory Undertaker	Status of negotiation
UK Power Networks Group (Operations) Limited (UKPN) (Sch15, Part 3)	There is one outstanding point to be agreed in the protective provisions in the DCO. UKPN has responded on this point on 16 September 2022 and this is being considered by the Applicant.
National Grid (Sch15, Part 4)	The Applicant responded to National Grid in relation to the protective provisions on 25 August 2022. National Grid has further responded on 21 September 2022, and those comments are being considered by the Applicant.
Environmental Agency (Sch15, Part 5)	The Applicant responded to the EA with comments on the protective provisions on 25 August 2022, and the EA has responded with comments on 23 September 2022, which the Applicant is considering. The protective provisions are close to being agreed.
Network Rail (Sch15, Part 7)	The Applicant responded to Network Rail in relation to the protective provision on 25 August 2022. Since then several emails have been exchanged to clarify points on the draft PPs, most recently on 14 September 2022.
Essex County Council (Sch15, Part 8)	The Applicant has agreed protective provisions with Essex County Council in its role as drainage authority. These were included in the dDCO submitted at Deadline 1B. There was a subsequent meeting on 26 September 2022, and the Applicant has made further minor amendments to the protective provisions to reflect those discussions.
Essex and Suffolk Water (Sch15, Part 9)	The Applicant provided draft protective provision to Essex and Suffolk Water on the 2 September 2022 for their consideration. A response is awaited.

5. Agenda Item 4 – Opportunity for Interested Parties to Comment on Other Aspects of the Draft DCO and to Raise Any Matters Not Covered

- 5.1.1 **The ExA** asked whether anybody had anything to raise that had not already been discussed and nothing was raised.

6. Agenda Item 5 – Other Matters

- 6.1.1 **Carly Vince**, the Applicant's Chief Planning Officer, provided an update on the section 106 agreement informing that a draft has been shared with the local authorities and had been discussed the day before the hearing. A series of meetings are taking place over the coming weeks. Ms Vince reported that she was confident that the section 106 agreement will be agreed for the last deadline, and agreed to submit a draft section 106 agreement around deadline 5.