

OAKLANDS FARM SOLAR PARK

PLANNING ACT 2008 SECTION 51 ADVICE AT ACCEPTANCE

APPENDIX: DRAFT DEVELOPMENT CONSENT ORDER AND EXPLANATORY MEMORANDUM

General

1. The Explanatory Memorandum must explain the purpose and effect of provisions in the draft order. [The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009].
2. Ensure that thorough justification [emphasis added] is provided in the Explanatory Memorandum for every Article and Requirement, explaining why the inclusion of the power is appropriate in the specific case. The extent of justification should be proportionate to the degree of novelty and/ or controversy in relation to the inclusion of that power. [Advice Note 15 - paragraph 1.2].
3. Consider whether more consistency can be provided in the references made to the different stages of the authorised development and whether each relevant stage is identified each time they are referenced, including:
 - “... construction or maintenance ...”,
 - “... construction, operation, maintenance or decommissioning ...”,
 - “... construction maintenance or decommissioning ...”
 - “... construction, maintenance operation or decommissioning ...”
 - “... construction, operational maintenance and decommissioning ...”
 - “... construction, operation or maintenance ...”
 - “... construction, operation, maintenance or use ...”
 - “... construction, maintenance or operation ...”
 - “... construction, maintenance, use or operation ...”
 - “... erection, construction or maintenance ...”
4. Consider whether reference should be made to either “local planning authority” or “relevant planning authority” rather than to both.
5. Consider whether the references to “... any materially new or materially different effects that have not been assessed in the environmental statement ...”, “... any materially new or materially different environmental effects from those assessed in the environmental statement ...”, and “... any materially new or materially different environmental effects compared to those in the environmental statement ...” should each be replaced by “... any materially new or materially more adverse effects compared to those identified in the environmental statement ...”.
6. Consider whether provisions that confer deemed consent if an authority does not respond within a specified period (a “guillotine”) find the right balance between not unnecessarily delaying the Proposed Development and ensuring that appropriate regard is given to the interests and advice of other parties. Consider discussing and agreeing each provision with each relevant authority. Consider whether provisions should be added for any application for consent to contain a statement drawing the authority’s attention to any guillotine.

Part 1 – Preliminary

Article 2(1) – Interpretation. Provide justification in the Explanatory Memorandum for the definitions that differ from those provided in s235 of the Planning Act 2008. [Advice Note 15 – paragraph 6.1].

Article 2(1) – Interpretation. Consider amending “the book of reference” to “book of reference” and placing in alphabetical order in the list of definitions.

Article 2(1) – Interpretation. Adjust the definitions of ‘commence’ and ‘site preparation works’ if that is necessary to remove any site preparation works that are likely to have significant environmental effects, for example, in terms of noise or impacts on protected species or archaeological remains. [Advice Note 15 - paragraph 21.2].

Article 2(1) – Interpretation. Consider whether the definition of “date of final commissioning” could be simplified to “... the date on which the authorised development commences operation by generating electricity on a commercial basis but excluding the generation of electricity during commissioning.”

Article 2(1) – Interpretation. Adjust the definition of “maintain” if that is necessary for it not to authorise development which may result in significant environmental effects not already assessed. [Advice Note 15 – paragraph 18.2].

Article 2(1) – Interpretation. Adjust relevant definitions to ensure consistency, for example “... under article 35 ...” and “... in accordance with article 35 ...”.

Article 2(1) – Interpretation. Consider whether definitions of “carriageways”, “footpath”, “footway”, “holding company”, “owner”, “plot”, “protected species”, “relevant planning authority”, “street works”, “subsidiary”, and “traffic authority” are required for the use of those terms in the Articles or Schedules.

Article 2(2) – Interpretation. Clarify the meanings of “approximate”, “marginal difference”, and “small tolerance” in the Development Consent Order and Explanatory Memorandum. Notwithstanding any precedent, consider whether it would assist with clarity and precision for limits of deviation of the works to be secured, and whether this is necessary to ensure consistency with the Environmental Statement.

Part 2 – Principal Powers

Article 6 – Disapplication and modification of legislative provisions. Notwithstanding any precedent, provide justification in the Explanatory Memorandum for each disapplication or amendment. Provide information on the purpose of the legislation; the persons/body having the power being disappplied; an explanation as to the effect of disapplication and whether any protective provisions or requirements are required to prevent any adverse impact arising as a result of disapplying the legislative controls; and (by reference to s120 and Schedule 5 of the Planning Act 2008) how each disappplied provision constitutes a matter for which provision may be made in the Development Consent Order.

Article 7 - Defence to proceedings in respect of statutory nuisance. Provide justification in the Explanatory Memorandum for the additional protection sought for each nuisance, including with reference to the likely effects identified in the Environmental Statement and the controls provided elsewhere in the Development Consent Order.

Part 3 - Streets

Article 9(1)(a) – Power to alter layout, etc., of streets. Provide justification in the Explanatory Memorandum for why powers are requested for the permanent alteration of streets when the operation of the authorised development would be for no more than 40 years following the date of final commissioning. Consider whether provisions are required for permanent alterations to be completed to the reasonable satisfaction of the relevant authority. Consider whether provisions are required for the maintenance of any altered streets.

Article 10(1)(a) – Access to works. Provide justification in the Explanatory Memorandum for why powers are requested for the creation of permanent means of access when the operation of the authorised development would be for no more than 40 years following the date of final commissioning.

Article 13 – Traffic regulation measures. Provide justification in the Explanatory Memorandum for why the broad powers to regulate traffic on any road are necessary and appropriate. Explain what steps have been taken to alert all relevant parties to this possibility. Explain how the resulting impacts have been assessed.

Part 5 – Powers of Acquisition

Article 17 - Compulsory acquisition of land. Article 19 - Compulsory acquisition of rights and restrictive covenants. Provide justification in the Explanatory Memorandum for why powers are requested for compulsory acquisition when the operation of the authorised development would be for no more than 40 years following the date of final commissioning. Justify whether the powers sought for compulsory acquisition and restrictive covenants are no more than is reasonably required and proportionate to the needs of the Proposed Development, whether the extent of rights and interests to be acquired have been minimised, and whether disproportionate or unjustified interference with human rights would be avoided. Ensure that any compulsory acquisition and restrictive covenants are correctly identified on the Land Plans, in the Book of Reference and in the Statement of Reasons.

Article 17 - Compulsory acquisition of land. Article 19 - Compulsory acquisition of rights and restrictive covenants. Consider whether related land rights provisions are required for after decommissioning, for example to deal with any land or rights compulsorily acquired and any restrictive covenants put in place before then.

Article 19 - Compulsory acquisition of rights and restrictive covenants. To enable the Secretary of State to consider whether the imposition of Restrictive Covenants is necessary for the purposes of implementing a Development Consent Order, and appropriate in human rights terms, fully explain and justify the need for including such powers in the Statement of Reasons. Development Consent Order provisions seeking to impose Restrictive Covenants should not be broadly drafted and should identify the land to which they relate and the nature of the Restrictive Covenant. [Advice Note 15 – paragraph 24.3].

Article 19(5) & (6) - Compulsory acquisition of rights and restrictive covenants. Consider whether paragraphs (5) and (6) are required given Article 5.

Article 21 - Application of the 1981 Act. Article 24 - Modification of Part 1 of the Compulsory Purchase Act 1965. Notwithstanding any precedent, provide justification in the Explanatory Memorandum for each disapplication or amendment. Provide information on the purpose of the legislation; the persons/body having the power being disappplied; an explanation as to the effect of disapplication and whether any protective provisions or requirements are required to prevent any adverse impact arising as a result of disapplying the legislative controls; and (by reference to s120 and Schedule 5 of the Planning Act 2008) how each disappplied provision constitutes a matter for which provision may be made in the Development Consent Order.

Article 23 - Power to override easements and other rights. Provide justification in the Explanatory Memorandum for why this provision is necessary and appropriate.

Article 26 - Temporary use of land for carrying out the authorised development. Article 27 Temporary use of land for maintaining authorised development. Consider whether any land for which powers for temporary use are sought should be for a shorter duration than 40 years following the date of final commissioning. Consider whether the powers requested minimise the extent of rights and interests to be acquired and avoid disproportionate or unjustified interference with human rights. Consider whether provisions should be included to limit the duration for the temporary use of some plots for specified stages or activities, for example when they would only be required during construction or decommissioning.

Article 26(1)(a)(ii) - Temporary use of land for carrying out the authorised development. Provide justification in the Explanatory Memorandum for why the broad powers to take temporary possession of any other Order land are necessary and appropriate. Explain what steps have been taken to alert all relevant landowners, occupiers, etc. to this possibility and explain the consideration given to their rights. Explain how the resulting impacts have been assessed.

Article 27(1) - Temporary use of land for maintaining the authorised development. Consider whether an option should be provided for the undertaker to enter land for the purpose of gaining access for maintenance purposes without having to take temporary possession.

Article 28 – Statutory undertakers. Article 29 - Apparatus and rights of statutory undertakers in stopped up streets. Provide justification in the Explanatory Memorandum for why these provisions are necessary and appropriate. Explain whether these articles are consistent with the Schedule 10 – Protective provisions, including in relation to the acquisition or overriding of interests of any statutory undertaker requiring agreement with them.

Part 7 – Miscellaneous and general

Article 35 – Certification of plans, etc. The Applicant is encouraged to set out the reference numbers of all documents. [Advice Note 15 – paragraph 11.2]. Ensure that every individual document is identified either within the Development Consent Order itself or within a separate certified document. Ensure that each document listed is the latest version submitted to the Examination and that the version number is identified accordingly.

Article 37 - Felling or lopping of trees or removal of hedgerows. Provide justification in the Explanatory Memorandum for why the broad powers to fell or lop trees, or shrubs or cut back their roots are necessary and appropriate. Consider whether this should be subject to the prior consent of the relevant planning authority. Set out why removal of hedgerows cannot be restricted to those identified in Schedule 9. Consider how consistency with the Environmental Statement would be ensured.

Article 38 - Trees subject to Tree Preservation Orders. Provide justification in the Explanatory Memorandum for why the broad powers to fell or lop trees subject to tree preservation orders or cut back their roots are necessary and appropriate. Consider whether this should be subject to the prior consent of the relevant planning authority. Consider identifying the affected trees in Schedule 9. Consider how consistency with the Environmental Statement would be ensured.

Schedule 2 – Requirements

General

1. Ensure that requirements are precise, enforceable, necessary, relevant to the development, relevant to planning and reasonable in all other respects. [Advice Note 15 – paragraph 15.2].
2. Ensure that any mitigation measures relied upon in the Environmental Statement are robustly secured and capable of being delivered. [Advice Note 15 – paragraph 16.1]. Ensure that this is provided for all stages including site preparation works, construction, operation, maintenance, and decommissioning. Ensure that the Environmental Statement provides clear and well-reasoned justification that the secured mitigation measures would result in the residual effects identified in the Environmental Statement, including where they are considered to reduce the effects from significant to non-significant.
3. Consider whether there should be provisions for the activities permitted during operation to be restricted to those considered in the Environmental Statement. Ensure that consideration is given to any potential for large scale replacement of the solar panels and any other works for up to 40 years following the date of final commissioning.
4. Ensure that any provisions in that allow for flexibility are justified within the Explanatory Memorandum and assessed within the Environmental Statement. [Advice Note 15 – paragraph 17.1].
5. Ensure that the Requirements have been discussed, and where possible agreed, with the relevant planning authorities and other relevant statutory bodies.
6. Consider ensuring that all management plans, working methods and mitigation measures are specifically required to be in accordance with relevant outline plans, such as the Outline Construction Environmental Management Plan.
7. Consider the need for consultation and agreement with relevant statutory bodies on matters related to their functions.
8. Consider whether an ecological protection and mitigation strategy should be required to be submitted to and approved by the relevant planning authority in

consultation with the Environment Agency before the authorised development may commence. Consider the provisions for site preparation works.

9. Consider whether a requirement should be added in relation to surveys of protected species that are shown or reasonably likely to be present before any relevant works (during site preparation works, construction, operation, or decommissioning) are carried out that may affect those protected species. Consider the provision of measures to protect any protected species identified by those surveys or during the relevant works. Consider the potential for protected species to move into the Order Land during the operation of the authorised development. Consider the need for consultation and approval by the relevant planning authority and Natural England.
10. Consider whether a biodiversity net gain strategy should be required to be submitted to and approved by the relevant planning authority in consultation with the relevant statutory nature conservation body. Consider setting out the net gain in habitat units that the strategy would be required to secure and that it must be substantially in accordance with the outline landscape and ecological management plan.
11. Consider whether a requirement should be added for no part of the site preparation works or authorised development to commence until written details of all proposed temporary and permanent fences, walls, or other means of enclosure, for that part have been submitted to and approved by the relevant planning authority. Set out what those written details should accord with. Clarify when the temporary and permanent measures should be in place.
12. Consider whether a requirement should be added to secure the planting, hedgerow enhancement and temporary screening proposed in the Environmental Statement in relation to glint and glare to obscure reflecting solar panels from view prior to planting reaching maturity along Coton Road.
13. Consider whether a requirement should be added for the provision of the new permissive path across the Order Land from Lads Grave in the south of the Site to Rosliston and Walton-on-Trent via the Cross Britain Way and when this would be provided. Consider including provisions for approval of the route, maintenance, and access by the relevant planning authority.
14. Consider whether a requirement should be added for no part of the site preparation works or authorised development to commence until a soil management plan for that part has been submitted to and approved by the relevant planning authority. Set out what the plan should accord with.
15. Consider whether a requirement should be added to secure the end state of the Order Land after decommissioning. Consider agreeing any wording with the local planning authority and other relevant statutory bodies. Consider whether provisions are needed to secure funding for decommissioning.

Requirement 3 – Time limits. Consider whether provision should be added for no part of the authorised development to commence until a written scheme setting out the phases of construction of the authorised development with timetables and plans for each phase has been submitted to the relevant planning authorities. Consider what notice should be provided for the site preparation works.

Requirement 5 – Detailed design approval. Consider including the parameters that the authorised development must be designed in accordance with, for example the design parameters set out in paragraphs 4.11-14 and Table 4.2 of ES Chapter 4 Project Description. Consider how consistency with the Environmental Statement would be ensured.

Requirement 9(2) - Construction environmental management plans (CEMP). Consider whether the CEMP should be required to provide details of a Surface Water Management Plan. Consider whether the relevant authorities require an outline version of the Surface Water Management Plan to be submitted, consulted on, and agreed before the close of the Examination.

Requirement 13 – Land contamination. Consider whether measures should be added in relation to avoiding disturbing any contamination, site investigations, verification plans, verification reports, and to consultation with the Environment Agency on relevant matters related to their functions.

Requirement 18 – Archaeology. Consider whether measures should be added for any archaeological remains not previously identified which are revealed when carrying out the authorised development. Consider whether the county archaeologist and, if appropriate, Historic England require a written scheme of investigation to be submitted, consulted on, and agreed before the close of the Examination.

Requirement 20 – Construction hours. Consider whether any of the works outside working hours should be required to not give rise to any materially new or materially more adverse effects compared to those identified in the Environmental Statement and should only be permitted following the prior written approval of the identified activity, extent, timing, and duration by the relevant local authority in advance.

Schedule 10 – Protective Provisions

1. The Applicant is encouraged to agree Protective Provisions with the protected parties prior to submitting the application. Where agreement on Protective Provisions has not been reached during Preapplication stage, the Applicant should submit with their application the standard Protective Provisions for all relevant protected parties with any amendments annotated with full justification included within the Explanatory Memorandum. [Advice Note 15 – paragraph 4.1].
2. The Applicant is encouraged to agree any side agreements with the protected parties and for written confirmation of that to be provided by the parties before the close of the Examination.