

The Planning Inspectorate  
National Infrastructure Directorate  
Temple Quay House  
Temple Quay  
Bristol  
BS1 6PN

FAO: Ms Naoual Margoum, Case Manager

**Date**  
3<sup>rd</sup> May 2024

Dear Ms Margoum

**EN010122 – APPLICATION FOR A DEVELOPMENT CONSENT ORDER FOR OAKLANDS FARM SOLAR PARK, SOUTH DERBYSHIRE**

**PLANNING ACT 2008 (AS AMENDED) – SECTION 51 SUBMISSION**

I write further to your letter of the 5th March 2024 which provided advice to the Applicant under s51 of the Planning Act 2008 at the point of the above Application being accepted for examination.

This letter accompanies a submission of amended documents which address the points raised in the S51 advice. It summarises which documents have been amended and the changes made to them, to provide clarity for any interested party reviewing the application. The amended documents also respond to the comments made at Box 30 of the s55 Acceptance Checklist. Both the draft Development Consent Order and accompanying Explanatory Memorandum have been amended to reflect the separate schedule of detailed comments provided by the Inspectorate on those two documents at the point of acceptance.

The following documents form the submission by the Applicant in response to the S51 advice. All documents submitted have been clearly marked as being S51/May 2024 versions, to distinguish them from the original submitted versions where necessary:

- 1.4 – Application Guide;
- 2.2 - Land Plans;
- 2.3 – Works Plan;
- 2.4 – Streets, Access and Rights of Way Plan;
- 3.1 – Draft Development Consent Order;
- 3.2 - Explanatory Memorandum;
- 4.3 - Book of Reference;
- 5.1 – Consultation Report – an amended May 2024 version of the Main Statement;
  - Appendix 10.3 - Section 42 Letter to Landowners, occupiers and those with an interest 20 April 2023;
  - Appendix 11.2 - Final Published Statement of Community Consultation (SoCC);
  - Appendix 11.16 - Statutory Consultation Virtual Exhibition;
- 6.1 – Environmental Statement - May 2024 versions of:
  - Figure 10.1 – 10.9 – Air Quality Management Areas
  - Appendix 8.1 – Flood Risk Assessment
- 6.2 – Non-Technical Summary;
- 9.1 – this S51 Covering Letter;
- 9.2 – Crossing Method Statement.

### **Document 1.4 – S51 Application Guide**

The Application Guide has been updated to reflect the documents which form part of this s51 submission, as well as the current status of Statements of Common Ground.

### **Document 2.2 – S51 Land Plans**

The Land Plans have been revised to reflect the comments in Box 30 of the Acceptance Checklist with plot boundaries now made bolder and with labels added to reflect the sheet being viewed. Plots 01-021 and 03-058 are shown in yellow, for Temporary Possession, with the key updated accordingly.

### **Document 2.3 – S51 Works Plan**

Works no. 2, 3, 4d, 6 and 8 are now labelled on Sheets 3 and 4 and the roads referred to in the draft DCO are now clearly named on the Works Plan.

### **Document 2.4 – S51 Streets, Access and Rights of Way Plan, May 2024**

The roads referred to in the draft DCO are now clearly named on the Streets, Access and Rights of Way Plan.

### **Document 3.1 – S51 Draft Development Consent Order and Document 3.2 – S51 Explanatory Memorandum**

The table appended to this letter provides the Applicant's response to each of the individual points raised by the Inspectorate regarding the dDCO and Explanatory Memorandum at the S51 Acceptance advice stage. Both clean and tracked change versions of the dDCO and Explanatory Memorandum are provided as part of this submission.

In addition the following points from Box 30 of the s55 Acceptance Checklist have also been addressed:

- Access AS-A2, as marked on Sheet 1 of the Streets, Access and Rights of Way Plan, is now included in Schedule 4.
- Schedule 8 of the dDCO has been amended to now refer to plot 03-058 instead of 03-057.
- The Explanatory Memorandum has been amended to now include Work No 5b.

### **Document 4.3 – S51 Book of Reference**

The Applicant confirms that the Book of Reference was reviewed prior to s56 acceptance publicity being undertaken. The Book of Reference had also been reviewed just prior to submission, and no further updates were identified as being required prior to s56 acceptance publicity. An amended version of the Book of Reference has however been submitted to reflect amendments to Plots 02-055 and 02-056, with Derbyshire County Council added in respect of the Cross Britain Way Public Right of Way in each case, as noted in the s55 Acceptance Checklist.

Given the above, no amendments were required to the Statement of Reasons at this stage.

### **Document 5.1 – Consultation Report, May 2024**

The Consultation Report has been updated to correct the dates at Paragraph 10.8.3 and Table 10.3 as well as in Appendix 10.3. Appendix 10.6 appears to show the correct date and has not been amended. The duplicate Appendix 11.15 has been amended to 11.16 and the formatting of Appendix 11.2 has been amended to include paragraph numbers.

## **Document 6.1 - Environmental Statement**

The S51 Advice notes the need for the ES to refer consistently to the National Policy Statements. For clarity at this stage, revised National Policy Statements (NPS) EN-1 to EN-5 were laid before Parliament in November 2023. These revised versions were designated by the Secretary of State for Energy Security and Net Zero and came into force on 17 January 2024. The Environmental Statement (ES) was prepared prior to designation and references the previously designated NPS EN-1 to EN-5 from 2011, and then refers to the now designated NPS EN-1 to EN-5 as the "November 2023 draft to be designated", and such references to those November 2023 drafts should be taken to be references to the now designated NPS EN-1 to EN-5.

## **Document 6.1 - Appendix 4.4 – Outline Operational Environmental Management Plan**

The s51 Advice queries whether the Applicant would envisage mass panel replacement being required and if so whether that had been assessed within the Application. It is not expected that there will be a need for mass panel replacement during the operation of the Proposed Development. Part 2 (Principal Powers) of the S51 version of the dDCO has been amended to clarify that the dDCO does not authorise the carrying out of any maintenance works which are likely to give rise to any materially new or materially different environmental effects that have not been assessed in the ES, to provide certainty over the level of maintenance activity which could be undertaken.

Given the above a new version of the Outline Operational Environmental Management Plan (Appendix 4.4 of Document 6.1) has not been submitted at this stage.

## **Document 6.1 - Appendix 8.1 – Flood Risk Assessment**

An amended version of the Flood Risk Assessment has been submitted. The FRA now deals with the Sequential and Exceptions Tests at Section 3.2. The Applicant's position on those matters remains as per the position taken within the Planning Statement, at Chapter 13 on Flood Risk.

As documented at Section 4.2.2 of the amended FRA, the watercourse in question is entirely within Flood Zone 3a and does not have any areas of Flood Zone 3b associated with it.

The s55 Acceptance Checklist notes that there has been no evidence of agreement of approach with the EA. The Applicant did contact the EA during the preparation of the Application but at that stage they were unable to provide any modelled flooding data for the watercourse in question. The Environment Agency's National Infrastructure Team contacted the Applicant soon after the acceptance of the Application; a cost recovery agreement is being entered into between the Applicant and the EA and discussions are now commencing on a Statement of Common Ground.

The amended FRA also deals with the remaining point raised by the s55 Acceptance Checklist, with the footnote references now corrected.

## **Document 6.1 - Figure 10.1 – 10.9 – Air Quality Management Areas**

Figure 10.5 has been amended to show both AQMAs and their extents. The whole document which encompasses Figures 10.1 – 10.9 has been provided so that it can easily supersede the original version, but for clarity only Figure 10.5 has been amended.

## **Document 6.2 – S51 Non-Technical Summary**

The table of contents of the NTS has been corrected and updated.

## **Additional Consultees Identified**

The Applicant has taken a precautionary approach and has served notice on the additional bodies identified by the Planning Inspectorate under S42(1)(a) of the PA2008 in order to advise these bodies of the acceptance of the application. To confirm, these bodies are:

- Canal and River Trust
- UK Health Security Agency
- The Crown Estate
- The Office for Nuclear Regulation
- Network Rail
- National Highways Historical Railways Estate
- Northern Gas Networks Limited
- Wales and West Utilities Ltd
- Squire Energy Limited (now Stark Works)
- Mua Electricity Limited
- Optimal Power Networks Limited
- National Grid System Operation Limited

In addition, for the avoidance of doubt, the Civil Aviation Authority and NATS En-route (NERL) Safeguarding have also been notified on a precautionary basis under S42(1)(a) of the PA2008 that the application has been accepted.

### **Document 9.2 – Crossing Method Statement**

The s51 Advice notes that the Application references the prospect of special installation techniques being required through the grid route corridor to address various obstacles which exist. A Crossing Method Statement is therefore provided as requested which sets out in broad detail what types of crossing methods are anticipated and the process for identifying which method will be appropriate at each obstacle.

### **Statements of Common Ground**

The Applicant has identified in the Application Guide a number of parties with whom it intends to seek a Statement of Common Ground. At this stage it is confirmed that discussions regarding Statements of Common Ground are progressing with each of those parties. Further updates will be provided as the pre-examination and examination proceeds.

I would be grateful if the application can be amended to include the documents which accompany this letter, which supersede their previous versions. Please do not hesitate to contact me if you have any queries regarding this S51 submission.

Yours sincerely

*Ashley McInnes*

Ashley McInnes

Oaklands Farm Solar Limited

## **Appendix A**

**Response by the Applicant to the specific matters raised by the Planning Inspectorate at the acceptance stage regarding the draft Development Consent Order and Explanatory Memorandum**

## PINS Section 51 Advice - dDCO and Explanatory Memorandum

### General Points

Number	Comment	Action
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].	The purpose and effect of the articles of the draft Order are set out in Section 6 of the Explanatory Memorandum. The purpose and effect of the Schedules of the draft Order are set out in Section 7 of the Explanatory Memorandum
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].	The Applicant is satisfied that proportionate justification is provided in the Explanatory Memorandum for every Article and Requirement.
3	<p>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:</p> <ul style="list-style-type: none"> <li>• “... construction or maintenance ...”,</li> <li>• “... construction, operation, maintenance or decommissioning ...”,</li> <li>• “... construction maintenance or decommissioning ...”</li> <li>• “... construction, maintenance operation or decommissioning ...”</li> <li>• “... construction, operational maintenance and decommissioning ...”</li> <li>• “... construction, operation or maintenance ...”</li> <li>• “... construction, operation, maintenance or use ...”</li> <li>• “... construction, maintenance or operation ...”</li> <li>• “... construction, maintenance, use or operation ...”</li> <li>• “... erection, construction or maintenance ...”</li> </ul>	Whether reference should be made to some or all phases of development depends on the context of the reference. The Applicant has reviewed the draft Order and made revisions where appropriate, as shown in both clean and tracked versions.
4	Consider whether reference should be made to either “local planning authority” or “relevant planning authority” rather than to both.	Refers to “relevant planning authority” have been updated to “local planning authority” for consistency of terms. The draft Order has been revised accordingly as shown in both clean and tracked versions.

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 ..."	The phrase "materially new or materially different environmental effects from those assessed in the environmental statement" has precedent in various DCOs, including The Longfield Solar Farm Order 2023, The HyNet Carbon Dioxide Pipeline Order 2024, and The Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024. The Applicant has therefore used this wording in the draft Order where appropriate.
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.	<p>As identified in the Overarching National Policy Statement for Energy (EN-1), there is a critical national priority for the provision of nationally significant low carbon infrastructure. Deemed consent provisions are necessary to ensure that delivery of the proposed development is not unnecessarily delayed. There is precedent for the inclusion of deemed consent provisions in a number of DCOs to ensure the prompt delivery of nationally significant infrastructure projects. The effect of the deemed consent provision is always within the control of the relevant authority, who can refuse the approval application if necessary.</p> <p>In relation to the discharge of Requirements, the Applicant has proposed an amendment at paragraph 26 of Schedule 1 of the draft Order which would allow the determination period to be extended by agreement between the Applicant and the discharging authority. This will ensure that the effect of the deemed consent provision can be delayed where the parties agree further time is required.</p> <p>The Applicant is in discussion with the relevant authority for each provision, to secure their agreement to these provisions. The status of these discussions will be set out in the SOCGs. The Applicant considers that the deemed consent provisions in the draft Order appropriately balance the need to not unnecessarily delay the proposed development, and ensure appropriate regard is had to the interests and advice of other parties.</p>

### Section 51 Advice Letter

<b>1</b>	'access' is misspelt at page 48 of the DCO.	The Applicant has corrected this error.
<b>2 - dDCO</b>	AS-A2 marked on Sheet 1 of the Streets, Access and Rights of Way Plan is omitted from Schedule 4.	The Applicant has inserted referenced to AS-A2 as marked on Sheet 1 of the Streets, Access and Rights of Way Plan to Part 2 of Schedule 4.
	Schedule 6 includes plot 03-057 as Temporary Possession which is not in the BoR, however plot number 03-058 is listed as Temporary Possession in the BoR.	The Applicant understands the erroneous reference to plot 03-057 appears in Schedule 8 of the Development Consent and has corrected the error accordingly.
<b>3 - EM</b>	Work no. 5b is omitted.	Work No. 5B has been inserted to the Explanatory Memorandum.

## PINS Section 51 Advice - dDCO and Explanatory Memorandum

### Part 1 - Preliminary

Number	Comment	Action
1	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].	The definitions of "building" and "local planning authority" in the draft Order differ from those in s235 of the 2008 Act. The Applicant has added explanations for these differences into the Explanatory Memorandum, and has also proposed amendments to the definition of "local planning authority" in the draft Order, as shown in clean and tracked versions.
2	Article 2(1) – Interpretation. Consider amending “the book of reference” to “book of reference” and placing in alphabetical order in the list of definitions.	The Applicant has made this amendment in the draft Order as shown in clean and tracked versions.
3	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].	The Applicant is satisfied that the "site preparation works" as defined in the draft Order would not be likely to have significant environmental effects, and therefore no amendments are proposed. The "site preparation works" are consistent with those typically permitted under DCOs prior to "commencement", and in particular are consistent with those authorised under The Longfield Solar Farm Development Consent Order 2023.
4	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.”	The Applicant has made this amendment in the draft Order, as shown in clean and tracked versions.
5	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].	The Applicant has made this amendment in the draft Order as shown in clean and tracked versions.
6	Article 2(1) – Interpretation. Adjust relevant definitions to ensure consistency, for example “... under article 35 ...” and “... in accordance with article 35 ...”.	The Applicant has made this amendment in the draft Order as shown in clean and tracked versions.



7	<p>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.</p>	<p>The Applicant does not consider it necessary to define "carriageways", "footpath", or "street works", as these are commonly understood terms, which are defined in statute, and it is not common practice to include definitions for these terms within DCOs.</p> <p>A definition of "protected species" is not considered necessary, as the term is only used at Requirement 8, which refers to where the term is defined in the Conservation of Habitats and Species Regulations 2017 and the Wildlife and Countryside Act 1981.</p> <p>Definitions of "owner", "plot", "subsidiary" and "traffic authority" have been added to the draft Order. References to "relevant planning authority" have been amended to "local planning authority".</p>
8	<p>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.</p>	<p>The Applicant has clarified the limits of deviation through a revision to Article 3(2) that "Each numbered work must be situated within the corresponding numbered area shown on the works plan <i>and must not exceed the design parameters assessed in the environmental statement.</i>"</p>

## PINS Section 51 Advice - dDCO and Explanatory Memorandum Part 2 - Principal Powers

Number	Comment	Action
1	<p>Article 6 – Disapplication and modification of legislative provisions.</p> <p>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.</p>	<p>The Applicant has made this revision in the Development Consent Order as shown in clean and tracked versions.</p>
2	<p>Article 7 - Defence to proceedings in respect of statutory nuisance.</p> <p>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.</p>	<p>The Applicant has provided additional justification in the Explanatory Memorandum as shown in clean and tracked versions.</p>

**PINS Section 51 Advice - dDCO and Explanatory Memorandum  
Part 3 - Streets**

Number	Comment	Action
1	<p>Article 9(1)(a) – Power to alter layout, etc., of streets.</p> <p>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.</p>	<p>Permanent alterations are required at the points marked AS-B1, AS-C1, AS-D1, AS-D2, AS-E1, AS-F1 and AS-G1 to facilitate the provision of a permanent private means of access to the site, which will require to be used for the purposes of the construction, operation and decommissioning of the proposed development. The Applicant does not consider that temporary alterations would be appropriate given the durations involved (which would be over 40 years, taking into account construction and decommissioning). Permanent alterations are required at the points marked AS-D3 and AS-D44 to allow for vegetation clearance to ensure appropriate visibility splays can be provided for safety purposes.</p> <p>There is precedent for DCOs to authorise permanent alterations to streets where they relate to temporary, but long-term, development, including Article 9 of the Longfield Solar Farm Order 2023. As the permanent works relate to the creation of private means of access, the Applicant does not consider it necessary for provisions to be included for the maintenance of any altered streets, as these will continue to be maintained by the local highway authority.</p>
2	<p>Article 10(1)(a) – Access to works.</p> <p>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.</p>	<p>In Article 10(1)(a) and Part 1 of Schedule 4, the Applicant is seeking powers to improve existing means of access. As these accesses already exist, it is considered appropriate that any works to improve them to facilitate the proposed development should be permanent.</p>

3	<p>Article 13 – Traffic regulation measures.</p> <p>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.</p>	<p>Article 13(2) includes a general power that would authorise temporary traffic regulation measures for the purposes of the construction or decommissioning of the Authorised Development. The inclusion of this power is necessary to ensure the Undertaker has sufficient flexibility to respond to changing conditions on the road network during the lifetime of the Authorised Development. The general power may only be exercised with the consent of the relevant traffic authority, and the Applicant is in discussions with the local authorities in relation to the DCO application.</p> <p>The likely significant effects of the Authorised Development on transport and access have been assessed in Chapter 10 of the Environmental Statement, and no significant effects have been identified. The Applicant has submitted an Outline Construction Traffic Management Plan, which has been consulted on at multiple stages with Staffordshire County Council, Derbyshire County Council, and local parish councils. The Outline CTMP includes a number of embedded traffic mitigation measures in order to limit the impact on the local highway network.</p>
---	---	---

**PINS Section 51 Advice - dDCO and Explanatory Memorandum**  
**Part 5 - Powers of Acquisition**

Number	Comment	Action
1	<p>Article 17 - Compulsory acquisition of land. Article 19 - Compulsory acquisition of rights and restrictive covenants.</p> <p>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.</p>	<p>The Applicant's justification for the use of compulsory acquisition powers is set out in the Statement of Reasons. As temporary compulsory acquisition is not available under English law, it is not possible for the Applicant to compulsorily acquire land, or rights in land, for a temporary period.</p> <p>The Applicant is seeking compulsory acquisition of the land on which it is proposed solar panels will be sited. This is considered necessary and proportionate, as the Applicant requires to be able to exclusively possess the land during the lifetime of the Proposed Development.</p> <p>The Applicant is seeking compulsory acquisition of rights in land where necessary to facilitate access to the solar array site, or to facilitate the grid connection cabling. The acquisition of rights only is considered necessary and proportionate, as the Applicant does not require to exclusively possess this land during the lifetime of the Proposed Development, but does require to be able to use the land for specific purposes e.g. for access, or for the installation and keeping of electrical cabling. As set out in the Statement of Reasons, the Applicant is committed to only relying on powers of compulsory acquisition as a last resort.</p> <p>The Applicant has entered into an option agreement with the owners of the solar array site, and is in advanced discussions to enter into option agreements with the owners of the cable connection route.</p> <p>As set out in the Statement of Reasons and Planning Statement, there is a critical national priority for the provision of nationally significant low carbon infrastructure. Compulsory acquisition powers have therefore been included in the draft Order to ensure that the Proposed Development can be delivered should landowners default on voluntary agreements, on where unknown interests in the land emerge.</p> <p>The Applicant confirms that the plots subject to compulsory acquisition are correctly identified on the Land Plans, in the Book of Reference and in the Statement of Reasons.</p>

2	<p>Article 17 - Compulsory acquisition of land. Article 19 - Compulsory acquisition of rights and restrictive covenants.</p> <p>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.</p>	<p>As set out above, it is not possible under English law to compulsorily acquire land, or rights in land, for a temporary period. The voluntary agreements the Applicant is seeking would include provision for decommissioning. In the event land, or rights in land, was acquired compulsorily, this would be a permanent interest, and therefore specific provision is not required for the acquisition of land, or rights in land, specifically relating to decommissioning.</p>
3	<p>Article 19 - Compulsory acquisition of rights and restrictive covenants.</p> <p>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].</p>	<p>In relation to the plots over which "access rights" (as defined in Schedule 6 of the draft Order) are sought, the Applicant seeks rights to restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove vegetation, and restrict the planting of trees or carrying out operations or actions which may obstruct, interrupt or interfere with the exercise of the access rights or damage the authorised development.</p> <p>The imposition of these restrictions is necessary to protect the Applicant's ability to exercise its access rights to access the solar array site and grid connection cable route for the purposes of construction, operations and maintenance, and decommissioning. The restrictions would only apply where the activities would obstruct, interrupt or interference with the exercise of the access rights, or damage the proposed development.</p> <p>In relation to the plots over which "cable rights" (as defined in Schedule 6 of the draft Order) are sought, the Applicant seeks rights to restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove vegetation, and restrict the planting of trees or carrying out operations or actions which may obstruct, interrupt or interfere with the exercise of the cable rights or damage the authorised development.</p> <p>The imposition of these restrictions is necessary to protect the grid connection cables once installed. The restrictions would only apply where the activities would obstruct, interrupt or interfere with the exercise of the cable rights, or damage the proposed development.</p> <p>In relation to the plots over which "substation connection rights" (as defined in Schedule 6 of the draft Order) are sought, the Applicant seeks rights to restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove vegetation, and restrict the planting of trees or carrying out operations or actions which may obstruct, interrupt or interfere with the exercise of the substation connection rights or damage the authorised development.</p> <p>The imposition of these restrictions is necessary to protect the development's connection to the National Grid. The restrictions would only apply where the activities would obstruct, interrupt or interfere with the exercise of the substation connection rights, or damage the proposed development.</p> <p>The ability to acquire new rights and impose restrictive covenants is required in order to</p>

4	<p>Article 19(5) &amp; (6) - Compulsory acquisition of rights and restrictive covenants.</p> <p>Consider whether paragraphs (5) and (6) are required given Article 5.</p>	<p>The Applicant considers paragraphs (5) and (6) are required as Article 5 relates to the transfer of the benefit of the Development Consent Order generally, whilst these paragraphs relate to the transfer of the undertaker's power to acquire right or impose restrictive covenants to statutory undertakers where this is required for the purpose of diverting, replacing or protecting the apparatus of a statutory undertaker. The Applicant does not propose making changes to the draft Development Consent Order in this regard.</p> <p>The Applicant's approach in relation to this matter is common practice for DCOs, and reflects the approach taken in article 20 of The Longfield Solar Farm Order 2023, The Cleve Hill Solar Park Order 2020, The Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024, and The HyNet Carbon Dioxide Pipeline Order 2024.</p>
5	<p>Article 21 - Application of the 1981 Act. Article 24 - Modification of Part 1 of the Compulsory Purchase Act 1965.</p> <p>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 disapplied; 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 disapplied provision constitutes a matter for which provision may be made in the Development Consent Order.</p>	<p>The Applicant has provided this justification at paragraphs 6.64 and 6.86 of the Explanatory Memorandum.</p>
6	<p>Article 23 - Power to override easements and other rights.</p> <p>Provide justification in the Explanatory Memorandum for why this provision is necessary and appropriate.</p>	<p>The Applicant has added to this justification at paragraph 6.74.</p>

7	<p>Article 26 - Temporary use of land for carrying out the authorised development. Article 27 Temporary use of land for maintaining authorised development.</p> <p>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.</p>	<p>Article 26 authorises the temporary possession of land "in connection with the carrying out of the authorised development", and therefore only allows temporary possession of land during construction of the proposed development. Paragraph (4) provides that the Undertaker must not remain in possession of land for longer than reasonably necessary and, in any event must not, without the agreement of the owners of the land, remain in possession of land after the end of the period of one year beginning with the date of completion of that part of the Authorised Development for which temporary possession of the land was taken (unless the undertaker commences compulsory acquisition procedure). The Article also requires the undertaker to give 14 days' notice before taking possession, and to restore the land following the temporary works. Paragraphs (6) to (8) make provision for compensation. The provision of temporary possession powers is required to ensure that no greater rights over land are sought than are necessary to ensure delivery of the Proposed Development, and the inclusion of Article 26 is considered necessary and proportionate.</p> <p>Article 27 authorises the temporary possession of land for the purposes of maintaining the proposed development during the period of 5 years beginning with the date on which a phase of the proposed development first exports electricity to the national electricity transmission network. Paragraph (4) provides that the Undertaker must not remain in possession of land for longer than reasonably necessary to carry out the maintenance of the part of the proposed development for which possession of the land was taken. The Article also requires the undertaker to give 28 days' notice before taking possession, and to restore the land following the temporary possession. Paragraphs (6) to (8) make provision for compensation. The provision of temporary possession powers for maintenance is required to ensure that no greater rights over land are sought than are necessary to ensure delivery of the proposed development, and the inclusion of Article 27 is considered necessary and proportionate.</p>
8	<p>Article 26(1)(a)(ii) - Temporary use of land for carrying out the authorised development.</p> <p>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.</p>	<p>Paragraph (1)(a)(ii) allows Article 26 to apply to land which may later be the subject of compulsory acquisition. This reflects a common approach to designing and building infrastructure projects, whereby possession is taken of a wider area required for the purposes of construction, and once the location of new apparatus is known definitively (after it has been built), then the final area of land required permanently is defined and acquired. This allows a more proportionate approach to the extent of land acquisition. The Applicant has consulted with affected landowners as required by section 42 of the 2008 Act. This process of this consultation is detailed in the Consultation Report (document reference APP-022).</p>



9	<p>Article 27(1) - Temporary use of land for maintaining the authorised development.</p> <p>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.</p>	<p>Temporary possession may only be taken under Article 27 during the 5-year maintenance period where reasonably required for the purpose of maintaining the proposed development. Paragraph (4) allows temporary possession to be taken only for so long as is reasonably necessary to carry out the maintenance. This power is therefore already restricted such that it can only be exercised where temporary possession is reasonably required and necessary. This, together with notice provisions and the requirement to pay compensation, provide sufficient protections to ensure that any interfere with land rights under Article 27 is necessary and proportionate.</p>
10	<p>Article 28 – Statutory undertakers. Article 29 - Apparatus and rights of statutory undertakers in stopped up streets.</p> <p>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.</p>	<p>The Applicant has added this justification at paragraphs 6.101 and 6.104 of the Explanatory Memorandum.</p> <p>Article 28 is required to clarify that the undertaker may compulsorily acquire land, or rights in land, held by statutory undertakers, and may alter a statutory undertakers' rights in relation to apparatus within the Order land. In recognition of the need to ensure the apparatus of statutory undertakers is appropriately protected, if the undertaker does require to exercise these powers, how such powers can be exercised is governed by the protections set out in schedule 10 (protective provisions).</p> <p>Article 29 is required to ensure that, where a street is altered or diverted or the the use of a street is temporarily restricted or prohibited under the Order, any powers or rights held by statutory undertakers in relation to apparatus under that street are maintained. The protective provisions then operate where the proposed development may have a direct or direct impact on that apparatus.</p>

**PINS Section 51 Advice - dDCO and Explanatory Memorandum  
Part 7 - Miscellaneous/General**

Number	Comment	Action
1	<p>Article 35 – Certification of plans, etc.</p> <p>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.</p>	<p>The Applicant proposes that a new 'Schedule 12' is inserted into the Development Consent Order that would provide the reference number for all documents listed in this Article. The Applicant suggests this Schedule is created and populated at the final deadline to ensure all documents are captured as reference numbers may change throughout Examination.</p>
2	<p>Article 37 - Felling or lopping of trees or removal of hedgerows.</p> <p>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.</p>	<p>The Applicant has added to this justification at paragraphs 6.121, 6.123 and 6.124.</p> <p>The power in paragraph (1) to fell or lop any tree or shrub is restricted to circumstances where such work is reasonably believed to be necessary to prevent the tree or shrub from obstructing or interfering with the authorised development or any apparatus used in connection with the proposed development, from constituting a danger to persons using the proposed development, or from obstructing or interfering with the passage of construction vehicles to the extent necessary for the purposes of construction of the proposed development. While broad, the power is therefore subject to appropriate limitations, and is necessary for the safe delivery of the proposed development.</p> <p>Impacts on important hedgerows have been assessed in ES Technical Appendix 6.15, and appropriate mitigation is secured in the Outline LEMP.</p> <p>Given the secured mitigation and the limitations imposed on the powers conferred by this article, it is not considered that the prior consent of the relevant planning authority is necessary.</p>

3	<p>Article 38 - Trees subject to Tree Preservation Orders.</p> <p>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.</p>	<p>The Applicant has added to this justification at paragraphs 6.126 to 6.127.</p> <p>While broad, the powers under this article may only be exercised where the undertaker reasonably believes it to be necessary to do so in order to prevent the tree from obstructing or interfering with the Authorised Development or any apparatus used in connection with the Authorised Development.</p> <p>This article is necessary to give full effect to the Authorised Development. The broad powers are considered necessary to enable the Undertaker to acquire the necessary flexibility to fell, lop or cut back the roots of trees, the identity of which may change from time to time. No prior consent of the relevant planning authority is sought, as any removal of trees or parts thereof will be mitigated through habitat creation (tree planting) as secured in the outline LEMP (Volume 3, Appendix 5.6 of the ES) and as part of the Associated Development.</p>
---	--	--

## PINS Section 51 Advice - dDCO and Explanatory Memorandum Schedule 2 - Requirements

Number	Comment	Action
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].	The Applicant is satisfied that the requirements meet these thresholds.
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.	The Applicant is satisfied that mitigation measures are secured as appropriate for the relevant stage of development, and are capable of being delivered. For further information on mitigation measures and where they are secured, see the Environmental Statement, Volume 3 Appendix 17.1: Schedule of Mitigation.
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.	The Applicant has added wording to Part 2 (Principal Powers), Article 4 (Maintenance of authorised development), to clarify that it does not authorise the carrying out of any maintenance works which are likely to give rise to any materially new or materially different environmental effects that have not been assessed in the ES.
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].	The Applicant is satisfied that provisions for flexibility have been sufficiently justified within the Explanatory Memorandum and assessed within the Environmental Statement.
5	Ensure that the Requirements have been discussed, and where possible agreed, with the relevant planning authorities and other relevant statutory bodies.	The Applicant will engage with the relevant authorities and other relevant statutory bodies on the Requirements through the progression of Statements of Common Ground.
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.	The Applicant has reviewed and is satisfied that, where relevant, all plans/measures/details to be approved under the requirements are specified to be in accordance with outline plans submitted as part of the application.
7	Consider the need for consultation and agreement with relevant statutory bodies on matters related to their functions.	The Applicant consulted with relevant statutory bodies, as set out in the Consultation Report (EN010122/APP/5.1). The Applicant seeks to maintain an ongoing dialogue with relevant consultees, and is seeking SOCGs with: <ol style="list-style-type: none"> <li>1. South Derbyshire District Council</li> <li>2. Derbyshire County Council</li> <li>3. Environment Agency</li> <li>4. Natural England</li> <li>5. National Highways</li> <li>6. Historic England</li> <li>7. National Grid</li> <li>8. Emergency Services</li> </ol>

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.	The Applicant considers these provisions are covered by the Construction Environmental Management Plans to be submitted under requirement 9.
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.	<p>The Outline Construction Environmental Management Plan states at paragraph 2.8.5 that pre-construction protected species surveys will be undertaken prior to any works commencing on site, and the final CEMP and LEMP updated in line with the findings. This would include surveys for invasive non-native species. The carrying out of these surveys is therefore secured under requirement 9 (construction environmental management plans).</p> <p>For further clarity, the Applicant has inserted a new requirement 21 to the Development Consent Order that requires protected species surveys to be undertaken prior to the commencement of development, such surveys to inform a Species Protection Plan.</p>
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.	Delivery of biodiversity net gain is secured via the Outline Landscape Ecological Management Plan (requirement 8). The Biodiversity Net Gain Report demonstrates a net gain of 565.51 habitat units (125.07% increase), a net gain of 37.92 hedgerow units (20.02% increase), and a net gain of 4.18 river units (19.82% increase).
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.	<p>Requirement 16 requires details of proposed permanent and temporary fences, walls or other means of enclosure to be submitted to and approved by the local planning authority.</p> <p>The Applicant has inserted a new paragraph (6) at requirement 16 which requires details of all proposed</p>
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.	The planting, hedgerow enhancement and temporary screening is secured through the Landscape and Ecological Management Plan (Requirement 8).

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.	Provision of the new permissive path is secured through requirement 19. The Applicant has amended requirement 19 to clarify that details relating to the permissive path must be submitted and approved under requirement 5. Requirement 19 confirms that the permissive path must be accessible by the public for 264 days a year (subject to closures for maintenance or emergencies).
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.	The Applicant has amended requirement 8 to require a soil management plan to be submitted and approved prior to the commencement of site preparation works.
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 21 requires the undertaker to submit a decommissioning environmental management plan and decommissioning traffic management plan for approval, and to decommission the Proposed Development in accordance with the approved plans. Decommissioning will be carried out in accordance with the relevant legislation and policy in force at the time of decommissioning, and it is not considered necessary or appropriate to include further detail in the draft Order.
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 4 requires a written scheme setting out the phases of construction to be submitted to and approved by the relevant planning authority.  Requirements which require details to be submitted and approved prior to the carrying out of site preparation works will ensure the local planning authority are appropriately aware of the carrying out of site preparation works, and a specific notification requirement is not considered to be necessary.
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 5(2)(c) requires that the detailed design submitted for approval accords with the principles and assessments set out in the environmental statement, and Requirement 5(2)(d) requires that the detailed design accords with the outline design principles set out in the design statement. These provisions will ensure consistency with the Environmental Statement.

<p>Requirement 9(2) - Construction environmental management plans (CEMP).</p>	<p>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.</p>	<p>While the Outline CEMP does not specifically refer to a Surface Water Management Plan, it does include provisions, which will be detailed in the final CEMP, relating to surface water management which are appropriate and proportionate to the proposed development. Requirement 17 of the draft Order also requires details of the surface water and foul water drainage system for each phase to be submitted to and approved by the local planning authority.</p>
<p>Requirement 13 – Land contamination</p>	<p>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.</p>	<p>Requirement 13 requires a contamination risk assessment to be carried out prior to commencement of development. Appropriate remediation strategies and measures would be secured where found to be necessary, and remediation must be carried out in accordance with the approved scheme.</p> <p>The Applicant has amended requirement 13 to require the undertaker to submit a verification report following completion of any remediation works.</p>
<p>Requirement 18 – Archaeology.</p>	<p>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.</p>	<p>The Applicant has made a revision in the Development Consent Order at requirement 18(1) to require the written scheme of investigation to be approved in consultation with the county archaeologist. The Applicant does not consider it proportionate for the written scheme of investigation to be approved in consultation with Historic England as anticipated archaeological remains would be solely within the remit of Derbyshire County Council.</p> <p>The written scheme of investigation approved under requirement 18 will include provision for dealing with unexpected archaeological finds. This approach has been agreed with the local planning authority as shown in Table 7.1 of the Environmental Statement (document reference APP-139).</p>

<p>Requirement 20 – Construction hours.</p>	<p>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</p>	<p>The Applicant has made an amendment at requirement 20(2) to provide that non-emergency works outside of permitted working hours must not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement. The Applicant has also included provision for a scheme for work outside standard construction hours to be submitted to and approved by the local planning authority.</p> <p>These limitations are not considered appropriate for emergency works. However, any emergency works must be notified to the local planning authority within 72 hours.</p>
---	---	--



## PINS Section 51 Advice - dDCO and Explanatory Memorandum Schedule 10 - Protective Provisions

Number	Comment	Action
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].	The Applicant has agreed the Protective Provisions with each of National Grid Electricity Distribution (East Midlands) plc and South Staffordshire Water. Engagement with Cadent Gas Limited and National Grid Electricity Transmission plc is ongoing. The Applicant will provide a further update on negotiations at the first deadline.
2	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].	As above