

The Planning Inspectorate
[via Planning Inspectorate website]

Our ref: XA/2024/100072/01-L01
Your ref: EN010122
Date: 3 May 2024

Dear Sir/Madam

PRE-EXAMINATION - SOLAR FARM. INTERESTED PARTY RELEVANT REPRESENTATION. OAKLANDS FARM SOLAR PARK, DERBYSHIRE.

We are advised that on 5 March 2024 an application (reference: EN010122) for a Development Consent Order (DCO) was accepted by the Planning Inspectorate for examination.

These Relevant Representations contain an overview of the project issues which fall within our remit. They are given without prejudice to any future detailed representations that we may make throughout the examination process. We may also have further representations to make when supplementary information becomes available in relation to the project.

We have reviewed the draft DCO, Environmental Statement (ES) and supporting documents submitted to the Planning Inspectorate as part of the above-mentioned application.

Summary of Environment Agency position

- 1) The flood risk has not been appropriately assessed. Therefore, there is a risk that the proposed mitigation measures are not appropriate.
- 2) The Water Framework Directive (WFD) Assessment lacks information and has been incorrectly screened. Specifically, the WFD Assessment does not address the WFD groundwater body in question and hydro-morphological impacts have been screened out even though culverting of watercourses is proposed.
- 3) We cannot agree to disapply the requirement for any impoundment licences required.
- 4) The detail of the monitoring proposed within the Outline Construction Environmental Management Plan (oCEMP) has not been established. Therefore, the approach to monitoring is unclear.

- 5) We request to be consulted when the Construction Environment Management Plan (CEMP) is submitted to the relevant Local Authority to be approved under Requirement 9 and ask that the wording of this Requirement is changed to reflect this request.
- 6) Changes to water quality that does not impact WFD need to be considered.
- 7) The pollution risks of emergency response have not been appropriately assessed.

Appendix 1 – Environmental Statement - key issues and advice

Appendix 2 – Draft Development Consent Order - key issues and advice.

Appendix 3 – Supplementary Advice (advice for the applicant on waste and materials management)

Yours faithfully

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Appendix 1 – Environmental Statement - Key Issues and Advice

Flood Risk Assessment and Outline Drainage Strategy [APP-141]

Issue

The assessment has not demonstrated that the Sequential Test has been passed. Therefore, it is unclear whether the process to locate development in lower flood risk areas has been carried out.

Impact

The opportunity to determine whether the development can be located in a lower flood risk area has been missed.

Solution

The Applicant must fully assess the flood risk over the development's lifetime and use that information to demonstrate that the Sequential Test is passed.

Comment

Paragraph 5.8.10 of NPS EN-1 states that "it would only be appropriate to move onto the Exception Test when the Sequential Test has identified reasonably available, lower risk sites appropriate for the proposed development where, accounting for wider sustainable development objectives, application of relevant policies would provide a clear reason for refusing development in any alternative locations identified." Please note the responsibility for the Sequential Test lies with the relevant local planning authority.

Issue

The proposed development does not constitute 'less vulnerable' development as stated in the flood risk assessment (FRA). The assessment of flood risk and subsequent mitigation is not adequate, and the Applicant is unable to demonstrate that the Exception Test has been passed.

Impact

There is a risk that the project will not be kept safe for its lifetime and flood risk will increase elsewhere.

Solution

The FRA must be revised to reflect the correct vulnerability classification and ensure that policy requirements are met.

Comment

Annex 3 of the National Planning Policy Framework (NPPF) states that 'solar farms' are 'essential infrastructure'. In line with Table 2 of the Planning Practice Guidance (PPG), the development is required to demonstrate that it passes the Exception Test. Paragraph 5.8.11 of National Policy Statement (NPS) EN-1 states that "both elements of the Exception Test will have to be satisfied for development to be consented. To pass the Exception Test it should be demonstrated that:

- the project would provide wider sustainability benefits to the community that outweigh flood risk; and
- the project will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible will reduce flood risk overall."

Issue

Fluvial flood risk has not been properly assessed. There remains a risk of increased flood risk on or off site.

Impact

It is unclear whether the scheme will result in a displacement of flood water and an increase in flood risk elsewhere. Appropriate mitigation is unable to be secured.

Solution

It is the Applicant's responsibility to appropriately assess the flood risk associated with their proposed development. For a development of this scale with a vulnerability classification of 'essential infrastructure' we would expect any assessment of fluvial flood risk to be based on detailed flood modelling. Given that the source of fluvial flood risk within the red line boundary originates from Ordinary Watercourses, it is recommended that the Applicant should contact the Lead Local Flood Authority to determine whether any detailed flood modelling already exists.

Comment

The FRA only uses the Flood Map for Planning to assess fluvial flood risk. This map is only intended as a planning tool to prompt where a more detailed assessment of flood risk may be required. The Flood Map for Planning does not account for future flood risk, taking climate change into consideration, and is also not detailed enough to cover any catchments smaller than 3km² (regardless of whether there is an associated fluvial flood risk or not). The Flood Map for Planning identifies areas of the site as being within Flood Zone 2 and 3, so further assessment of this fluvial flood risk is required.

The Environment Agency and the Lead Local Flood Authority may sometimes have detailed flood modelling available. However, where this is not the case, it is the Applicant's responsibility to ensure that sufficient flood risk data is available to inform their assessment of flood risk, which may involve undertaking any detailed flood risk modelling themselves. The lack of existing detailed flood modelling is not indicative of a lack of fluvial flood risk, For more information please refer to [Using modelling for flood risk assessments – GOV.UK \(www.gov.uk\)](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/344242/Using_modelling_for_flood_risk_assessments_-_GOV.UK.pdf) Using modelling for flood risk assessments – GOV.UK (www.gov.uk)'.
[Using modelling for flood risk assessments – GOV.UK \(www.gov.uk\)](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/344242/Using_modelling_for_flood_risk_assessments_-_GOV.UK.pdf)

Until the risk is properly understood, the Sequential and Exception Tests cannot be applied and passed.

The notes to Table 2 of the NPPF are also clear that in Flood Zone 3a, 'essential infrastructure' should be designed and constructed to remain operational and safe in times of flood, which means equipment necessary for its operational would need to remain dry. We would expect a 1 in 100 year, plus an allowance for climate change, including a 600mm freeboard to be used as the design flood level. The 600mm freeboard accounts for any uncertainty in modelled flood levels, as well as for the presence of any floating debris caught within flood flows, which could damage the solar panels.

It is also unclear whether any other above ground elements of the scheme could be at risk from fluvial flows.

Issue

We do not consider the 1 in 1,000-year fluvial flood event a suitable proxy for the future 1 in 100-year, plus an allowance for climate change, fluvial flood extent.

Impact

The risks over the development's lifetime are not understood and therefore adequate mitigation has not been provided.

Solution

Within Flood Zone 3a, 'essential infrastructure' should assess the higher central allowance (design flood event) and the upper end allowance (for sensitivity testing). Further information and guidance can be found in '[Flood risk assessments: climate change allowances - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/614422/Flood_risk_assessments_climate_change_allowances_-_GOV.UK_(www.gov.uk).pdf)'.

Water Framework Directive Assessment (APP-142)

Issue

Groundwater has not been appropriately addressed. The specific assessment of whether the works will affect the environmental objectives of WFD does not actually address the groundwater body in question.

Impact

The assessment carefully considers the current and future status of the three surface water bodies present locally. However, the same consideration for the groundwater body is absent which could lead to its impacts (where present) being ignored.

Solution

We request these same aspects and considerations as undertaken for the surface water bodies to be carried out and added to the WFD Assessment and Chapter 8 of the ES.

Issue

Hydro-morphological impacts have been screened out from further assessment.

Impact

The proposed trackway crossings will lead to the culverting of watercourses. There is a risk that the physical characteristics and water content of waterbodies will be adversely affected.

Solution

Hydro-morphology should be scoped into the WFD Assessment to fully assess the impact of the proposed trackway crossings on river morphology.

Comment

Ideally these trackways should be open span bridges to allow natural sediment movement and reduce the impact to the river morphology. However, if this is not possible then it is recommended that the invert of the culvert be set a minimum of 300mm below the existing bed so that there shall be no step or drop in the final level of the bed.

Outline Construction Environmental Management Plan [APP-090]**Issue**

It is proposed that daily monitoring by the Principal Contractor will be implemented to ensure compliance with the CEMP. However, the details of what this monitoring will involve are currently not secured.

Impact

If monitoring is not secured within an appropriate plan, there is a risk that it will not be effective in preventing or minimising environmental harm.

Solution

Monitoring requirements, review procedures and details of corrective action should be secured within appropriate plans, for instance an Environmental Monitoring Plan. This should be added to the list of plans to be included within the CEMP within Requirement 9 of the Draft DCO.

Issue

No mention is made within the oCEMP of seeking or adhering to an environmental permit.

Impact

Although these regulations are referenced within the Consents and Agreements Position Statement [APP-018], the CEMP should be a key tool used by a Principal Contractor to achieve compliance with any environmental permit held. We often encounter construction sites which do not comply with

permit requirements or carry out unpermitted discharges as a result of holding an insufficient CEMP or not following the procedures within their CEMP.

Solution

The need for an environmental permit for discharges should be reflected within the oCEMP and detailed CEMP. Plans should be secured within the oCEMP which will provide confidence that the detailed CEMP will provide an adequate mechanism for achieving compliance with any necessary permit conditions.

Water Resources and Flood Risk [APP-143]

Issue

Risks to the water environment are not understood. The proposed method adopted (the only examples relating to water quality involve changes to WFD status) risks the underestimation of water quality impacts.

Impact

Significant pollution or deterioration in water quality can occur without resulting in a change in WFD status. This can be because the effect is short term, it occurs in a non-designated water body, or it takes place in a location that is not actively monitored.

Solution

Changes to water quality that do not impact WFD status should still be considered as having the potential to cause medium or large magnitude effects, depending on the extent, severity, and duration of that change.

Project Description [APP-096]

Issue

The method of controlling firewater is unclear. There are risks of significant environmental pollution in the event of a fire.

Impact

If the firewater isn't adequately controlled this could result in significant pollution risks and cause detrimental impact to the environment.

Solution

The Applicant should confirm that the flow control valves will close automatically if a fire is detected by the detection system and include any relevant routine maintenance required, to ensure this system remains functional, within the Outline Drainage Strategy.

Comment

If the flow control valve requires manual closure, it is unlikely that the drainage system will retain firewater due to the likely length of time it would take for an operator to attend the site. This would negate the function of the firewater containment infrastructure and result in pollution in the event of a fire.

Appendix 2 – Draft Development Consent Order - Key Issues and Advice

Disapplication Issue - Article 6(1)(d) of the Draft DCO

It is proposed that temporary water impoundment licences under Section 25 of the Water Resources Act 1991, in connection with the laying of cables, are to be disapplied under Article 6(1)(d) of the Draft DCO.

We cannot agree to disapply the requirement for any impoundment licences required and the Applicant will need to apply for these separately through our National Permitting Service (NPS). More information on when a licence for an impoundment is required can be found [here](#). This guidance also includes the circumstances where an impoundment licence is not required. We recommend early engagement with our NPS once detailed design details are known to evaluate whether an impoundment licence is required for the water crossings identified to the North and South of Rosliston Road.

The reference to disapplication of Section 25 of the Water Resources Act 1991 should be deleted in the next version of the Draft DCO.

Requirement 9 Issue

Requirement 9(1) of the Draft DCO prevents the Applicant from commencing any phase of construction before the local planning authority has approved the CEMP for that phase. We would like to request to be consulted on the initial CEMP submission prior to the commencement of construction.

Impact

The CEMP provides essential mitigation to prevent impacts from sedimentation and pollution from construction sites. We often encounter construction sites that have caused pollution because their CEMP was either insufficient or was not adhered to.

Solution

We request to be consulted on the CEMP to be approved under Requirement 9 and ask that part 3 of this Requirement is re-worded as follows:

“(3) Pre-commencement establishment of construction compounds, preparation of land for construction, construction area fencing and installation of site drainage must only take place in accordance with a specific plan for such works which must accord with the outline CEMP and which has been submitted to and approved by the local planning authority, *in consultation with the Environment Agency.*”

Appendix 3 – Supplementary Advice (to the applicant on waste and materials management)

CL: AIRE Definition of Waste: Development Industry Code of Practice (DoW CoP)

CL: AIRE DoW CoP guidance can be found via the following link:

<http://www.claire.co.uk/projects-and-initiatives/dow-cop/28-framework-and-guidance/111-dow-cop-main-document>

The DoW CoP sets out the lines of evidence that are needed to demonstrate that the excavated materials are not or have ceased to be waste. These are based on four factors:

- Protection of human health and the environment (acceptable risk assessment of pollution).
- Suitability for use without further treatment (no further processing and/or treatment, as demonstrated by a specification and a site-specific risk assessment including chemical, geotechnical properties and biological aspects).
- Certainty of Use (outlined in the Remediation Strategy and Material Management Plan).
- Quantity of Material (outlined in the Remediation Strategy and Material Management Plan).

To demonstrate the factors a Materials Management Plan (MMP) needs to be produced to ensure all factors are considered and the correct determination is made. A Verification Plan needs to be set out in the MMP and must identify the recording method of materials being placed, as well as the quantity of materials to be used. It should also contain a statement on how the use of the materials relates to the remediation or design objectives.

In general, any material that has to be treated in order to render it suitable for its intended use is considered to be a waste and waste controls apply.

To demonstrate this to the Environment Agency's satisfaction, the processes and requirements detailed in the DoW CoP need to be followed in full. The requirements include:

- desktop study of the site
- conceptual modelling of the site(s) concerned
- site investigation details (if appropriate)
- and any details of contamination (if relevant)

Regardless of whether the site is contaminated or not there the following documents should be produced:

- Risk Assessments
- Options Appraisal Report
- Remediation Strategy (Contaminated soils) **or** Design Statement (Clean naturally occurring soils)
- Materials Management Plan
- Verification Report once the work is completed.

The decision to use the CL: AIRE DoW CoP is the responsibility of the holder of the materials. The project manager should collate all relevant documents; permissions, site reports, MMP etc. and consult with an independent Qualified Person (QP) to confirm that the site meets the requirements and tests for use of the DoW CoP. The Qualified Person must review the documentation and let the developer know that a Verification Report will be required before signing a Declaration. If the site meets the tests that materials are suitable for re-use, certain to be re-used, are not excessive in volume and pose no risk to the environment or harm to human health then the QP can make a formal Declaration to CL: AIRE.

The formal Declaration must be submitted to CL: AIRE and the Environment Agency by a Qualified Person **before** any excavation activities or transfer of materials occurs. In these circumstances the QP is meeting the requirements of the Regulator to ensure appropriate environmental and human health protection is in place for the development to go ahead.

Materials not used in accordance with the DoW CoP process in full may be deemed waste and will require a relevant permit for deposit. Materials illegally deposited or deposited at inappropriate sites may be subject to relevant landfill taxes, payable by all parties. Only robust due diligence is a defense against joint liability.

For clarification, it is important to note that DoW CoP declarations **cannot** be made retrospectively. In addition to this if you wish to re-use material under the 'site of origin scenario' and this material has previously been imported to that site as waste without authorisation, for example a historical illegal deposit, then it does not originate at that site. It is not site derived material, and you **cannot** use DoW CoP site of origin scenario for this activity, you will require an appropriate waste authorisation such as an environmental permit.