

The Planning Inspectorate
[OaklandsFarmSolar@planninginspectorate.
gov.uk.]

Our ref: XA/2024/100121/01-L01
Your ref: EN010122
Date: 6 August 2024

Dear Sir/Madam

DEADLINE 1 (6 AUGUST 2024) RESPONSES TO THE EXAMINING AUTHORITY'S (EXA) FIRST WRITTEN QUESTIONS. OAKLANDS FARM SOLAR PARK, DERBYSHIRE.

Further to our formal Relevant Representation response (dated: 3 May 2024) we have now reviewed the ExA's First Written Questions (dated 16 July 2024) and our comments are provided below.

Environment Agency (EA) Responses to ExQ1
1.2. [General Point]

Articles 11(7), 14(9), 16(6) confer deemed consent if the authority does not respond within 28 days (a "guillotine"). The Applicant [[AS-017](#)] considers that these provisions are necessary to ensure that delivery of the Proposed Development is not unnecessarily delayed.

a) Do DCC, SDDC and the EA consider that the 28 days period is reasonable?

The EA does not support 'deemed approval' for any of consents.

b) Should provisions be added for any application for consent to contain a statement drawing the authority's attention to the guillotine?

Yes, if the above approach is taken.

1.5 [draft Development Consent Order (dDCO) Part 1 Preliminary]

Article 2 - Interpretation

The defined “site preparation works” are pre-commencement activities that could be undertaken without the controls that only apply following commencement, including those in dDCO Requirements and in the Outline Construction Environmental Management Plan (Outline CEMP) [APP-090]. The Applicant [AS-017] is satisfied with the definition of site preparation works and considers that they would not be likely to have significant environmental effects.

a) do the parties have any comments on the activities included in “site preparation works”?

The “site preparation works” on page 6 of the draft Development Consent Order include ‘(c) remedial work in respect of any contamination or other adverse ground conditions’. Such works are pre-commencement activities that could be undertaken without the controls that only apply following commencement. This means that remediation of the site could take place without the Construction and Environmental Management Plan (CEMP) (Requirement 9) being approved or in place. It also means that remedial works can take place before the Contamination Risk Assessment under Requirement 13 for Land Contamination has been produced and agreed. Significant environmental effects cannot be ruled out. Therefore, we advise that ‘(c) remedial work in respect of any contamination or other adverse ground conditions’ is removed from the “site preparations work” list in the dDCO, and that such works are undertaken with controls that apply at commencement (i.e., controls within Requirements 9 and 13 apply).

b) Should any more mitigation be secured for “site preparation works”, for example in relation to noise, impacts on protected species, archaeological remains, or traffic?

Requirement 9 (CEMP) and 13 (Land contamination) are sufficient if any ‘remedial work in respect of any contamination or other adverse ground conditions’ is no longer classed as “site preparation work” and therefore no longer a pre-commencement activity. If such activities are to remain as pre commencement, controls like those secured through Requirement 9 and 13 will be required.

1.8 [dDCO Schedule 2 – Requirements]

Requirement 4 - Phases of authorised development and date of final commissioning

a) Should the scope of the written scheme setting out the phases of construction of the authorised development be expanded for clarity, for example by adding key activities and timescales?

No comment

b) Should a written scheme be required for the site preparation works? – this links with the question above?

No comment

2.7 [Land rights, related matters, and statutory undertakers]

Other inaccuracies

Are any parties aware of any other inaccuracies in the BoR [AS-009], SoR [APP-019], or Land Plan [AS-002]?

We are not aware of any inaccuracies in the Book of Reference, Statement of Reasons or Land Plan.

3.2 [General and cross-topic planning matter- statutory bodies]

Responses to the Applicant's submissions

a) Please could statutory bodies provide a written response to any submissions made by the Applicant that either seek to address concerns that they have previously raised, or that raise new concerns, at the earliest opportunity?

Please refer to our Written Representation which also has our Work Package Tracker appended to it.

b) Please could the responses set out whether and, if so, how their concerns have been addressed and set out any remaining concerns and the steps that might be taken to resolve them?

Please refer to our Written Representation which also has our Work Package Tracker appended to it.

3.4 [General and cross-topic planning matter- statutory bodies]

Construction phase management plans

The dDCO [AS-005] and Outline CEMP [APP-090] refer to several management plans for the construction phase that would only be prepared post-consent, including the Public Rights of Way Management Plan, Site Waste Management Plan, Species Protection Plan, Travel Plan, and Water Quality and Silt Management Plan.

- a) ***Please could the Applicant ensure that the dDCO [AS-005] and/ or Outline CEMP [APP090] identify the measures to be included in those management plans to demonstrate that the mitigation relied on in the ES is secured?***

For the applicant to answer

- b) ***Please could DCC, SDDC, and the EA advise whether outline versions of any of those management plans, or any other management plans, should be provided during the Examination to clarify and help secure the measures that should be included? In each case, please set out why this is necessary and proportionate***

Waste	We would not require an outline version of the Site Waste Management Plan pre-consent.
Water Quality	With regards to outline Water Quality and Silt Management Plans we are currently unable to provide an answer to this. We will provide a response to this question at Deadline 2 (15 August 2024).

3.5 [General and cross-topic planning matter- statutory bodies]

Pollution control through other consenting and licensing regimes

Paragraphs 4.12.2 and 4.12.10 of NPS EN-1 note that the planning and pollution control systems are separate but complementary, that pollution control is concerned with preventing pollution using measures to prohibit or limit the releases of substances to the environment, and to ensuring that ambient air, water, and land quality meet standards that guard against impacts to the environment or human health. It states that the Secretary of State (SoS) should work on the assumption that the relevant pollution control regime and other environmental regulatory regimes, including those on land drainage, water abstraction and biodiversity, will be properly applied and enforced by the relevant regulator.

Paragraph 4.12.15 of NPS EN-1 requires the SoS to consider if the EA, any pollution control authority, Statutory Nature Conservation Bodies, Drainage Boards, water and sewerage undertakers, and other relevant bodies are:

- satisfied that potential releases can be adequately regulated under the pollution control framework; and
- the effects of existing sources of pollution in and around the site are not such that the cumulative effects of pollution would make the Proposed Development unacceptable, particularly in relation to statutory environmental quality limits.

a) Please could the relevant bodies comment, highlighting any specific concerns

<p>Water Resources</p>	<p>The applicant may have approached the water undertaker to agree a supply of water to the site. The applicant has not made the Environment Agency aware of the need for any Water Resources permits for other sources of supply to date. However, the Environmental Statement makes references to non-potable on site water availability for construction activities such as dust suppression. <u>(APP-175 Environmental Statement 16.1 - Air Quality Assessment)</u></p> <p>Consumptive uses of water during construction will require an abstraction licence for quantities >20m³/day. There is availability from surface water in this catchment, but it may be restricted to medium-high low flows (Q70) only (i.e. not available during low flows). More information can be found in the licensing strategy for the catchment here. Planning for on-site storage to buffer water supply when it is not available directly is encouraged, particularly for activities such as dust suppression which is often needed during hot dry weather.</p>
<p>Water Quality</p>	<p>We will provide an answer to this question with regards to water quality related permits at Deadline 2 (15 August 2024)</p>

b) Please could the Applicant provide evidence of whether relevant bodies, including the water and sewerage undertakers, are satisfied and what concerns remain?

For the applicant to answer

c) Please could the Applicant set out the steps that will be taken to resolve any outstanding concerns?

For the applicant to answer

d) Please could the relevant bodies and the Applicant provide regular updates to the Examination?

No permit application(s) has currently been submitted. We can provide updates via our Work Package Tracker as we progress through the DCO process.

5.1 [Project lifetime and decommissioning]

Decommissioning of underground cables

Paragraph 2.10.68 of NPS EN-3 states that the nature and extent of decommissioning of a site can vary and generally it is expected that underground cabling will be dug out to ensure that prior use of the site can continue.

The Applicant [[APP-092](#), [APP-181](#)] says that the cables may be left in situ, depending on the method which is likely to have the least environmental impact at the time.

a) Do the parties have any comments on the Applicant's suggested approach and whether it strikes an appropriate balance between the potential magnitude and duration of impacts during decommissioning and the longer-term implications for future site use?

The approach to decommissioning cables will depend upon a site-specific risk assessment being carried out prior to the decommissioning phase. However, we would normally object to pipelines/ cables (being left in situ) that transport pollutants, particularly hazardous substances, that are below the water table in principal or secondary aquifers. We would expect to work with operators to agree best available environmental options.

b) Should the dDCO [[AS-005](#)] require the underground cables and ducting to be removed?

We are unable to provide a yes or no answer to this question as it depends on the outcome of a site-specific risk assessment to be undertaken prior to the decommissioning phase. However, it is important to note that leaving cables in situ could fall under the definition of waste.

5.2 [Project lifetime and decommissioning]

Draft DCO [AS-005] Requirement 22 - Decommissioning and restoration End state and funding

Several parties, including South Derbyshire District Council [RR-295], Lullington Parish Meeting [RR-179], Alex Wolfe [RR-010], Denise Ann Walsh [RR-077], Diane Abbott [RR-080], Jacqueline Shirley Bott [RR-129], Martin David William Abbott [RR-190], and Tracy Hiatt [RR321] raise concerns in relation to decommissioning.

The Applicant provides a description of the decommissioning activities [APP-092, APP-181]. The Applicant [AS-017] considers that it is not necessary to add a requirement to secure the end state of the Order Land after decommissioning and refers to the requirement for a decommissioning environmental management plan and a decommissioning traffic management plan to be submitted for approval.

The ExA is considering if it has sufficient understanding of the likely end state of the land after decommissioning, the suitability for other uses after decommissioning, the measures that should be secured by the DCO, and the likely potential effects.

a) Please could the parties comment on how the end state after decommissioning should be defined?

The Decommissioning Environmental Management Plan (DEMP) will capture the environmental situation at the time and the applicant will use this information to inform their decommissioning plan. We request to be consulted on the DEMP (Requirement 22) and proposed decommissioning and restoration plans.

b) Is it necessary, reasonable, and appropriate for the definition of the end state after decommissioning to be secured more precisely by the dDCO?

Please see above comments. From our perspective this is sufficient.

c) Should a provision be added to the dDCO to secure funding for decommissioning?

We have no comments to make. The Local Planning Authority (LPA) might be best placed to answer this.

- d) If it should be secured, how should the amount of funding be identified, what form of security would be appropriate, and when should the security be put in place?**

We have no comments to make. The LPA might be best placed to answer this.

5.3 [Project lifetime and decommissioning]

Draft DCO [AS-005] Requirement 22 - Decommissioning and restoration Timescales for completion

The dDCO requires decommissioning to commence no later than 40 years following the date of final commissioning of the first phase of Work No. 1. The Applicant [APP-181] says that decommissioning is expected to take between 12 and 24 months.

- a) Should the dDCO include a requirement for decommissioning and restoration to be completed within a specified timescale?**

Yes, to ensure it is done. A requirement such as this will also enable enforcement.

- b) If so, how should the completion of decommissioning and restoration be defined, and what is an appropriate timescale for it to be completed? Should separate timescales be identified for different activities, for example for decommissioning, for restoration, and for any necessary maintenance?**

Defining the completion of decommissioning and restoration is required to ensure everyone has the same expectations. This will also aid enforcement if required. The definition/timescale of decommissioning and restoration is not possible to define at this time but would be based on the DEMP (Requirement 21).

- c) Should the commencement and completion of decommissioning also be related to when the generation of electricity ceases in case that is earlier than 40 years following the date of final commissioning of the first phase of Work No. 1?**

The requirement can give two options, 1) within 2 years of energy generation ceasing or 2) within 2 years after the 40-year expiry date, whichever is sooner.

6.8 [Agriculture, land use, soils, ground conditions, minerals, and geology]

Draft DCO [AS-005] Requirement 13 - Land contamination

The Applicant [[AS-017](#)] states that appropriate remediation strategies and measures would be secured where found to be necessary, and that remediation must be carried out in accordance with the approved scheme.

- a) *Is the approach consistent with the EA's guidance on land contamination risk management [LCRM]? Should it be required that land contamination is dealt with in accordance with that guidance?*

Yes, the approach follows the process outlined in LCRM (gov.uk). We recommend that land contamination is dealt with in accordance with this guidance. We also recommend that reference is made to the position statements within the EA's publication - '[The Environment Agency's Approach to Groundwater Protection](#)' (2018).

- b) *Should measures be added to Requirement 13 in relation to avoiding disturbing any contamination and to consultation with the EA?*

Yes, any contamination identified to pose a risk to controlled waters receptors (through mobilisation during construction, for example) should be appropriately remediated. Any unsuspected contamination subsequently identified to pose a risk to controlled waters receptors should be reported to the Environment Agency and appropriately dealt with via an agreed remediation strategy.

Note: Requirement 13(d) (Land contamination) within the amended draft DCO [[AS-006](#)] includes measures to follow if unsuspected contamination is found. 13(e) states that the contamination risk assessment will be submitted to the LPA for approval in consultation with the Environment Agency.

7.9 [Biodiversity]

Operational phase detailed assessment

The Applicant [[APP-135](#) paragraph 6.7] scoped adverse impacts arising during the operational phase out of the detailed assessment on the basis that there is no potential for significant effects to occur for all ecological receptors. Are the parties content that adverse impacts arising during the operational phase were scoped out of the detailed assessment?

This question is within the remit of Natural England and LPA's ecologists. There are no main rivers on/ adjacent the site. Therefore, the information doesn't suggest there is a risk to water dependant species / habitats for which the EA are the lead.

7.10 [Biodiversity]

Wildflower meadows

The EA [APP-121] is quoted as stating that if crops are to be replaced by wildflower meadows, a management plan must be agreed which should include when and where any grazing is permitted, as well as an annual cut and removal of wildflowers in August to allow species to fully establish.

- a) ***Please, following consultation with the EA, could the Applicant ensure that suitable measures for the management and maintenance of wildflower meadows are included in the Outline OEMP [APP-091]?***

For the applicant to answer

- b) ***Please could the EA advise if it has any outstanding concerns on the Applicant's update?***

No outstanding concerns.

12.2 [Water quality, resources, drainage, and flooding]

Draft DCO [AS-005] Article 6 - Disapplication and modification of legislative provisions

The Applicant [AS-007] is seeking to disapply a requirement in s25 of the Land Drainage Act 1991 for statutory consent from the EA in relation to impounding water necessary for the temporary stopping up of watercourses to trench and lay cables, installation of culverts, drainage and other features to cross watercourses. It states that it would be content in principle to include protective provisions for the benefit of the EA, if requested.

- a) ***Notwithstanding any potential discussions on protective provisions, please could the EA set out the implications of s25 of the Land Drainage Act 1991 being disapplied, including in relation to the need to control the Proposed Development and mitigate its effects?***

We believe that this is an error and that in Article 6, the Applicant is actually meaning to seek to disapply s25 of the Water Resources Act, not the Land Drainage Act. However, the Applicant has since confirmed to us verbally that they no longer wish to disapply s25 of the Water Resources Act and will apply for an impoundment licence through the usual route outside of the DCO process. Further information is available within our Written Representation and appended Work package Tracker.

b) *Without prejudice to any later determination, please could the EA set out any concerns that it currently has that may lead to any impoundment licenses not being granted?*

Although there are no main rivers present on the site, an impoundment licence may still be required for an Ordinary Watercourse if it is part of the upper catchment of a main river system. The lead local authority would consider this only in regard to flood risk.

At face value, it is unlikely that the development would qualify under any of the exemptions which apply to the need for an impoundment licence.

However, many impoundments can be deemed to be low risk and there are circumstances where a licence is not required. Without knowing more details of the nature and purpose of the impoundment, it is not possible to give an indication of whether this is the case here.

The EA has published its guidance to when an impoundment is needed which includes a checklist for the applicant to refer to when making the decision to apply or not. This is at the applicants own risk, should there be any environmental harm caused as a result of the impoundment. We would recommend the Applicant submits a pre-application enquiry to our National Permitting Service if there is any uncertainty.

12.3 [Water quality, resources, drainage, and flooding]

Draft DCO [AS-005] Requirement 9 - Construction environmental management plans (CEMP)

The Applicant [AS-017] states that while the Outline CEMP [APP-090] does not refer to a Surface Water Management Plan, it includes surface water management provisions. It refers to Requirement 17, which provides for details of the surface water and foul water drainage system for each phase to be submitted to and approved by the local planning authority.

- a) Should a requirement to provide details of a Surface Water Management Plan be added to Requirement 9 of the dDCO? If so, why?**

No, we feel this is sufficiently covered within the current Requirements.

- a) Would it be helpful for the Applicant to provide an Outline Surface Water Management Plan to the Examination to clarify and help secure the measures that should be included.**

No comment, see above answer.

12.4 Flood risk assessment (FRA)

The EA [AS-019] states that flood risk has not been appropriately assessed and there is a risk that the proposed mitigation measures are not appropriate. The Applicant subsequently updated its Flood Risk Assessment and Outline Drainage Strategy [AS-014].

- a) Please could the Applicant consult with the EA on the adequacy of the updated FRA and on the appropriateness of the proposed mitigation measures?**

Applicant to answer

- b) Following consultation with the EA, please could the Applicant provide any updates as necessary?**

Applicant to answer

- c) Please could the EA advise if it has any outstanding concerns on the Applicant's updates, including in relation to whether the FRA satisfies the minimum requirements set out in paragraph 5.8.15 of NPS EN-1?**

Yes, we have outstanding concerns as the Flood Risk Assessment (FRA) does not currently satisfy the minimum requirements of NPS EN-1. However, we have had several meetings with the applicant and their flood risk consultants to address our concerns and we understand that an amended FRA will be available in the coming weeks. Please see our Written Representation and Work Package Tracker for more information.

d) Is the EA satisfied that the FRA makes up-to-date allowances for climate change?

No, however see the above answer.

e) Does DCC, as Lead Local Flood Authority, have any concerns about the FRA?

Durham County Council to answer this question

12.5 [Water quality, resources, drainage, and flooding]

Flood debris

Please comment on the potential for flood debris to build up on the legs supporting the solar panels and any related implications for flood risk and drainage.

Currently, we are still awaiting flood modelling to understand the extent and depth of fluvial flooding onsite. This will determine if a maintenance plan/clearance plan is necessary.

If it is found that water (at deep enough depths) is reaching the solar panels then a Maintenance Plan will be required, which should be specified under Requirement 11 (Operational Environmental Management Plan), and this will need to include the following:

- Check periodically for penitential debris which could be moved by flood water (fallen trees etc) and removal.
- Checks and clearance of all flood debris after a storm event.
- Checks of the structural integrity of the solar panels after a storm event to reduce the risk of falling and causing blockages.

However, as the watercourses are Ordinary Watercourses the maintenance of any river channels/banks to reduce the risk of debris will need to be discussed with the Lead Local Flood Authority.

12.7 [Water quality, resources, drainage, and flooding]

Potential water quality, drainage, and flooding benefits

Paragraph 2.10.154 of NPS EN-3 states that where previous management of the site has involved intensive agricultural practice, solar sites can deliver significant ecosystem services value in the form of drainage, flood attenuation, and water quality management.

Have reasonable opportunities been taken to maximise the potential benefits?

As we are still awaiting modelling and an updated FRA, we currently do not have a detailed understanding of the flood risk onsite so we cannot determine if flood reduction options have been maximised.

Yours faithfully

Mr. Lewis Pemberton
Planning Specialist

Direct dial [REDACTED]

Direct e-mail [REDACTED] [@environment-agency.gov.uk](mailto:[REDACTED]@environment-agency.gov.uk)