

Nationally Significant Infrastructure Project: EN010123 Heckington Fen Solar Park

Post Hearing Submission prepared by Lincolnshire County Council

Issue Specific Hearings (ISH) 3 & 4 & Action Points – November 2023

Introduction

Lincolnshire County Council (“LCC”) attended ISH3 and ISH4 on the draft DCO and Environmental matters held on 21st and 22nd November 2023 respectively. A summary of LCC’s oral representations for both hearings appears below. This document is limited to addressing matter where there was an element of disagreement at the ISHs, all other matters on the agenda were either agreed or LCC had no comments to make.

ISH3 - Draft Development Consent Order

Agenda Item	Summary of comments made
Part 1 – Draft Development Consent Order	
Item 4 – Schedule 2: Requirements	<p>LCC has ongoing concerns in relation to the following requirements set out within Schedule 2:</p> <p>Requirement 8 - currently only provides for a minimum of 60% biodiversity net gain – a significant shortfall from the “over 100% in habitat units” claimed as recently as Deadline 2 (DL2) within the Applicant’s response to the LIRs (REP2-078).</p> <p>LCC notes that at the hearing, the Applicant quite rightly acknowledged that if only 60% is secured, it can no longer claim to rely upon the benefits which would be associated with the 100% figure set out within the application documents.</p> <p>Also see response to Action Point ISH3-AP3.</p> <p>Requirement 17 currently provides no negative element triggering the requirement to implement the permissive path, it merely provides for a plan to be provided prior to any path but does not require the path itself. The Applicant is encouraged to consider re-wording the trigger point for this requirement.</p> <p>Requirement 18 - does not provide for circumstances in which the project ceases exporting energy to the grid. If failures occur across all or part of the scheme, the Operator should be required to inform the Council of its proposals for replacing, fixing or decommissioning those parts which are no longer operational. Discussions were held with the Applicant post-ISH3 on this and it is hoped that agreement can be reached for a requirement within the DCO which requires the Operator to submit a scheme including its proposals to bring the apparatus back into use or decommission it in the event that it ceases exporting for a period of 12 months. A 12 month period strikes the right balance between</p>

	<p>not requiring any action in the event of temporary outages but equally not permitting a redundant project to sit within the landscape without generating any of the benefits which would have justified its presence in circumstances where consent is granted.</p> <p>Equally subparagraphs (1) and (2) do not operate in a way which provides the Council with a set notice period prior to the date the Operator intends to decommission the scheme. This should be re-worded to provide for a set notice period in between receipt of notice by LCC and the proposed decommissioning date.</p> <p>Requirement 19 - LCC remains of the view that it is appropriate for the Council to be informed of planned maintenance including replacement of panels or any activity which could include the need for HGV deliveries for example.</p>
<p>Item 5 – Protective Provisions</p>	<p>LCC has begun discussions with the applicant about a potential additional protective provision for the Fire Authority which is based on a similar approach that is being taken forward as part of the Gate Burton DCO. This will essentially say the Fire Authority can come and inspect the battery energy storage system on an annual basis that their fees will be paid for doing so.</p> <p>Also see response to Action Point ISH3-AP8.</p>
<p>Item 6 – Other Articles and Schedules</p>	<p>LCC has ongoing comments in relation to Schedule 14. LCC considers a 10 week period is appropriate and in line with the Longfield Solar DCO.</p> <p>In relation to paragraph (5) the fee proposed by the Applicant is in line with a condition discharge fee for a TCPA scheme. This is wholly insufficient. This project is much larger and of greater complexity and the requirements reflect this. Further, discharge of Requirement 6 is not akin to a simple condition discharge but is instead akin to a complex reserved matters approval under the TCPA regime, for which a full planning application fee is due under the Fee Regulations. At present, the draft DCO undervalues the time and importance of the work undertaken to discharge DCO requirements and is equally not in line with Advice Note 15 which notably does not seek to import the TCPA Fees Regulations into a draft DCO but instead proposes a bespoke fee amount.</p>
<p>Part 2 – Environmental Matters</p>	
<p>Item 8 – Land and Soils</p>	<p>The Applicant’s position appears to be that temporary effects on soils are not capable of being significant following the IEMA guidance and are therefore not a harm of any consequence within the planning balance. The Applicant sought to downplay the 2015 WMS and its requirement for compelling evidence.</p>

	<p>It should be noted that this is emphatically not how the Secretary of State has approached the matter in other solar DCO or TCPA decisions. For instance, the Longfield Solar decision letter notes at paragraph 4.54 as follows (it should be noted that at paragraph 4.59 the S of S records his agreement with the ExA):</p> <p><i>“Further, the ExA notes that the 2015 Written Ministerial Statement (“WMS”) of the former Secretary of State for Communities and Local Government is an important and relevant consideration which provides further context to the Government’s general approach to the siting of solar farms on BMV agricultural land and advises that any such proposal would need to be justified by the most compelling evidence”.</i></p> <p>At paragraph 4.58 the ExA (and S of S) conclude that the permanent <u>and</u> temporary loss of BMV weighed against the proposal.</p> <p>LCC takes the same approach here – the use of BMV is clearly discouraged in all local and national policy statements on the topic and negative weight attaches to both the temporary and permanent loss, noting that a 40-year time period is a significant portion of our lifetimes so “temporary” needs to be seen in this context. This is carried through to the newly published EN-3.</p>
--	--

ISH3 Action Points		
No.	Action	LCC Response
ISH3-AP1	<p>Schedule 2 Requirement</p> <p>R3 (Phasing the authorised development and date of final commissioning)</p> <p>With reference to the Applicant’s comments at ISH3 and in REP2-012 (point 14) provide written comments in response to their view that it would be inappropriate for Relevant Planning Authorities (RPAs) to approve a phasing plan.</p>	<p>Given the relatively contained nature of this specific NSIP project, LCC is agreeable to the drafting of R3 as set out in the dDCO submitted at DL2 [REP-009] – namely that the phasing does not require approval by the RPAs but rather the requirement simply places an obligation to submit a scheme setting out a timetable and plan of that phasing.</p>
ISH3-AP3	<p>R8 (Landscape ecological management plan)</p> <p>Provide written comment on the amendments made to R8.</p>	<p>LCC welcomes the revisions made to R8 in the dDCO submitted at DL2 [REP2-009]. In relation to part (c), we welcome the Applicant’s amendment and commitment to secure a minimum 60% BNG rather</p>

		<p>than 10% as originally drafted however this is still a significant shortfall from the “over 100% in habitat units” claimed as recently as Deadline 2 (DL2) within the Applicant’s response to the LIRs [REP2-078]. We have no issue with the Requirement fixing the use of Metric 4.0 given that to remove this reference could introduce future uncertainty in relation to complying with a fixed BNG figure.</p> <p>However, whilst we appreciate that the Applicant does not wish to over commit themselves at this stage given the detailed design of the scheme has yet to be confirmed, given the 40% difference between the two figures, we believe there is still scope for a higher % to be agreed that would strike a reasonable balance between giving the Applicant the flexibility they require whilst ensuring one of the key benefits of this scheme as promoted by the Applicant is secured/delivered.</p> <p>Finally, whilst the drafting of R8 is acceptable, we do still have some concerns about the robustness of aspects of the oLEMP especially in relation to the maintenance regime and so will continue to liaise direct with the Applicant and suggest changes to the content of this plan.</p>
ISH3-AP5	<p>R17 (Permissive path)</p> <p>Provide written comment on the wording of R17.</p>	<p>Suggested alternative drafting for R17 is as follows:</p> <p><i>“Prior to the construction implementation laying out and provision of the permissive path, the undertaker must submit details of the permissive path details to.....”</i></p>
ISH3-AP8	<p>Schedule 13 Protective Provisions</p> <p>Consideration of additional Protective Provisions for the Lincolnshire Fire and Rescue Service</p>	<p>Post hearing discussions continued between the parties. It is understood that the Applicant is agreeable to the principle and purpose of the draft provisions but discussions are on-going as to whether this would be best dealt with as a protective provision or as a separate agreement. Discussions will continue with a view to confirm at a later date and this will be reflected in a Statement of Common Ground.</p>
ISH3-AP13	<p>Provide a response to the Applicant’s summaries as above</p>	<p>As requested LCC will provide a response by DL4.</p>

ISH4 – Environmental Matters

Agenda Item	Summary of comments made
Item 4 – Landscape and Visual Amenity and Residential Visual Amenity	<p>The Applicant has failed to give any consideration to whether effects assessed as ‘moderate’ should be considered significant or not. Whilst the Applicant points to paragraphs within GLVIA 3 which refer to this being a matter of judgement for the assessor, that is correct but it still requires a judgement to actually be made on a case-by-case basis rather than the approach taken by the Applicant which is, instead of making an informed judgement, making an assumption that moderate effects are not significant. This has a notable potential to “miss” significant effects and thereby underassess the scale of significant effects across the project.</p> <p>The Applicant also overly relies upon hedgerow planting for mitigation. Hedgerows are not a common characteristic of the site and the immediate locality, with the fields predominantly being defined by drainage ditches and occasional woodland blocks. The hedgerow mitigation proposed, alongside the managed height being a minimum of 3m and a maximum of 5m would adversely affect “<i>the open panoramas and enormous skies</i>” which is characteristic of The Fens and would introduce a significant vertical element into views which are currently long and open and characteristic of the area. The effect would be most notably experienced by users of country lanes to the north of the site where their views to the south would be foreshortened by very high hedges which are out of character for the area. It would equally be experienced by travellers to South Kyme and isolated dwellings along the A17. Whilst the A17 is a faster road, some change would also be noticeable as a result of the proposed mitigation which would reduce the wide views to the north.</p> <p>The Landscape Strategy Plan [REP2-046] details the planting specification and schedules for the proposed mitigation and whilst further information is contained within the outline Landscape Ecological Management Plan (oLEMP) [REP2-074] we do still have some concerns about the robustness of the maintenance regime as set out in the oLEMP. These concerns are principally that the information contained therein is light and should be sufficient to ensure the effective establishment and management of the soft landscape works for the duration of the development. The initial period should include detailed methodology for ensuring the saplings establish effectively, especially given the climatic extremes that are being faced. This would include details of weed suppression, watering and replacement protocols. The number of visits during the establishment period should be detailed alongside a methodology for reporting the</p>

	<p>findings and actions undertaken. The management plan should also detail the effective management of the juvenile plants to ensure effective growth of all species. This would need to detail the number of visits per year and the actions of each visit alongside reporting mechanisms. These comments have been forwarded onto the Applicant in advance of this response and LCC will continue to liaise directly with the Applicant about changes to the content of this plan.</p>
Item 8 – Transport	<p>LCC considers that Cowbridge Road, Vicarage Drove and Bicker Drove are not accurately described as of negligible sensitivity. They are country lanes which could be used by walkers and do not have a segregated footway. They are therefore rightly described as being of medium or high sensitivity. It is noted that, at the hearing, the Applicant agreed with this assessment and proposes to present an updated assessment which may be agreed through the SOCG. This is welcomed.</p>