

**North Kesteven District Council Written Summary of Oral Submissions at ISH3 and ISH4 – 21<sup>st</sup> and 22<sup>nd</sup> November 2023**

**Issue Specific Hearing 3**

Agenda Item	Comments
Item 1 – Welcome	n/a no comment
Item 2 – Purpose of the Issue Specific Hearing	n/a no comment
Item 3 – Applicant update on dDCO	n/a no comment
Item 4 – Schedule 2: Requirements	<p>The Council summarises its position in relation to the Deadline 2 dDCO (REP2-009) as follows:</p> <p><b>Part 2 Principal Powers - Defence to proceedings in respect of statutory nuisance</b></p> <p>The Council maintains its previous position that this inclusion is not justified. The proposals are not of a type where such disapplication would be warranted; for example in relation to nuisance stemming from MOD operations.</p> <p><b>Draft Requirements</b></p> <ul style="list-style-type: none"> <li>• Requirement 3 (phasing) – please see the NKDC ‘Action Points’ response on this matter</li> <li>• Requirement 6 (detailed design approval) – the draft could be expanded to reference that detailed design should be substantially in accordance with the details set out in the outline design document/DAS</li> <li>• Requirement 8 (LEMP) - please see the NKDC ‘Action Points’ response on this matter and the separate note below (ISH4) outlining the additional information requested by the Council’s ecologist AECOM in relation to Deadline 2 submissions. The Council agrees that the part (2) (b) requirement to undertake further survey work as necessary is required and in principle can address points previously raised by AECOM on this matter. The replacement plantings period should be increased from 5 years to 7 years consistent with the 2020 NKDC Tree Strategy</li> </ul>

- Requirement 10 (Fencing) – any details must align with recommendations contained in the LEMP regarding deer fencing/exclusion
- Requirement 12 (Archaeology) – the Heritage Trust of Lincolnshire are satisfied with the revised wording however the applicant is requested to consider flexibility proposed by the Rochdale envelope in terms of the potential to develop in areas not previously trial trenched. This is more of an operational issue to ensure that the timings of submissions in relation to Requirement 6 (detailed design submission) are aligned with archaeological matters.
- Requirement 15 (Operational noise) – we note and support inclusion of the ‘maintenance’ reference
- Requirement 16 (Supply chain, employment and skills) – the Council provided feedback on the applicant’s supply chain, employment and skills plan through its First Questions response. As currently worded the Requirement only addresses opportunity for individuals and businesses to access employment and supply chain opportunities associated with the construction, operation and maintenance of the authorised development; i.e. there is no educational or training commitment. Section 3 of the supply chain, employment and skills plan refers to potential traineeships/apprenticeships. The Council requires further information as to how this will be delivered noting that this would likely require a financial commitment and that there is no draft s106 submitted. The Council has however had recent follow up dialogue on this matter with the applicant.
- Requirement 18 (Decommissioning and restoration) – the Council supports the inclusion of the additional triggers working back from the 40-year deadline for the submission and approval of decommissioning and restoration details. However, we maintain previous concerns that the drafting is still deficient insofar as it does not contain a clause relating to and requiring decommissioning and restoration if there is early cessation of energy generation. We are aware of, and briefly discussed, the Mallard Pass solar NSIP example which contains such triggers and requirements. We maintain that this is necessary to mitigate harm arising not least in relation to BMV land impacts and we have had recent follow up dialogue on this matter with the applicant.

- Requirement 19 (OEMP) – we welcome the inclusion of this additional Requirement but raise drafting concerns in relation to part (2), namely details of how sheep grazing will be managed and maintained at the Solar Park site. As drafted the wording, and the underlying detail contained with the November 2023 outline OEMP, is not sufficiently detailed as to the nature of contracts in place, matters such as expected grazing/stocking densities and likely periods when the site will be grazed. These details must be able to be secured over the lifetime of the development with opportunities to agree alternative agricultural ‘mitigation’ in the event of gaps in grazing contracts throughout that 40-year period. We have had recent follow up dialogue on this matter with the applicant.
- Requirement 21 (Community Orchard) – as above in relation to the LEMP, replacement plantings within the community orchard should also be bound by the 7-year timescale consistent with the 2020 NKDC Tree Strategy

#### **Schedule 14 – Timescale for Discharge**

The Council notes the amendment increasing the proposed discharge period to 8 weeks and with a deemed discharge clause throughout. As set out, the Council does not support this period and these arrangements however we have had recent follow up dialogue on this matter with the applicant.

#### **Schedule 14 – Discharge Fees**

The Council notes the proposal at (5) which suggests payment of a Requirement discharge fee equivalent to the discharge of planning conditions under the TCPA mechanism. Whilst we welcome the amendment and the commitment to paying a fee, we do not support the rate proposed and have previously set out to the applicant that this undervalues the actual time and cost that will need to be expended by the Council.

We note the draft Mallard Pass solar NSIP proposal (Sch. 16, part 5) which proposes a higher figure being the ‘Other operations – maximum fee’ rate. Whilst we understand that the proposals for subsequent rate reductions with follow-up discharge applications is not supported by the County Council, this rate is more representative reflective of the scale, nature and complexity of matters being discharged and the discharge timescales which the applicant is seeking.

	<p>Whilst we note and accept, in principle, the offer of a Planning Performance Agreement running alongside the discharge process ultimately this is a discretionary mechanism.</p> <p>We will continue to discuss amendments on a 'without prejudice' basis with the applicant.</p>
Item 5 – Schedule 13: Protective Provisions	n/a no comment
Item 6 – Other Articles and Schedules	n/a no comment
Item 7 - Update on Statements of Common Ground	The Council has been working with the applicant to update the SOCC. We will continue to progress this as the examination period continues.
Item 8 – Land and Soils	<p>Consistent with the published set of actions, the Council will provide a response to the applicant's submitted written scripts in relation to agricultural land and soils by Deadline 4. In summary at this stage and consistent with our LIR and Written Representation:</p> <ul style="list-style-type: none"> <li>• We disagree with the applicant's continued primary focus on permanent loss/sealing over of BMV land as opposed to the loss of agricultural opportunity over the lifetime of development</li> <li>• Whilst we accept that the applicant modified the DCO boundary at pre-application stage and removed some areas of Grade 1 and 2 BMV land, we disagree that this amounted to 'prioritising the use of poorer quality land'</li> <li>• We disagree that varying (reduced) weight can be applied to Central Lincolnshire Local Plan policies S14 and S67 on the basis of the 'scale' of PA2008 NSIP solar proposals versus TCPA 1990 applications and that it is 'easier' to comply with BMV policy at local level. CLLP policy on BMV land is consistent with the national approach in the EN-1 and 3 policy statements and the NPPF.</li> </ul>

	<ul style="list-style-type: none"> <li>• The applicant has referred to the January 2022 IEMA guidance ‘A New Perspective on Land and Soil in Environmental Impact Assessment’ in the context of discussing significance of impact, however CLLP paragraph 11.8.3 (allied to policy S67) defines a ‘significant’ loss of BMV either individually or cumulatively as being 1ha or more.</li> <li>• The applicant suggests that there is no ‘food production’ planning policy, national food security crisis nor any requirement to actively use agricultural land for the growing of food. Nevertheless, NPPF paragraph 174 identifies the broader economic and other benefits of the best and most versatile agricultural land</li> <li>• The applicant has not yet developed and presented a detailed mitigation strategy stemming from proposed sheep grazing during the operational phase.</li> </ul>
Item 9 – Landscape and Visual Amenity, and Residential Visual Amenity	n/a no comment – deferred to ISH4
Item 10 - Any Other Matters	n/a no comment
Item 11 - Review of Issues and Actions Arising	n/a no comment
Item 12 – Close	n/a no comment

**Issue Specific Hearing 4**

Agenda Item	Comments
Item 1 – Welcome	n/a no comment
Item 2 – Purpose of the Issue Specific Hearing	n/a no comment
Item 3 - Landscape and Visual Amenity, and Residential Visual Amenity	Deferred from ISH3 - n/a no comment
Item 4 – Historic Environment	<p>The Council’s position in relation to impacts on the setting of the Grade I listed Kyme Tower was set out in our response to First Questions. In summary, due to the historic function of the tower and the extant landscape setting, no views of the tower, or away from the tower, should be classed as “incidental” and therefore the Council disagrees with the applicant’s overall assessment on that point.</p> <p>The fact that the tower is visible from the application site demonstrates the fact that Kyme Tower was designed to be a physical presence in the landscape. The application site would be visible and present within views away from the tower, thereby affecting the landscape character of the site, though this is yet to be properly assessed through the application. This would affect the setting of the tower, thereby having a degree of ‘less than substantial harm’ on its special interest.</p> <p>The impact of monumental architecture in the landscape is further exemplified by views of numerous church towers and spires located outside the study area, which are still clearly visible from the application site. As such the Council disagrees with the conclusion in paragraph 10.5.22 of APP-063 that the effect on Kyme Tower is “not significant” and that no harm is caused.</p> <p>In our view, we continue to believe that the impact has yet to be fully assessed, however we accept that the harm lies towards the lower end of ‘less than substantial’ (engaging NPPF paragraph 202) and that the required counterbalance of public benefit would be met. In their response to First Questions, we note that Historic England agree that ‘a low level of less than substantial harm might still be identified and taken into the ExA’s consideration’.</p>

	<p>In relation to archaeological matters, the Heritage Trust of Lincolnshire confirmed on behalf of the Council that the revised (Deadline 2) OWSI has now set out the outline aims of the potential excavation options for mitigation, and the methods and standards that will be employed for any strip, map and record excavations and watching briefs across the energy park site and the cable route corridor.</p> <p>In response to our previous concerns regarding the absence of baseline information on the significance of the archaeological resource along the cable route, the Council welcomes the applicant's interim report, which analyses 67 trial trenches excavated in August and September 2023 out of a total of 233 trenches proposed along the cable corridor. The report notes that 24 trenches contained archaeological remains; the majority of archaeological features were concentrated in the centre of the area evaluated, in trenches 121–128, 130, 242, 243–245.</p> <p>The interim report notes that the archaeological features correlated well with a possible enclosure system identified in the geophysics, with evidence recovered from seven trenches comprising Romano-British pottery, fired clay, animal bone and a fragment of Romano-British rotary quern stone. The Council will continue to liaise with the applicant on this matter.</p>
<p>Item 5 - Ecology, Biodiversity and Ornithology and the Natural Environment</p>	<p>The Council's consultant ecologist (AECOM) confirmed that there are still unresolved matters in relation to Biodiversity Net Gain. The proposals set out in the Deadline 2 OLEMP confirm the proposed delivery of a minimum of 60% BNG. AECOM's position is that whilst as a minimum this figure should be achievable further information is still required in relation to assumptions and evidence used for the BNG assessment.</p> <p>As set out in our response to the Action Points, we welcome in principle the applicant's commitment to securing 60% of BNG in habitat units. We would however reiterate that if the applicant seeks to align increasing weight with increasing BNG then the latter must be able to be evidenced at the point of decision and we noted from the ISH that the applicant appears content to fallback to a more defensible (in evidence) position of demonstrating 60% BNG rather than seeking to evidence a greater quantum.</p>

Our position is that it should be possible for the applicant to commit to additional provision above 60%. 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].

Nevertheless the baseline reports (e.g. the phase 1 habitat survey reports) still do not provide detailed accounts of the baseline condition of each relevant habitat (for example information on the composition of each of the woodlands and hedgerows included within the calculations) and the BNG assessment report also does not provide the relevant underpinning evidence; instead it primarily explains how the baseline condition score has been derived which is not the same.

Specifically, further information is required in relation to woodlands, hedgerows, ditches and arable field margins (combination of baseline and enhancement details) and in relation to the proposed post-development grassland types. The Council has provided detailed feedback to the applicant and we will continue to liaise on this matter.

In relation to ground nesting birds, the main ecological consideration is those bird species experiencing cumulative habitat loss – namely skylark, yellow wagtail, quail. It is agreed that the mitigation solution for skylark (and therefore yellow wagtail) set in the oLEMP is reasonable, however it is incomplete. Matters still to be resolved are:

- (a) the mechanism to secure the skylark mitigation - there is no firm proposal in the oLEMP suitable to be agreed or to inform a Requirement;
- (b) the level of provision to mitigate the impact – namely how many skylark plots are needed to effectively mitigate; and
- (c) that this mitigation actually provides additional opportunities over and above what the existing landscape provides at the proposed locations for skylark plots. The mitigation needs to deliver extra capacity/boost skylark nesting success to offset the reduction in nesting opportunities in the site.

In relation to quail whilst we note the applicant’s response in their Deadline 2 response to Local Impact Report, we maintain that survey effort did not match good practice and we would welcome further comment from the applicant.



Item 6 - Water Environment	n/a no comment
Item 7 - Habitats Regulations Assessment	n/a no comment
Item 8 - Other Environmental Matters: including Transport and Access, Air Quality, Noise, Climate Change, Glint and Glare, Socio-Economics, Miscellaneous Issues	On socio-economic matters we referred to the Council's response to First Questions, the supply chain, employment and skills plan, and Requirement drafting in respect of education, training and apprenticeships.
Item 9 - Cumulative Assessment	The Council provided comments in relation to cumulative assessment and interrelationships with other projects in its response to First Questions. We will continue to identify projects to the applicant.
Item 10 - Statements of Common Ground	The Council has been working with the applicant to update the SOCC. We will continue to progress this as the examination period continues
Item 11 - Review of Issues and Actions Arising	n/a no comment
Item 12 - Close	n/a no comment