

North Kesteven District Council response to the Examining Authority’s written questions and requests for information (ExQ2) issued on 19 December 2023

Question	NKDC reply
<p>GEN 2.1</p> <p>‘The revised National Planning Policy Framework is expected to be published shortly. All parties are invited to make comment on any relevant implications for the Application’</p>	<p>Paragraph 5 of the December 2023 NPPF reaffirms that the Framework does not contain specific policies for nationally significant infrastructure projects and that decision making primacy rests with the Planning Act 2008 (as amended) and the relevant national policy statements for major infrastructure, albeit that the NPPF is still relevant.</p> <p>Paragraph 157 continues to recognise that the planning system should support the transition to a low carbon future in a changing climate and should help to shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience; and support renewable and low carbon energy and associated infrastructure.</p> <p>Paragraph 160 reaffirms that to help increase the use and supply of renewable and low carbon energy and heat, plans provide a positive strategy for energy from these sources, that maximises the potential for suitable development, including future re-powering and life extension, while ensuring that adverse impacts are addressed appropriately (including cumulative landscape and visual impacts).</p> <p>Paragraph 163 affirms that when determining planning applications for renewable and low carbon development, local planning authorities should approve the application if its impacts are (or can be made) acceptable and, in the case of applications for the repowering and life-extension of existing renewable sites, give significant weight to the benefits of utilising an established site, and approve the proposal if its impacts are or can be made acceptable.</p>

Paragraph 180 confirms that planning decisions should contribute to and enhance the natural and local environment by amongst other things recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land.

Paragraph 181 of the December 2023 NPPF notes that “plans should: distinguish between the hierarchy of international, national and locally designated sites; allocate land with the least environmental or amenity value, where consistent with other policies in this Framework⁶²; take a strategic approach to maintaining and enhancing networks of habitats and green infrastructure; and plan for the enhancement of natural capital at a catchment or landscape scale across local authority boundaries”. Footnote 62 then notes as follows:

“Where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality. The availability of agricultural land used for food production should be considered, alongside the other policies in this Framework, when deciding what sites are most appropriate for development”.

The NPPF’s position remains that whilst the starting point is that proposals for renewable energy should be approved where adverse impacts can be resolved, the December version also carries forward the need to balance and consider the economic and other benefits of the best and most versatile agricultural land. Whilst the reference to use of agricultural land for food production is made in the context of plan making and site allocations nevertheless it is not irrelevant to decision making as it affirms the broader principle that the value of agricultural land for food production is a material planning consideration.

In the context of the Council’s comments at the Hearing sessions and in Deadline 3 submissions regarding decommissioning in the context of cessation of energy generation, and that BMV-loss mitigations must be in place, paragraph 163 is pertinent insofar as it calls for great weight to be assigned to repowering renewable energy projects on established sites.

	<p>Whilst these proposals do not engage repowering at this stage and are submitted for a temporary 40 year period nevertheless paragraph 163 envisages that such schemes will be expected to endure beyond the initial application period.</p> <p>In the Council’s opinion this heightens the need to ensure that appropriate mitigations are in place through the DCO given that those mitigations might reasonably be relied upon for in excess of the 40-year operational period initially sought. This includes provisions for early decommissioning in the circumstances specified above and in securing grazing or other agricultural process interventions as per the Council’s previous submissions.</p>
<p>GEN 2.2</p> <p>‘On 22 November 2023 the Department for Energy Security and Net Zero published updated versions of the draft National Policy Statements (NPS) for Energy (EN1 to EN5) which contain some changes to elements regarding the scope of critical national priority (CNP) infrastructure and the decision-making process for low carbon generation applications in general (amongst other changes), including for solar generating stations and related connections.</p>	<p>The EXA has requested that all parties are invited to provide comments on the potential effect of changes in the November 2023 versions of the revised draft Energy NPS on matters related to the Proposed Development compared to the March 2023 versions of the Energy NPS.</p> <p>As a starting point we would highlight that the 2011 version of the NPSs remain in force until the revised documents are designated in ‘early 2024’ (date not yet given). The transitional provisions at paragraph 1.6.2 of the latest draft of EN-1 confirms that <i>“any application accepted for examination before designation of the 2023 amendments, the 2011 suite of NPSs should have effect in accordance with the terms of those NPS”</i>. Therefore, as a starting point NKDC would point out that the 2011 version of the NPSs remain in force until they are replaced.</p> <p>In relation to the November 2023 version of EN-1, paragraph 5.11.12 affirms that applicants ‘should seek to minimise impacts on the best and most versatile agricultural land (defined as land in grades 1, 2 and 3a of the Agricultural Land Classification) and preferably use land in areas of poorer quality (grades 3b, 4 and 5)’. The following paragraph notes that applicants ‘should also identify any effects and seek to minimise impacts on soil health and protect and improve soil quality taking into account any mitigation measures proposed, with paragraph 5.11.14 then noting that applicants are ‘encouraged to develop and implement a Soil Management Plan which could help minimise potential land contamination’.</p>

These revised draft Statements have been laid before Parliament but are yet to be designated for the purposes of section 104 of the Planning Act 2008.

All parties are invited to provide comments on the potential effect of changes in the November 2023 versions of the revised draft Energy NPS on matters related to the Proposed Development compared to the March 2023 versions of the Energy NPS’.

These provisions are the same as in the equivalent paragraphs of the March 2023 EN-1 version.

The references to Secretary of State decision making in relation to agricultural land/BMV are consent across both the March and November 2023 versions, where paragraph 5.11.34 of both documents note that ‘applicants do not site their scheme on the best and most versatile agricultural land without justification’ and that ‘where schemes are to be sited on best and most versatile agricultural land the Secretary of State should take into account the economic and other benefits of that land. Where development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality.

In relation to the November 2023 version EN3 and as stated in Section 4.2 of EN-1, to support the urgent need for new low carbon infrastructure, all onshore and offshore electricity generation covered in the NPS that does not involve fossil fuel combustion (namely renewable generation, including anaerobic digestion and other plants that convert residual waste into energy, including combustion, provided they meet existing definitions of low carbon) are now considered to be Critical National Priority (CNP) Infrastructure.

CNP is then defined in the glossary at section 3 of EN3, which again cross references Section 4.2 of EN-1 which applies a policy presumption that, subject to any legal requirements (including under section 104 of the Planning Act 2008), ‘the urgent need for CNP Infrastructure to achieving our energy objectives, together with the national security, economic, commercial, and net zero benefits, will in general outweigh any other residual impacts not capable of being addressed by application of the mitigation hierarchy’.

CNP Infrastructure is defined as nationally significant low carbon energy projects, including renewable energy generation schemes and lifetime extensions of nationally significant low carbon infrastructure, and repowering of projects.

Section 3.10 of the March 2023 EN3 addresses technology specific considerations for solar development, replaced by section 2.10 in the November version. The 'Agriculture land classification and land type' sub-heading is consistent to both documents, and both versions note that whilst land type should not be a predominating factor in determining the suitability of the site location applicants should, where possible, utilise suitable previously developed land, brownfield land, contaminated land and industrial land.

Both versions also note that where the proposed use of any agricultural land has been shown to be necessary, poorer quality land should be preferred to higher quality land avoiding the use of "Best and Most Versatile" agricultural land where possible. Both versions also confirm that at the scale of development envisaged it is likely that applicants' developments will use some agricultural land and therefore that applicants should explain their choice of site, noting the preference for development to be on suitable brownfield, industrial and 'low and medium grade agricultural land'.' The latter reference is specific to the November 2023 version and therefore emphasises that avoidance of using 'high grade' (BMV) land is preferred.

Under the 'Mitigations' sub-heading, the text is unaltered in relation to agricultural land impacts, and similarly in relation to SofS decision making considerations in relation to 'Agriculture land classification and land type', which states at 2.10.145 (November version) that "the Secretary of State should take into account the economic and other benefits of the best and most versatile agricultural land. The Secretary of State should ensure that the applicant has put forward appropriate mitigation measures to minimise impacts on soils or soil resources".

Paragraph 2.10.146 of the November 2023 version, under the sub-heading of 'Project lifetime and decommissioning' sets out that the Secretary of State 'should ensure that the applicant has put forward outline plans for decommissioning the generating station when no longer in use and restoring the land to a suitable use'. This text mirrors that at paragraph 3.10.137 of the March 2023 version.

	<p>Both are silent on the definition and interpretation of ‘...<i>when no longer in use</i>’ and the Council’s position, validated by the approach being taken on other Lincolnshire solar NSIP proposals (e.g. Mallard Pass) is that this should not be restricted to decommissioning occurring only at the point of the temporary planning permission expiring and can (and should) therefore engage if there is earlier more prolonged cessation of energy generation.</p>
<p>GEN 2.4</p> <p>‘The Applicant’s response to ExQ1 GEN 1.7 [REP2-077] included some further detail regarding methodology for assessment of likely significant effect on some of the miscellaneous issues presented within Environmental Statement (ES) Chapter 18 [PS-077].</p> <p>Could Lincolnshire County Council (LCC), North Kesteven District Council (NKDC) and Boston Borough Council (BBC) confirm if they have any comments regarding the methodology for Major Accidents and Disasters; Waste; Electric,</p>	<p>NKDC makes no comments/has no objections in relation to these matters.</p>

<p>Magnetic and Electromagnetic Fields; and Telecommunications as presented'</p>	
<p>GEN 2.5</p> <p>'An addition has been made to the outline Decommissioning and Restoration Plan [REP3-023] at paragraphs 1.18.2 and 1.18.5 c) relating to monitoring reporting to Relevant Planning Authorities (RPAs) and the action to be taken in the event of a failure. LCC, NKDC and BBC are invited to comment on this additional provision within the Plan'</p>	<p>Paragraph 1.18.2 of the outline DRP states that environmental controls will already be in place from the construction and operational phases secured through the Outline CEMP and Outline OEMP, and therefore prior to decommissioning any impacts of works to remove the solar panels and associated infrastructure will be minimised. The applicant states that during decommissioning works a brief report will be produced and submitted to the Relevant Planning Authorities on a quarterly basis. The Council considers that this is a reasonable frequency and has no objection to it.</p> <p>The applicant then notes that in the event that monitoring identifies a failure to adequately mitigate impacts or that mitigation is not being effective the Environmental Manager or Project Manager will detail these factors in the report and submit details to the Relevant Planning Authorities of the actions being taken to remedy the failures. The applicant also confirms that a final report will be produced and submitted to the Relevant Planning Authorities following completion of decommissioning, including summarising where observed deviations from the DRP (s) and corrective actions have been undertaken.</p> <p>The Council's only concern here is that this is a notification process rather than one requiring approval (to those deviations and required remedies) by the RPAs. Under the proposed scenario there remains a risk that impacts could be identified and actions implemented by the applicant, without approval of the RPAs, for number of months without any advance scrutiny.</p>

	<p>Whilst quarterly reports should help ensure that the RPAs are appraised and potentially given advance notice of where deviations and remedies outside of previously agreed scope are needed, there should be a mechanism which allows/requires prior written approval to those variations by the RPA (on a case-by-case basis) and further that any variations cannot result in significant environmental effects over and above those previously assessed through the DCO application.</p>
<p>GEN 2.7</p> <p>'An Equality Impact Assessment was submitted at D3 [REP3-031] which includes consideration of persons or groups with a protected characteristic in order to inform the Examining Authority (ExA) how the Applicant has considered the Equality Act 2010 and provide information to assist the decision maker in applying the Public Sector Equality Duty.</p> <p>Could LCC, NKDC, BBC and any other Interested Parties provide any comments they wish to raise'</p>	<p>The Council notes that a number of measures are identified as being needed to address potential equality impacts resulting from the proposed development, being a final detailed CEMP which includes appropriate management of potential noise impacts and associated engagement with Build-A-Future East Heckington, a final detailed LEMP detailing how the applicant will establish the new Community Orchard, a detailed Supply Chain, Employment and Skills Plan and a new permissive path. The Council supports these proposals in principle and agrees that, subject to detailed design and agreement, they are proportionate having regard to the Equality Act 2010 and in the application of the Public Sector Equality Duty (PSED).</p>

GEN 2.11

'The Applicant's response to ExQ1 BIO 1.5 [REP2-077] clarifies that a major beneficial effect relates to hedgerow resource only and that Table 6.10 ES Chapter 6 [PS-059] does not report tree resource during the construction phase as these effects were not deemed to be significant.

Other non-significant residual effects are reported within Table 6.10

- i) Could the Applicant provide further explanation why tree resource has been excluded from Table 6.10 or update it to include tree resource.

The applicant's reply to part (iv) of BIO 1.5 is as follows:

"The beneficial effects, including the residual beneficial effects, during the construction phase have been solely determined based on the quantum of the proposed vegetation, and not their maturity. The assumption is that the proposed planting would be implemented at the end of the 30-month construction period to allow for the worst case scenario. Assumptions consider that newly planted hedgerows, when managed and monitored correctly, will achieve maturity between 5 and 7 years after planting. DEFRA's BNG Metric applies a 'time to target condition' multiplier of 5 years for the creation of species rich native hedgerows in 'moderate' condition".

The Council has not raised this matter in any of its previous comments however in response to the ExA's question we think that it would be appropriate to assign varying effect significance based on the maturity of planting over time rather than at the point of planting. Soft landscaping detailed species choice and size/specification on planting is ultimately reserved by draft Requirements 6 and 8 and as noted above the applicant has applied a worse case scenario based upon planting being delayed to the end of the construction period. We consider it reasonable to apply the 'time to target condition' multiplier and assign a different effect significance which takes account of that maturity over time.

BIO 2.1

'The ES Technical Note: Additional Ecology Information [REP3-027] includes further details relating to survey methods for quail and arable flora, and a skylark mitigation strategy.

i) NKDC and LWT are invited to provide comment on the Technical Note.

ii) The Applicant is to update the skylark mitigation strategy within the next version of the outline Landscape and Ecological Management Plan (LEMP)'

Quail – The applicant has acknowledged that the survey effort did not fully align with the relevant guidance. As with other protected birds, an absence of records now is not evidence for likely absence at construction. It is therefore agreed that the proposed pre-commencement surveys are an appropriate means to manage the construction specific risk (i.e. risk of impact on breeding quail as a Wildlife and Countryside Act Schedule 1 bird species). Similarly, the timing of works to avoid the risk period would also be a suitable mitigation strategy.

In relation to assessment of the potential consequences of permanent habitat loss on quail, it is necessary to take a precautionary position i.e. quail could be present and be affected. This is because, as agreed, the survey effort applied was below the level needed to conclude likely absence from the site. The applicant identifies the possible need for mitigation of loss of habitat and proposes to secure this through an update to the CEMP at Deadline 4 (paragraph 2.9 of the Technical Note). On behalf of North Kesteven District Council, AECOM can provide further advice once this supplementary scheme of mitigation has been provided. We also advise that this may need to be addressed in an update to the outline LEMP (if only to place holding text as a reminder of the need for further consideration of this when agreeing the final LEMP).

Scarce arable flora - the response in the Technical Note is acceptable. The response clarifies that the survey was undertaken at field scale, not at the point locations indicated on the report figure. On that basis, the survey effort was sufficiently extensive to provide reasonable confidence (in combination with the desk study) in the conclusions reached. North Kesteven District Council has no further comment.

Skylark mitigation strategy – We have no fundamental disagreement with the narrative in the Technical Note. However, paragraph 4.9 (which relates, worst-case, to loss of approaching one quarter of the number of territories recorded) does not provide confidence that full or substantive mitigation is currently achieved or adequately secured. This is not currently secured via the OLEMP (paragraph 5.5.10) as the contributory strategy has not been defined or a specific proposal made.

	<p>It is assumed that this further information will be provided within the update to the skylark mitigation strategy at Deadline 5. We therefore defer further comment until this document is submitted.</p>
<p>BIO 2.2</p> <p>'The most recent update to the draft DCO [REP3-004] includes an amendment to R8(c) which increases minimum Biodiversity Net Gain (BNG) of habitat units to 65% using the Biodiversity Metric 4.0.</p> <p>Statutory Biodiversity Metric tools and guides were released by the Department for Environment, Food and Rural Affairs on Wednesday 29 November 2023.</p> <p>NKDC in their response to ISH3 Action Points [AP3, REP3-040] notes that they have no objection to fixing the use of Biodiversity Metric 4.0 in R8.</p>	<p>Part i) The Statutory Biodiversity Metric and its guidance does not diverge markedly from Biodiversity Metric 4.0. So, it is considered that there would be no substantive implications from continued use of Biodiversity Metric 4.0. Further, as this application is not subject to Statutory BNG regimes, there is no requirement for an update to the current metric. This position is consistent with the advice previously published by Natural England when issuing Metric 4.0. Nevertheless, whilst we accept that NSIPs are not yet mandated to demonstrate compliance with the statutory BNG requirements the Council does feel it appropriate for schemes such as this to provide opportunities to secure and enhance BNG.</p> <p>Part ii) AECOM, for the Council, confirm that Council's previous position on this matter remains applicable. Setting the benchmark at 65% BNG provides the applicant with some flexibility for detailed design, although the applicant has expressed confidence in the ability to achieve the predicted level of BNG so this figure may still be too precautionary. However, there is a potential benefit to the applicant later from fixing a minimum threshold, as any excess units could potentially be sold later for use by another development. The Government has published guidance (https://www.gov.uk/guidance/make-on-site-biodiversity-gains-as-a-developer and https://www.gov.uk/guidance/biodiversity-net-gain-what-local-planning-authorities-should-do#checking-developers-selling-excess-on-site-gains) on excess on-site gains that may be helpful when formulating a response.</p> <p>Part iii) The Council confirms that it is acceptable to fix the use of Metric 4.0 given this was current at the time of submission of the application. This position is consistent with the advice previously published by Natural England when issuing Metric 4.0.</p>

<p>Longfield Solar Farm (Correction) Order 2023 includes amendments to DCO Schedule 2 R9(2)(a) in relation to the application of Biodiversity Metric 4.0.</p> <p>Could NKDC, BBC and LCC provide comment on:</p> <ul style="list-style-type: none"> i) The implications of the recent BNG tools and guidance (noting that this is not yet statutory for NSIPs). ii) The amendments to R8 to include an increase to the minimum percentage of BNG to 65%. <p>Whether to fix the use of Metric 4.0 given the above'</p>	
<p>BIO 2.5</p> <p>'The updated outline LEMP [REP3-021] includes at paragraph 5.5.2 confirmation that a woodland management plan will be created for the final LEMP, which will cover both</p>	<p>The Council notes the applicant's confirmation that a woodland management plan will be created for the Final LEMP and that the plan will broadly follow the Forestry Commission's 'small woodland plan' template. We agreed that this should cover the management of the community orchard and the new woodland planting in the north west corner of the Energy Park site however we would defer to the Forestry Commission in terms of the suitability of the template.</p>

<p>the community orchard and the replacement woodland planting in the north-west corner of the Energy Park site. NKDC and the Forestry Commission are asked to comment on this additional provision within the LEMP'</p>	<p>AECOM confirm that they do not disagree with paragraph 5.5.2. It is advised that the main or otherwise substantive purpose of these habitats, along with the other habitats contributing to the committed BNG, is biodiversity enhancement. Therefore, this should be the primary consideration when developing the final LEMP, including the management that will deliver the relevant habitat features needed to achieve the target 'condition' set for these habitats.</p>
<p>BIO 2.8</p> <p>'The Applicant's response to NKDC's WR [REP2-109], followed by the Applicant's written summary of ISH4 agenda item 5 [REP3-039] confirms that landowners have not consented to a survey of the potential veteran oak tree within group G39.</p> <p>The outline Construction and Environmental Management Plan (CEMP) [REP3-019] has been updated at paragraph 7.37 to include provision for further survey work.</p>	<p>We note that paragraph 7.37 of the outline CEMP states that further arboriculture survey work to identify 'veteran tree' status (reference G39 west of Bicker Fen Substation) will be undertaken in 2024. We are satisfied that draft R13 can cover and secure the need for this survey work to be undertaken. It is noted that this tree is located within Boston Borough. AECOM's position is that survey is not essential provided that a precautionary approach is taken i.e. assume the tree is veteran. No further action would be needed if the CEMP commits to use of micro-siting to achieve the minimum stand-off distance specified within the Standing Advice on veteran trees.</p> <p>R13 would be acceptable if the CEMP is more explicit on the competent persons required for these surveys, and also the good practice methods and timings that need to be applied (noting the prior comments on quail survey effort) – the survey timings will have specific relevance for the subsequent development of the construction programme.</p> <p>In relation to paragraph 7.35 (ditches) and 7.36 (soil testing) of the CEMP, it is suggested that these matters are specifically relevant to agreement of the final LEMP and therefore may need to be completed earlier than the other surveys detailed in the CEMP. These may be matters better carried over into an update of the OLEMP.</p>

<p>NKDC are asked to confirm if they are satisfied with this approach and whether R13 would adequately secure the suite of pre-commencement surveys set out in paragraphs 7.33 to 7.37 of the outline CEMP'</p>	
<p>DCO 2.6</p> <p>'An amendment to Schedule 14 (2) of the draft DCO [REP3-004] increases the timeframe for Relevant Planning Authorities to give notice of decision on a Requirement from eight to ten weeks. The Applicant's post-hearing submission [Agenda item 6, REP3-038] explains that no further changes will be made to the deemed discharge mechanism, referring to the 'critical national priority' status of solar in the final draft National Policy Statements.</p>	<p>NKDC has confirmed to the applicant that they are satisfied with the revised proposals for a 10-week discharge period with deemed discharge for all Requirements needing prior approval. Revision 5 has been updated on this basis. We note that other timings contained in Schedule 14 (3) relating to consultation/notification (10 and 20 working day periods) is consistent with the draft Mallard Pass DCO and on that basis these matters are also resolved.</p>

<p>LCC, NKDC and BBC are asked to provide any further comments they may wish to raise on Schedule 14'.</p>	
<p>DCO 2.7</p> <p>'ISH3 agenda item 6 referred to Schedule 14 (5) of the draft DCO [REP3-004] (Fees) and the Applicant's post hearing submission/ action point 10 [REP3-038] further responds to NKDC's comments regarding refunds to fees and notes that there is a mechanism to retain fees at paragraph 5(2)(b)(i).</p> <p>Schedule 14 (5)(1) refers to the 2012 Fee Regulations. The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations</p>	<p>With reference to the merit of fees being paid per Requirement rather than per application, the Council's position is that a fee should be paid on a per Requirement basis rather than a single fee covering the discharge of multiple Requirements in a single application. The Council's position is that the full fee must be paid even for proposed partial discharge of individual Requirements, i.e. phased discharge. The calculated fee will then reflect the total number of Requirements for which discharge is being sought in any specific application made.</p> <p>Given that the development will be phased it is unrealistic that the applicant will be able to submit all necessary information in an up-front/front loaded scenario and therefore we anticipate that there could be multiple applications submitted dealing with the same requirement.</p> <p>A working <i>example</i> using the applicant's suggested fee of £145 (which the Council does not accept) is as follows:</p> <p><i>Single application to discharge three Requirements – two in full and one partial:</i></p> <ul style="list-style-type: none"> • Partial discharge of Requirement 6 (detailed design) for Phase 1A only - £145 • Full discharge of Requirement R10 (fencing) for the main energy park site - £145 • Full discharge of Requirement R16 (Supply chain, employment and skills) - £145 <p>Application fee due = £435.</p>

2023 came into force on 6 December 2023.

- i) The Applicant is requested to amend the relevant wording of Schedule 14 (5) accordingly to reflect the 2023 Regulations.

The Applicant, LCC, NKDC and BBC are asked to also consider:

- ii) The merit of fees being paid per Requirement rather than per application.

Whether the provision to introduce an annual indexation of fees from 1 April 2025 as set out in Regulation 18A should be reflected within the draft DCO'.

The fee mechanism should reflect the scale, nature and complexity of matters being discharged and the discharge timescales which the applicant is seeking and that the Council has now accepted.

In the same way that the applicant expects priority to be given to the assessment of proposals for 'critical national priority' infrastructure, the Council expects that it should be appropriately remunerated to be able to prioritise discharge of requirement applications.

We agree that annual indexation of fees from 1 April 2025 (as set out in Regulation 18A) should be reflected within the draft DCO. Finally whilst the ExA has not specifically sought comments on the fee rate proposed by the applicant in relation to the discharge of Requirements we would refer to our comments made in elsewhere in relation to Schedule 14 (5) of the DCO and the precedent example of the Mallard Pass DCO – whose fee proposal is significantly higher than offered here.

We do not agree with the Applicant's proposal to link the fee amount payable to that set out under regulation 16(1)(b) of the Fee Regulations (recently amended by [Town and Country Planning \(Fees for Applications, Deemed Applications, Requests and Site Visits\) \(England\) \(Amendment\) Regulations 2023](#)). Whilst this fee has recently increased from £116 to £145, as above it is the Council's view that this is still wholly insufficient. As stated previously [under Agenda Item 6 of [REP3-052](#)] this project is of significantly greater scale and complexity than projects dealt with under the TCPA regime, and so too are the Requirements.

In the Council's view the fee amount proposed by the Applicant undervalues/underestimates the time and significance of the work undertaken to discharge DCO requirements and so needs to be increased to reflect the somewhat 'abnormal' nature of the resourcing needed and, as above, prioritisation ahead of workloads to reflect the agreed discharge periods and arrangements. NKDC will work with the applicant to suggest/propose alternative drafting in relation to Schedule 14(5) of the DCO in the hope that we can reflect a compromise position in later version/s and prior to the end of the Examination.

HE 2.1

'NKDC [REP2-101] and Historic England [REP2-091] consider that the solar park site lies within the setting of the Grade I listed Kyme Tower and that harm would arise to its setting (at the lower end of the scale).

A plan [REP3-041] has been provided for the ExA to carry out a further Unaccompanied Site Inspection in order to assist in assessing the setting of Kyme Tower.

Paragraphs 10.5.17 to 10.5.21 of ES Chapter 10 [REP2-024] sets out the elements which the Applicant considers contribute to its significance and goes onto conclude that no harm is predicted to occur.

10.5.17/10.5.18 – We agree that the elements of setting referred to however the applicant has already stated that “long-ranging views in all directions” contribute to the significance of Kyme Tower. As such, paragraph 10.5.18 contradicts this point by stating that intervisibility is incidental. In the Council’s view no views can and should be classed as ‘incidental’ due to the nature of the asset.

10.5.19 – There is an acceptance that the solar park may be contained within the views. There is no explanation of the “distinctly modern character” which is referenced. The open agricultural character is one that has been established for hundreds of years and would not be significantly different from that which that which currently exists.

In summary, the Council’s position remains that the impact of the proposed solar park on the setting of Kyme Tower has been insufficiently tested. The applicant acknowledges that long-ranging views in all directions contribute to the significance of the tower, yet there is still an attempt to de-scope the heritage asset by referring to the views as incidental, therefore being contradictory. The Council’s position remains that the impacts may be negligible and is anticipated to result in less than substantial harm at the lower end of the scale, however there is still a degree of impact in the Council’s opinion and that needs to be assessed accurately.

The Applicant's summary of ISH4 Agenda item 4 a) [REP3-039] reiterates their position regarding intervisibility and significance, and offers to provide further information in the form of visualisations.

Could NKDC and Historic England:

i) Clarify whether the level of detail provided in paragraphs 10.5.17 to 10.5.21 of ES Chapter 10 [REP2-024] is proportionate to the importance of the heritage asset and if it is sufficient to understand the potential impact of the proposal on its significance.

ii) Confirm whether they agree with the elements of setting in paragraph 10.5.17 of ES Chapter 10 and state if there are any additional elements they also consider contribute to its significance.

<p>iii) Provide any further comments they may have in relation to the Applicant's summary of ISH4 Agenda item 4 a) [REP3-039] in relation to Kyme Tower.</p> <p>Could the Applicant:</p> <p>i) Provide visualisations towards/from Kyme Tower to assist the ExA in their assessment of its setting'</p>	
<p>HE 2.2</p> <p>'The D3 update to the outline CEMP [REP3-019] at paragraphs 7.71 to 7.75 includes provision for protection zones and historic building record of non-designated heritage assets.</p> <p>Could NKDC and LCC confirm if they are satisfied with this approach'.</p>	<p>The Council is satisfied with the proposals at paragraph 7.74 that the historic building recording surveys of the brick-built cottages and barn of Six Hundreds Farm and the drainage pump at Head Dike should be undertaken to Level 1 of the Historic England guidance Understanding Historic Buildings: A Guide to Good Recording Practice (2016).</p>

<p>HE 2.3</p> <p>'R6 (2) of the draft DCO (REP3-004] includes an additional criteria regarding the need for design details to take account of the results of archaeological investigations.</p> <p>Could LCC, NKDC and BBC confirm their agreement to the proposed additional wording'.</p>	<p>The Council is satisfied that the additional criteria regarding the need for design details to take account of the results of archaeological investigations addresses previous comments in relation to R12 (archaeology).</p>
<p>LUS 2.2</p> <p>'R8 LEMP and R19 Operational Environmental Management Plan (OEMP) of the draft DCO [REP3-004] include provision for securing sheep grazing on the solar park site.</p>	<p>With reference to the additions to the oOEMP, in order to keep the land in good agricultural and environmental condition (GAEC), there needs to be a baseline survey agreed so that it can be measured against this. GAEC is a term used by DEFRA for agricultural subsidy schemes and in the Council's view this could form the basis of any assessment.</p> <p>With reference to sheep grazing the NFU guidance ('BRE (2014) Agricultural Good Practice Guidance for Solar Farms' – copy attached), under sub-heading 'Agricultural grazing for maximum production' states that grazing rates are '<i>2 to 3 sheep per hectare on new grassland and thereafter between 4 and 8 sheep per hectare</i>' in accordance with BRE guidelines. The reference to grazing of 2/3 sheep as noted in paragraph 2.23 of the outline OEMP is therefore ambiguous and might appear to be <1 sheep per hectare. As worded, there is no reference to increasing grazing densities to between 4 to 8 sheep per hectare after new grassland establishment.</p>

In response to comments made by NKDC at ISH3/4 the Applicant has proposed an additional commitment within the outline OEMP [paragraphs 2.22 to 2.24, REP3-034] relating to sheep grazing management. LCC, NKDC and BBC are asked to comment on this addition to the OEMP'

With reference to paragraph 2.24 of the outline OEMP an allowance should be made for eventualities, but there should be a plan in place to deal with the reasonably known outcomes such as disease and change of grazier. If the land is left ungrazed for longer than 1 season the grassland quality will quickly deteriorate and a cutting or mowing regime should be in place to deal with this as a minimum. However, grazing should be the priority and cutting should not become the normal regime; every effort should be made to secure grazing once conditions allow.

The Council's position therefore is that paragraphs 2.22 to 2.24 of the outline OEMP should be modified as follows:

'The land will be kept in good agricultural and environmental condition – in line with DEFRA GAEC definitions. This will be maintained by the management of the land predominantly by the grazing of sheep. Sheep will be grazed at a grazing intensity that does not result in visual damage to the grass sward from poaching (trampling), but will be sufficient to maintain the grassland in good condition.

The density of grazing is not typically specified as different systems of grazing vary considerably. However, the Applicant commits to grazing enough sheep over the whole of the solar park holding to maintain the good agricultural and environmental condition.

The Applicant thereby agrees that the grazing density across the site over the year will not fall below an average (calculated on the number of sheep grazing per month across the year) of 833 sheep in total calculated on the fenced areas of the solar park (Work No. 1) and the NFU Guidance of ~~2/3~~ 2 to 3 sheep per hectare on newly established grassland, and thereafter 4-8 sheep per hectare, unless otherwise agreed in writing by North Kesteven District Council or in the event of the circumstances mentioned in paragraph [TBC] below.

	<p><i>Certain circumstances may come forward whereby sheep are not grazed on the site; this could include disease, sickness, or economic (un)viability. Whereby sheep are not grazed on the solar park site for a period of more than 12 months, the Applicant will notify the Local Planning Authority and provide and implement a plan or scheme to outline how it proposes to continue agricultural processes at the solar park site. Cutting or mowing will be employed to manage the grassland if grazing cannot proceed, in order to maintain the grassland in GAEC'.</i></p>
<p>LUS 2.4</p> <p>'The Applicant has submitted a post-hearing submission for ISH3 agenda item 8 regarding use of Best and Most Versatile (BMV) agricultural land [Appendix 3, REP3-038]. This includes submissions regarding cumulative assessment, changes to calculations of amounts of BMV affected on other solar farm projects in Lincolnshire, and explanation of consideration of significant effect terms.</p> <p>LCC, NKDC and BBC are asked to provide any comments they may wish to raise'.</p>	<p>We are grateful to the applicant for submitting their extensive speaking notes from ISH 3 Agenda item 8 and are able to feedback as follows.</p> <p>As an overarching observation, consistent with the Council's LIR and Written Representation 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. Whilst we accept that the applicant has 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'.</p> <p>In relation to 'site selection and predominating factors' whilst we note that the solar park consists of as single site under a single landownership where the landowner is willing to diversify its holding into a renewable energy generation, and that this is 'opening' commentary, a 'willingness or ability to develop' does not override the application of agricultural land planning policy.</p>

With reference to the weight to be applied to policy considerations from national to local level, we note the pending adoption (early 2024) of the EN-1, 3 and 5 statements published in November 2023, and as set out above we note that the proposal is now defined as CNP infrastructure and where Section 4.2 of EN-1 applies a policy presumption that owing to the urgent need for such infrastructure, such need will now in general outweigh any other residual impacts not capable of being addressed by application of the mitigation hierarchy.

However, as set out above the transitional provisions at paragraph 1.6.2 of the latest draft of EN-1 reaffirms that *“any application accepted for examination before designation of the 2023 amendments, the 2011 suite of NPSs should have effect in accordance with the terms of those NPS”*. Therefore as a starting point the Council would highlight that the 2011 version of the NPSs remain in force until they are replaced, in 2024, by the November 2023 versions.

We disagree with the applicant’s suggestion 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.

The applicant’s statement sets out whilst local planning policies are important and relevant considerations they should be given ‘minimal’ weight in the context of smaller sites being more capable of addressing BMV ‘avoidance’ on the basis of scale. We disagree with this; this is nothing in EN1 or EN3 which suggests that avoidance of impacts is any more or less straightforward purely through the need to ‘scale up’ the consideration of alternative sites or alternative site layout options.

The Central Lincolnshire Local Plan policy on BMV land is consistent with the national approach in the EN-1 and 3 policy statements (both March and November 2023) and the December 2023 NPPF.

Indeed, the CLLP policy position is entirely consistent with the current adopted (2011) EN1, which at paragraph 5.10.8 notes that applicants 'should seek to minimise impacts on the best and most versatile agricultural land (defined as land in grades 1, 2 and 3a of the Agricultural Land Classification) and preferably use land in areas of poorer quality (grades 3b, 4 and 5) except where this would be inconsistent with other sustainability considerations'.

As set out above, the revised NPPF also references the need to consider food production impacts, albeit in relation to plan making and site allocations. Nevertheless, the addition of this reference is a step up from the previous NPPF version which was silent on the matter of food production and therefore recognises the government's move towards factoring this matter more explicitly into land use planning principles and the planning balance.

The applicant's note states that poorer quality land has been preferred as justified by the removal of Grade 1 and 2 land, as acknowledged by NKDC and which has 'minimised' the area of BMV land being used through iterative design. As set out in our Written Representation, we welcome the site layout and DCO boundary revision that was made at pre-application stage however we do not agree that this has 'minimised' the area of land being used through design intervention. This is given that we have identified further revisions that could have taken a larger broadly cohesive area of BMV land out of the DCO boundary and further reduced the overall proportions of BMV to non-BMV land with the order limits. However we accept that ultimately it is at the applicant's choice and discretion as to where to draw that boundary in the context of overall scheme energy output and viability.

The applicant also references temporary use of the land by way of mitigation and that as 'the Secretary of State can only consider the application before her and Government policy and the need for renewable energy generation from solar in 40 years' time may be entirely different from today'. We accept this point, suffice to highlight that there is now an increasing presumption (through the December 2023 NPPF and the November 2023 EN1 and EN3 documents) that CNP schemes will be repowered beyond their initial temporary operational period.

In the Council's opinion the references contained in the November 2023 EN statements, allied with the NPPF references to renewable energy scheme repowering serve to blur the lines between the consideration of temporary and permanent effects and the mitigations that need to flow from such schemes. In the context of the reinstatement of agricultural land activities pre-development, it is clearly no longer the case that such land uses will automatically revert from year 40.

The applicant has highlighted that the NPPF does not require active use of agricultural land rather that it is concerned with the protection of soil as a resource and furthermore that Planning Policy Guidance (Paragraph: 002 Reference ID: 8-002-20190721) highlights the importance of soils not just for growing crops but also as a store for carbon and water, and a reservoir for biodiversity and a buffer against pollution.

The point here is that the NPPF promotes the economic and other benefits more broadly of BMV land; including (as validated by the December 2023 version) the role in food production in the overall planning balance.

The applicant references that CLLP Policy S14 'Renewable Energy' provides a presumption in favour of development of ground based solar development on the proviso that, for proposals on BMV land, policy S67 is met. CLLP policy S67 refers to loss of BMV and the applicant then notes that there is no loss and the opportunities for food production and the continuance of the agricultural economy are preserved.

With reference to CLLP policy S67 'Best and Most Versatile Agricultural Land', the applicant suggests that there is no conflict on the basis that the Council has, essentially, misapplied the test in relation to the 'need' for development. The applicant points to the Council's assertion that the application has not established the need to utilise the BMV land, and that this is not the appropriate policy test – the focus being the overall need for the development – not least now in the context of the CNP infrastructure definition contained in EN1 and EN3.

In response, whilst that overall 'need' is not disputed, mindful of the status conferred through EN1 and EN3, the policy needs to be read in its entirety and alongside the preface text, which when taken together highlight that proposals should protect the best and most versatile agricultural land so as to protect opportunities for food production and the continuance of the agricultural economy.

In addition, whilst Policy S14 cross references policy S67, and the need to comply with it, policy S67 taken in isolation is drafted to address the range of development proposals that can come forward under the TCPA 1990 including therefore residential and commercial proposals which do not directly benefit from the 'presumption in favour' (of renewable energy development) conferred by CLLP policy S14 or by the national policy documents referred to.

Clearly, in the absence of this starting position for non-renewables projects there is a greater imperative to have demonstrated that overall 'need' in the planning balance, set against any BMV land impacts and other applicable development plan policies. The Council contends therefore part (a) of CLLP S67, whilst still clearly applicable to these proposals, will likely have more traction and materiality in assessing non-renewable energy development proposals.

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.

The Pegasus Group section of the speaking notes list 10 'beneficial gains' which should be set against BMV impacts and that note states that 'to date the County Council has not concisely stated their position if these benefits outweigh the temporary loss of 3ha of BMV agricultural land'. Whilst this reference is directed more to the County Council rather than District Council nevertheless this is a planning balance which rests with the EXA and the Secretary of State. Whilst the District Council has through its LIR identified a range of positive benefits stemming from the proposals it has invited the decision taker to set these in the context of (in particular) the adverse BMV land impacts that we have identified.

The element of the speaking notes attributable to Tony Kernon of Kernon Countryside Consultants Ltd summarises that local and national planning policy is focussed on the protection of agricultural land as a resource and the opportunities conferred; not its actual use for growing food. The statement notes that current use and intensity does not affect agricultural land grade and that there is no policy requiring land to be actively farmed; nor is there any 'food production' policy. The statement summarises that the 'significant' harm/effect identified by the Councils cannot therefore be based on (planning) policy.

Whilst the statement is correct insofar as it identifies that there is no policy position requiring BMV land to be actively farmed and used for growing food, nevertheless there is a consistency of reference from national to local planning policy which highlights the importance of protecting the best and most versatile agricultural land so as to safeguard opportunities for food production and the continuance of the agricultural economy.

Whilst the December 2023 NPPF (paragraph 124 (b)) notes that undeveloped land, per se, performs a number of roles including for wildlife, recreation, flood risk mitigation, cooling/shading and carbon storage, the paragraph also refers to its use for food production, as does footnote 62 allied to paragraph 181 – which states that 'the availability of agricultural land used for food production should be considered, alongside the other policies in this Framework, when deciding what sites are most appropriate for development'.

Paragraph 2.10.11 of the November 2023 EN3 references the 'Powering Up Britain: Energy Security Plan', which states that the government seeks 'large scale ground-mounted solar deployment across the UK, looking for development mainly on brownfield, industrial and low and medium grade agricultural land' and that the shared use of land 'encourages deployment of solar technology that delivers environmental benefits, with consideration for ongoing food production or environmental improvement'.

	<p>The 'Powering Up Britain...' plan confirms that 'meeting energy security and climate change goals is urgent and of critical importance to the country', and that 'these goals can be achieved together with maintaining food security for the UK'.</p> <p>Noting then that there is no policy position <i>requiring</i> best and most versatile agricultural land to be used for food production, it seems slightly counterintuitive to suggest that in the context of the statements, policy and guidance contained in EN3, the NPPF, the CLLP and 'Powering Up Britain...' the envisaged use of such land for food production is not the primary intention and that wildlife, recreation, flood risk mitigation, cooling/shading and carbon storage uses are to be considered secondary/ancillary.</p>
<p>SE 2.1</p> <p>'The updated outline Supply Chain, Employment and Skills (SCES) Plan [REP3-015] includes provision of an Apprenticeship Scheme amongst other initiatives and commitments, and states at section 3 that a fund to facilitate training and apprenticeships will be provided for the operational lifetime of the Proposed Development, the mechanism for which is to be agreed with NKDC and BBC following determination of the DCO.</p>	<p>Although not specifically stated in the outline Supply Chain, Employment and Skills (SCES) Plan, the Council's understanding is that the proposed funding of £50,000 per annum across the lifetime of the development was calculated based on the precedent example of the Longfield DCO Community Benefit Fund – see www.essex.gov.uk/news/2023/new-large-solar-energy-development-set-essex. A PDF copy of this webpage is appended to this submission.</p> <p>In relation to question 2 the Council has previously highlighted that there is currently no s106 Agreement before the parties nor is there any specific provision in the Revision 5 draft DCO. It is unclear whether the applicant intends to ultimately release these funds to the RPA/s or retain and manage the overall fund 'in house'.</p> <p>Given that this relates to a financial payment/commitment rather than for example submission and approval of a scheme of works, the Council's position is that no payment of money or other consideration can be positively specified (by Requirement) when granting a DCO.</p>

NKDC and BBC are asked to comment on the amendments to the outline SCES Plan including the amount of and approach to the funding for training and apprenticeships.

The Applicant, NKDC and BBC are to clarify:

i) How the proposed funding of £50,000 was calculated.

ii) If the Applicant's proposal for funding can be adequately secured within the outline SCES Plan to be secured by R16, or whether a Section 106 Agreement or similar obligation should be sought and if so, could its agreement be achieved within the Examination period.

However, it may be possible use a negatively worded Requirement to prohibit development authorised by the DCO until, for example, the applicant has entered into a planning obligation requiring either the payment of a financial contribution towards the funding of apprenticeships or an alternative unilateral undertaking mechanism whereby the funds are held and committed by the applicant.

Should the ExA be minded to give planning weight to the proposed funding in the context of socio economic considerations then one of these mechanisms, or a completed s106 Agreement, would need to be reflected in the DCO rather than being concluded separately by a Community Benefit Fund/Agreement.

We are aware that the other RPAs agree with this view and that the applicant has now indicated their intention to pursue a S106 and that all three RPAs would be subject of that agreement given that three RPA parties have an interest with regard to how the funding is spent. As a minimum, the Council hopes to be able to agree Heads of Terms and submit these to the ExA before the end of the Examination and work towards a signed/completed S106 with before the ExAs recommendation report is submitted to the SofS.

For the avoidance of doubt we recommend that that section 3 of the oSCES is amended to confirm that a s106 Agreement will be the mechanism by which the fund will be secured.