



Nationally Significant Infrastructure Project: EN01027

Mallard Pass Solar Farm

**Post Hearing Submission prepared by Lincolnshire County Council
Issue Specific Hearings & Action Point Responses – July 2023**

Introduction

Lincolnshire County Council (“LCC”) attended the Issue Specific Hearings (ISH) held on 11 to 13 July 2023 inclusive. The ISHs were as follows:

- ISH1 – Scope of the Proposed Development, Need, Site Selection and Alternatives
- ISH2 – Environmental Matters
- ISH3 – Draft Development Consent Order

A summary of LCC’s oral representations and response to the Action Points identified at the end of each of those hearings appear below.

ISH1 - Scope of the Proposed Development, Need, Site Selection and Alternatives

Agenda Item	Summary of comments made
3. Scope of the development	<p>The generating capacity of Mallard Pass (350MW) is oversized given the current grid connection agreement (240MW). Whilst LCC accept ‘overplanting’ as a principle for large-scale solar the difference in generating capacity and export is significant. On other NSIP projects battery energy storage (BES) is typically proposed to manage/store any excess energy produced. No BES is proposed at Mallard Pass and so any excess energy produced would be wasted and brings into question why the site needs to be so large.</p> <p>As the project is not proposed to be time-limited future advances in technology could result in increased productivity meaning less space is required to generate the same capacity or more capacity could be created over the same footprint. This could lead to greater surplus energy being wasted or lend a presumption in favour of future subsequent development being either a BES or a future substation Grid Connection upgrade. The scheme should therefore be reduced to more in line with the export connection agreement.</p>
4. Relevant planning policy and decisions	<p>LCC agree NPS’s and draft NPSs should be given primacy over local policies and has agreed with the applicant which Local Plan policies are important and relevant in the site selection process. Refer to the revised SoCG submitted at Deadline 4.</p>
	<p>The recent Longfield decision is important and relevant but this is a time-limited DCO. At Longfield the loss of BMV equates to 0.02% of that in the East of England (SoS letter para 4.57 and EXA report ER.5.7.45) and was deemed acceptable as the DCO was time-limited and so any loss would be temporary. At Mallard Pass a</p>

	<p>time-limit is not being sought and yet the proportion of BMV land lost would be greater than Longfield being cited as 0.052% of that within Lincolnshire & Rutland (cited in Deadline 3 Submission - 9.23 Applicant's Responses to Interested Parties' Deadline 2 Submissions - Land Use and Soils REP3-31). The loss of BMV would therefore be greater than Longfield and, unlike at Longfield, this would be permanent. This is a key difference and so unless a time-limit on the Mallard Pass scheme is imposed then the same balance of weight/arguments applied at Longfield regarding impact and loss of BMV land do not apply. Any DCO should therefore be time-limited in order to ensure this important resource is not permanently lost.</p>
5. Need	<p>LCC welcome a conversation about a community benefits package with all LPAs. Benefits to be delivered through the scheme include the creation of permissive paths and so a mechanism to secure these permanently needs to be provided and assured as part of the DCO.</p>

ISH1 Action Point Response(s)

<p>8. To provide a response to the Examining Authority's First Written Questions, question number 1.3.9, in relation to the site selection process and the local policies that may be deemed important and relevant.</p>
<p>LCC notes the applicant's approach to the site selection process and recognises that this has been influenced taking into account a number of different factors including proximity to a grid connection; minimising impacts on designated sites (e.g. SSSI/Listed Buildings, etc). Whilst LCC agrees National Policy Statements (NPS) and draft NPS's are to be given primacy over local policies the local planning policies that are also deemed important and relevant in assessing the site selection process have been agreed and are confirmed within the latest Statement of Common Ground (SoCG) - refer to the revised SoCG submitted at Deadline 4.</p>

ISH2 – Environmental Matters

Agenda Item	Summary of comments made
4. Landscape and visual effects	<p>LCC generally content with the methodology adopted having been carried out in line with GLIVA3. However, where there are differences these have already been highlighted in the LIR and SoCG as detailed below.</p>
	<p>LCC agree that whilst the majority of the impacts will be apparent from within the 2km study area there could be impacts outside of this zone and the assumption in the LVIA that the effect would diminish quickly beyond the 2km study area needs to be confirmed from site assessments and additional viewpoints - even if just to discount. Although the LVIA is not flawed by the restriction of a 2km consideration (as there are no important receptors omitted from consideration) for transparency and robustness consideration beyond the 2km zone would have been useful so it does weaken the arguments presented.</p>
	<p>Refer to LIR. Concern the term significant not used consistently across all topics/sections of the ES. Within other chapters of the ES Moderate is classed as 'significant' but in the LVIA only Major and Moderate-Major are only considered as significant.</p>
	<p>Whilst the selection of the viewpoints was discussed with LCC during the pre-application consultation stage, these were generalised locations and exact positions not agreed. LCC has concerns that in some instances a more representative view could be obtained in close proximity to that of the selected view (e.g. in some instances views are dominated by hedgerows when a few meters away a wider, more representative view would be possible). This is more about finer grain detail but in some cases could result in more significant impacts than identified. the impacts would be less dominated by hedgerows. Some of the images used in the assessment are of less than ideal quality with dark views rendering it hard to ascertain the finer grain information.</p>
	<p>LCC generally happy with the assumed growth rate applied but do have concerns about the impact of extreme climatic conditions such as really dry springs, etc which could impact upon the establishment and success of planting/mitigation. The Outline Landscape and Ecologist Management Plan could be more detailed at this stage setting out a more robust set of targets and tasks supplemented by a methodology for</p>

	<p>reviewing progress. Even if it is not proposed to include specific plant species at this stage an idea of provenance and mixes rather than just areas of planting would be helpful. Also refer to SoCG (Deadline 4 version)</p>
	<p>LCC supports the principle of replacing historic hedgerows as part of the project but good design should ensure any proposed landscaping augments the existing landscape rather than always simply providing screening. Therefore screening a development is not always the best way to go and planting should be used to augment the area.</p>
<p>5. Ecology and biodiversity</p>	<p>LCC support RCC and others comments that the DCO should include wording that commits to the use of latest version of BNG metric in place at the time of submission of dDCO Requirement 7 and also consideration to increasing % BNG commitment above the minimum 10% currently cited given the large difference in that identified as part of the ES (e.g. 71%). These two measures would give confidence and credence to the BNG benefits claimed to be delivered by the scheme and therefore enable the ExA to attach an appropriate level of weight to this as a potential benefit of the scheme in the planning balance.</p>
<p>6. Land use and soils</p>	<p>LCC notes that reference has been given to the recent Longfield decision as being important and relevant including assessment/consideration to loss of BMV. However, there are key differences between the projects. Longfield would result in the loss of BMV equating to 0.02% of that in East of England (SoS letter para 4.57 and EXA report ER.5.7.45) however the SoS/EXA did, on balance, deem this loss acceptable given it would be temporary and is a time-limited consent. Mallard Pass is not time-limited and the proportion of BMV land loss would be greater than Longfield representing 0.052% of the BMV of Lincolnshire & Rutland (cited in Deadline 3 Submission - 9.23 Applicant's Responses to Interested Parties' Deadline 2 Submissions - Land Use and Soils REP3-031). LCCs view is the loss of BMV from this scheme is greater than Longfield and permanent and so different factors need to be considered and the balance of weight applied is not the same. Furthermore, whilst the applicant will submit the % loss is still small overall, ExA will be aware of the other utility scale solar NSIPs currently being proposed within Lincolnshire and so concerns about the total cumulative loss arising from these projects. This again is a key issue that EXA need to consider rather than in isolation.</p>

	<p>It has been deemed appropriate to time-limit of solar DCOs resulting in the loss of BMV as a means to mitigate/ensure any impacts are temporary and therefore acceptable, if the ExA were minded to approve the Mallard Pass scheme (despite the higher area of BMV lost) we would suggest this should also only be for a time-limited period in line with other utility scale solar DCOs</p>
<p>9. Highways and Access</p>	<p>LCC welcome applicants offer to review/update CTMP to identify exact time HGVs would be restricted from passing through the village en-route to the site so as to further ensure no overlap.</p>
<p>11. Cultural heritage – also see summary attached as Appendix A.</p>	<p>Insufficient evaluation has been carried out to inform an appropriate mitigation strategy. The definition of field evaluation is to determine the presence or absence of archaeology, to define their character extent, quality preservation, and enable an assessment of their significance. An evaluation Written Scheme of Investigation was produced for which the methodology was agreed with the applicant but the trenching percentages and trenching plan have not. LCC maintain more evaluation is required before an appropriate mitigation strategy can be agreed.</p> <p>There is no guidance that sets out or prescribes what % trenching is reasonable however for every other NSIP that LCC is currently dealing with the promoters have agreed to 2% trial trenching following a comprehensive geophysical survey. When asked at a recent meeting of the East Midlands Association for Local Government Archaeological Officers the general consensus was that trenching of between 2-3% of the impact zone was considered reasonable following a comprehensive geophysical survey. The trenching results carried out so far for this programme have identified that archaeology can be 30cm from the current ground surface and so there's not a lot that could happen that wouldn't potentially have an impact on the archaeology. Whilst trenching in some limited areas has been between 2% and 5%, this has only been in areas where archaeology has been identified as highly likely and so results in confirmation bias. We still however have huge 'blank' areas and we have found from other sites that the non-intrusive surveys and the desk based assessments haven't identified significant archaeology and it's only through the trenching process where we have got a full picture of the archaeology and what the impact can be. Therefore without a greater density of trenching, including across blank areas, we can't have an informed mitigation strategy.</p> <p>If further evaluation it not carried out up front (i.e. pre-determination) and is instead left to be dealt with as a DCO Requirement, then the significance of any impact is not known and this potentially limits the mitigation options and also has wider implications of the scheme. For example, without sufficient evaluation</p>

	<p>or understanding up front then the ability to design out or mitigate impacts by reducing the Order Limits or altering the design and layout of the scheme would be lost (i.e. to exclude areas from development to secure preservation in situ, etc).</p>
	<p>Awaiting a copy of the outline Written Scheme of Investigation which will need to identify mitigation strategy. This document will need to be more than just a high-level document listing various mitigation options and instead but instead be a site specific mitigation strategy such as that agreed at the Gate Burton NSIP scheme which includes defined geographical mitigation areas for the full extent of the impact zone and identifies what mitigation would employed in those areas.</p>

ISH2 Action Point Response(s)

<p>1. Updated Statements of Common Ground (SoCG), including principal areas of disagreement</p>
<p>LCC will continue to work with the applicant to update the SoCG throughout the Examination period. Refer to the latest version submitted by the applicant at Deadline 4.</p>
<p>6. Review and provide any relevant comments on Design and Access Statement Design Guidance.</p>
<p>The DAS is theory heavy although the intentions are adequate both in regards protecting the existing landscape structure and addressing mitigation. At this stage more detail should be provided to show how the goals and objectives will work. The indicative cross-sections within the DAS are useful, but at this stage they would have been more useful if supported by a detailed landscape masterplan. Representations have been made by others highlighting the potential impact of mitigation planting and risk of creating an oppressive environment for PRow users and the detail at this stage is too vague to satisfy these concerns fully (see also comments below in response to Action Point 23).</p> <p>The submission mentions aspects such as bird and bat boxes and (as referenced in the LIR), LCC feels that the numbers are too limited given the scale of the development. It would be useful to engage in consultation to develop the objectives into real interventions so that fears of oppressive mitigation can be addressed.</p> <p>We do think the construction impacts on vegetation loss have been under-estimated and the reinstatement of these areas would be of importance.</p>

18. Detailed position statements on matters concerning archaeological evaluation and mitigation (may be included within SoCG)

Will be provided by Deadline 5

23. Further comments on the effect of proposed planting adjacent to the PRoW

The 15m set back is a good distance to prevent mitigation planting from enclosing routes too oppressively, however, as mentioned previously this would depend a lot on the type of species used and the overall quality of the design. At this stage, the detail of planting is too vague in terms of species mixes and accurate location, etc. More detail is required to enable an accurate judgement of impact to be given. Framed views across the landscape should also be encouraged rather than continuous hedges of the same height and in straight lines.

ISH3 Draft Development Consent Order

Agenda Item	Summary of comments made
4. Articles	
Article 2 – Interpretation	<p>LCC would recommend the definition of “maintain” be amended to exclude any works which may give rise to materially new or materially different environmental effects to those assessed as part of the original ES or subsequent approved DCO Requirements.</p> <p>LCC would request inclusion as a named “relevant planning authority” given its expertise in areas relating to various requirements, specifically in relation to highways and rights of way and in particularly in relation to archaeology or as a minimum referenced in specific requirements as a specified consultee – see also Schedule 2 Requirements</p> <p>Further comments and suggested revisions to wording of the draft DCo are provided separately.</p>
Articles 6 & 9	Discussion on going and will be clarified in future SoCGs
Article 12 – Claimed public right of way	LCC’s PROW Team has not seen this mechanism being used before and so is unsure at this stage whether it is legally possible to simultaneously record and extinguish a DMMO route. The ExA will therefore need to satisfy themselves that the proposed approach to adopt and extinguish the DMMO is something that is feasible/achievable legally through the DCO.
Article 17 – Removal of human remains	No specific comments on the drafting but as stated at ISH2, a wider concern has been raised regarding the lack of sufficient pre-determination evaluation or an agreed mitigation strategy. LCC question how the developer would know that there would be an impact on human remains if these have not been identified through evaluation and as such when the provisions of this Article would take effect.
6. Schedule 2 – Requirements	LCC considers it should be identified as a “relevant planning authority” particularly in relation to Requirement 10 or at the very least identified specifically as a named consultee in the same way as other statutory consultees have been (e.g. Historic England, Environment Agency, etc).

	Further comments and suggested revisions to wording of the draft DCo are provided separately.
11. Schedule 16 – Procedure for Discharge of requirements	<p>LCC considers a longer timeframe than 6 weeks is necessary. In our previous response to ExAQ1 we indicated a timeframe of 8 weeks however at Longfield the timeframe is 10 weeks and so would agree with SKDC that this be the same for Mallard Pass.</p> <p>LCC note the applicant intends to agree a graduated fee arrangement outside the DCO however we maintain a provision should remain within the DCO in line with Advice Note 15. This gives certainty to LPAs that the fees will be paid and not be subject of a separate agreement.</p> <p>Further comments and suggested revisions to wording of the draft DCo are provided separately.</p>

ISH2 Action Point Response(s)

9. Provide any further comment on Schedule 16 – Procedure for Discharge of Requirements
See updated SoCG and separate submission setting out suggested revisions to drafting of the dDCO Schedules and Requirements.

Appendix A - Written summary for Cultural Heritage section from Jan Allen, Historic Environment Officer (Lincolnshire County Council)

- There needs to be enough evaluation to inform the mitigation strategy and currently there isn't.
- Every other NSIP in Lincolnshire has agreed to 2% trenching following a comprehensive geophysical survey to inform that trenching programme. There is consensus in the East Midlands Association for Local Government Archaeological Officers of between 2 and 3%.
- Evaluation trenches need to cover known and suspected areas of archaeology and also the so-called "blank" areas because there will be archaeology which is not picked up in other evaluation techniques, for example burials do not show up in geophysical survey and in cropmarks later activity may mask earlier surviving archaeology.
- On another NSIP unexpected Saxon skeletons were found within 20cm of the ground surface, so our concern is that currently there will be unidentified unexamined archaeology which will be damaged or destroyed by the development process.
- Surviving archaeology may be damaged or destroyed by ground disturbance including 2.5m spikes, shoes, associated infrastructure and proposed mitigation measures such as scrapes and wildlife ponds as well as potential for compaction throughout construction and decommissioning.
- We are guided by our professional Chartered Institute for Archaeology (CIfA) Guidance and Standards, their definition of a field evaluation is ***'to determine the presence or absence of archaeology, to define their character, extent, quality and preservation, and enable an assessment of their significance.'***
- I agreed that in those areas where Mr. Sutton did trenching it was between 2% and 5%. In those parcels, the trenching was very useful and helps in terms of moving these areas forward.
- But there will be confirmation bias where you're only looking at where you already know those things. We have very large areas which have not been investigated in terms of ground-truthing.
- In terms of project management and risk management this defers a high level of risk to the developer in a post-consent situation of dealing with unexpected archaeology while the work programme has already commenced.
- An example is Heckington Fen, another Lincolnshire NSIP currently in evaluation phase, virtually all of the significant areas of archaeology were found by trenching.
- Mitigation requires sufficient baseline evidence for site-specific mitigation measures to be deployed effectively in an appropriate and reasonable way. This is currently not possible where trenching has not been undertaken across the impact zone.
- Otherwise we're just agreeing that there are methods of archaeological mitigation but it doesn't apply in any concrete way to the scheme.