

National Significant Infrastructure Project EN01027

Mallard Pass Solar Farm

Rutland County Council Comments of Draft Development Consent Order

July 2023

Rutland County Council (RCC) attended the Issue Specific Hearings (ISH) held between 11 and 13 July 2023. At the ISHs the ExA invited written comments on the suggested drafting of the articles and requirements of the draft Development Consent Order (dDCO). Below are RCC's comments at this stage. RCC have not had time to incorporate them into the current version of the draft Statement of Common Ground (dSoCG) but these will be incorporated into future versions.

Article 2 – Interpretation

“maintain” includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part of, but not remove, reconstruct, replacement including replacement of large sections of solar panels, replace the whole of, the authorised development to the extent that such works do not give rise to any material new or different environmental effects than those identified in the environmental statement and “maintenance” and “maintaining” are to be construed accordingly,;

Explanatory note / Reason:

The Council is concerned that the wording as originally drafted is too vague and could allow for the whole scale replacement of the development at some point in the future so long as one small element remained unchanged. This could result in environmental impacts that have not been considered as part of the examination process.

Schedule 2 Requirements

Phasing of the authorised development and date of final commissioning

3.—(1) No part of the authorised development may commence until a written scheme setting out the phase or phases of construction of the authorised development has been submitted to and approved by the relevant planning authorities.

(2) The scheme submitted pursuant to sub-paragraph (1) must include a timetable for the construction of the phase or phases of the authorised development and a plan identifying the phasing areas.

(3) The scheme submitted and approved pursuant to sub-paragraph (1) must be implemented as approved.

Explanatory note / Reason:

So that the phasing areas are clearly identified.

Landscape and ecology management plan

7.—(1) No phase of the authorised development may commence, and no part of the permitted preliminary works for that phase comprising vegetation removal may start, until a landscape and ecology management plan (which must be substantially in accordance with the outline landscape and ecology management plan) has been submitted to and approved by the relevant planning authority for that phase or, where the phase falls within the administrative areas of both the District of South Kesteven and the County of Rutland, both relevant planning authorities, following consultation with Natural England.

(2) The landscape and ecology management plan must include details of all proposed hard and soft landscaping works and ecological mitigation and enhancement measures (as applicable for the relevant numbered work) for that part and where applicable include for that part:

(a) the location, number, species, size and planting density of any proposed planting including details of any proposed tree and hedgerow planting and the proposed times of such planting;

(b) any hedgerows proposed for removal that are not shown on the hedgerows plans;

(c) cultivation, importing of materials and other operations to ensure plant establishment;

(d) existing trees to be retained;

(e) an implementation timetable;

(f) how the plan proposals will contribute to the achievement of a minimum of **60%** biodiversity net gain for the whole of the authorised development during the operation of the authorised development;

(g) how the landscaping and ecological measures proposed in the plan will be managed and maintained during the operational life of the authorised development to the date on which the decommissioning environmental management plan is implemented pursuant to requirement 18 (decommissioning and restoration);

(h) the ecological surveys required to be carried out prior to commencement of a numbered work, or following completion of a numbered work in order to monitor the effect of, or inform, the ecological mitigation measures and the monitoring regime to be taken forward following those initial surveys; and

(i) the final routing, specification and maintenance regime for each permissive path.

(3) Any hedgerow, shrub or tree planted as part of the approved plan that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority (as applicable), seriously damaged or diseased, must be replaced in the first available planting seasons with a specimen of the same species and size as that originally planted.

(4) Each landscape and ecology management plan approved under sub-paragraph (1) must be implemented as approved and maintained throughout the operation of the relevant phases of the authorised development to which each plan relates.

Explanatory note / Reason:

To ensure that a satisfactory level of BNG is achieved as indicated on the supporting statements.

Archaeology

10.—(1) No phase of the authorised development may commence, and no part of the permitted preliminary works for that phase may start, until a Written Scheme of Investigation for that phase has been submitted to and approved in writing by [Lincolnshire County Council](#) where the phase falls within the administrative area of the District of South Kesteven, or where the phase falls within the administrative area of both the District of South Kesteven and the County of Rutland, [Rutland County Council and Lincolnshire County Council](#), such approval to be in consultation with Historic England.

(2) The approved scheme must— (a) identify areas where archaeological work is required; and (b) the measures to be taken to protect, record or preserve any significant archaeological remains that may be found.

(3) Pre-construction archaeological investigations and pre-commencement material operations which involve intrusive ground works may take place only in accordance with a approved Written Scheme of Investigation and any archaeological works must be carried out by a suitably qualified and competent person or body previously notified to the relevant planning authority.

Explanatory note / Reason:

The information currently submitted in relation to archaeology is not considered sufficient to enable the authority to identify and mitigate all of the potential impacts to archaeological remains that may be found on site.

Decommissioning and restoration

18.—(1) Decommissioning of the authorised development must commence no later than 40 years following the date of final commissioning of the authorised development.

(2) Within 12 months (or such longer period of time that may be agreed with the relevant planning authority) of the date that the undertaker decides to decommission any part of the authorised development the undertaker must submit to the relevant

planning authority for that part (or both relevant planning authorities where that part falls within the administrative areas of both the District of South Kesteven and the County of Rutland) for approval, in consultation with the Environment Agency, a decommissioning environmental management plan for that part.

(3) The plans submitted and approved must be substantially in accordance with the relevant part of the outline decommissioning environmental management plan.

(4) No decommissioning works must be carried out until the relevant planning authority or both relevant planning authorities (as applicable) has/have approved the plan submitted in relation to such works.

(5) The plan submitted to and approved pursuant to sub-paragraph (1) must be implemented as approved for the works required to decommission that phase of the authorised development.

(6) This requirement is without prejudice to any other consents or permissions which may be required to decommission any part of the authorised development.

Explanatory note / Reason:

RCC Considers that the DCO should be time limited in order to provide certainty to the local community in terms of the overall restoration of the site.

It is also considered that in addition to the above comment the wording requires additional amendment in order to ensure the time limit for implementing the agreed restoration scheme which is currently unclear.

In addition it is considered that the information to be submitted as part of the decommissioning should also include reference to recycling the solar panels in an off-site location.

Schedule 16 – Procedure for discharge of requirements

Applications made under requirement

2.—(1) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement the relevant planning authority must give notice to the undertaker of its decision on the application within a period of **Thirteen** weeks beginning with the later of—

(a) the day immediately following that on which the application is received by the authority;

(b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 3; or

(c) such longer period that is agreed in writing by the undertaker and the relevant planning authority

(2) Subject to paragraph 4, in the event that the relevant planning authority does not determine an application within the period set out in sub-paragraph (1), the relevant planning authority is to be taken to have granted all parts of the application (without any condition or qualification) at the end of that period **with the exception of applications seeking discharge of items relating to Contamination, Archeology,**

Highway Safety and Flood Risk where the application shall be deemed to have been refused.

(3) Any application made to the relevant planning authority pursuant to sub-paragraph (1) must include a statement to confirm whether it is likely that the subject matter of the application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement and if it will then it must be accompanied by information setting out what those effects are.

(4) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement included in this Order and the relevant planning authority does not determine the application within the period set out in sub-paragraph (1)—

(a) And the application is accompanied by a report pursuant to sub-paragraph (3) which states that the subject matter of such application is likely to give rise to any materially new or materially different environmental effects compared to those in the environmental statement; or

(b) The relevant planning authority considers that the subject matter of such applications will give rise to any materially new or materially different environmental effects compared to those in the environmental statement, then the application is to be taken to have been refused by the relevant planning authority at the end of that period.

Explanatory note / Reason:

Many of the items been left for discharge by the Council are significant, for example the substation. This is the equivalent of a major application in its own right and will require consultation and referral to a meeting of the Planning Committee. Committee meetings only take place once a month and in order to allow sufficient time for consultation and then incorporating these into a committee report it is considered that a period of 13 weeks is reasonable. The Council would consider a range of time periods depending on the item been discharged so if it was a relatively minor item the time frame could be reduced from 13 weeks to 8 weeks for example agreement of boundary treatments.

It is also considered that the application to discharge should not automatically be approved in all cases. This could lead to unacceptable environmental impact occurring on the bases that the Council procedurally fails to meet deadline. It is considered that items relating to Contamination, Archeology and Highway Safety and Flood Risk should not be automatically approved.

Schedule 16 General Note:

It is considered that Schedule 16 should have a requirement relating to fees for the discharge of information. The Council is currently in discussions with the applicant

about this point and that a fee schedule may form a separate document. Notwithstanding this it is still considered appropriate for a reference to be made within the DCO itself.

Comments on Outline Construction Environmental Management Plan (oCEMP)

2.7 Working Hours

The Council has already made comments to the effect that there should be no working on Saturdays as well as Sundays (see previous comments in RCC LIR)

General Comments

Wheel Washes should be located at the primary compound access and at the access of secondary access compounds. Precise details of the wheel washing facilities should be agreed by RCC prior to installation.

Comments on Outline Construction Traffic Management Plan (oCTMP)

4 Staff and Parking

The CTMP will need to include details for the staff parking provision at both the primary and secondary construction areas. Whilst it is accepted that some staff will be transported to the sites it is considered that there will be need for some parking at all temporary construction areas.

Comments on Outline Landscape and Ecology Management Plan (oLEMP)

3.1.3 Objective 1 – Protect and enhance the biodiversity of the Order limits.

This section indicates a minimum Biodiversity Net Gain (BNG) of over 10% this should be increased to 60%.

RCC Highway Authority Comments:

In addition to the above point RCC as Local Highway Authority (LHA) would like to make the following comments on the Draft Development Consent Order (dDCO) (Clean) Deadline 3 (29th June 2023) Document Ref EN010127/APP/3.1.3 :-

The main areas of concern are the lack of provision for the off-site highway works to be assessed and controlled under Section 278 of the Highways Act 1980; the lack of detail relating to the off-site highway works and on-site parking and turning provision

within both the primary and secondary sites; and the lack of adequate wheel wash facilities within both the primary and secondary sites. However, the following is a list of all the LHA's concerns:-

Article 5 Power to maintain authorised development.

Contents noted, however the LHA would be concerned about the impact of wholesale replacement (which is highly likely given no defined end date), which could be significant and not dissimilar to the initial construction. Furthermore, the word 'maintain' in the Interpretation section specifically excludes the reconstruction or replacement of the whole authorised development, which could be all but one panel.

Article 6 Application and modification of statutory provisions

Contents noted, however the LHA request that all off-site highway works under Section 278 of the Highways Act 1980 are similarly excluded from this dDCO to ensure all works are completed to an acceptable standard and the Council's fees for carrying out such are covered.

Likewise, all Streetwork applications for road space bookings, temporary traffic management and Section 50 licences for utility works should be excluded from the dDCO to ensure that the works are suitable and can be programmed in by the Streetworks Team to avoid any conflict with other work on the highway network.

Article 8 Street Works

As mentioned above, the LHA are concerned about the dDCO allowing any streetworks to take place without the above-mentioned processes followed. The level of detail required is not contained within the application, so an assessment on the acceptability and scheduling cannot be made at this time. Furthermore, any street works would require Rutland and Lincs to assess road booking to ensure these works are carried out at a suitable time and do not conflict with other work on the network.

Article 9 Power to alter layout, etc of streets.

This part appears to remove the requirement to enter a Section 278 Agreement under the Highways Act 1980, for any temporary or permanent highway works, which is not acceptable to the LHA. There is insufficient information and detail within this application that would allow the LHA to accept highway works without further detail, under Section 278 of the Highways Act 1980. A provision must be included within the

dDCO to ensure the applicant submits an application under Section 278 of the Highways Act 1980 to allow the LHA to technically review the detail and inspect the highway works throughout. Furthermore, the LHA must have the ability to require remedial works where necessary and charge a fee to cover the associated costs of the application/s.

Article 10 Construction and maintenance of altered streets

Noted that there is provision for the works to be completed to the 'reasonable satisfaction' of the street authority, but it does not stipulate how the street authority will ensure this. Any works within the existing public highway will require technical review, vetting, site inspections and some form of certification process and the authority will require a fee to cover the costs. How will this provision be made?

Article 10 (1) - The LHA note the provision for 12 months maintenance, but there is no provision for pre-maintenance or pre-adoption inspections or to allow the LHA to require any remedials if the work carried out does not meet the required standard.

Article 10 - The wording 'reasonable satisfaction' is used throughout. The LHA respectfully request the removal of the word 'reasonable' on the basis that this is vague and open to significant interpretation or mis-interpretation and ultimately disagreement between the applicant and the LHA.

There also doesn't appear to be any timeframe for the delivery for when the off-site highway works must be completed by. The off-site highway works must be completed prior to commencement of development to ensure the highways are suitable to take the proposed construction vehicles. Article 10 should include this and an additional requirement should also be added to Schedule 2.

Article 11 Temporary stopping up of and permitting vehicular use on public rights of way

No provision for consultation with authorities, parish councils, affected residents. No schedule and no notice periods for advertising.

Article 12 Claimed public right of way

Only mention of County of Lincolnshire, no reference to County of Rutland.

Article 13 Access to works

Whilst reference is made to approval with relevant planning authority after consultation with the highway authority, this does not appear to allow for a formal review under S278 of the Highways Act 1980 as would be the normal requirement, together with associated fees.

Article 14 Agreements with street authorities

Article 14 (1) - Is this essentially allowing a Section 278 application? If this is the case, the LHA are concerned with the word 'may' and respectfully request that this is changed to 'must'. In the event this is changed, many of the other comments made by the LHA in relation to the lack of any provision for a formal Section 278 application will be resolved.

Article 14 (2) - This option would not be considered by Rutland County Council as the authority do not have the capacity or the desire to carry out these works. Should Lincolnshire County Council be of the same opinion, this Article could be removed in entirety.

Article 15 Traffic regulation measures

Contents noted, no comment.

Article 16 Discharge of water

This Article does not have any provision for ensuring surface water does not enter the public highway over land, for instance over the newly hardsurfaced areas such as the new vehicular accesses. Whilst it is acknowledged this element would be covered under the Highways Act 1980, could an informative be added reminding the applicant of this requirement.

Schedule 1

Para 1 Like many other documents 'mounting structure' refers to both piles and concrete foundations as a form of fixing the frames. As mentioned within the last hearing, should concrete foundations be used, these would have a significant impact on how surface water drainage acts and should be considered and modelled in greater detail before a decision is made.

Work No.6 works to facilitate access to Works Nos. 1 to 5 including

There is no mention of the off-site highway improvement works, specifically junction improvement/widening works x 3 and passing bays along Uffington Lane. Is this because it is covered by further Schedules?

Schedule 2

Requirement 6 Detailed design approval

The sub-list does not include the detailed design any of the off-site highway works.

In respect of detailed design of the off-site highway works, would this be akin to the level of detail required for a Section 278 application under the Highways Act 1980. And, if so, how will the LHA be reimbursed for the associated fee if a separate Section 278 application is not required (as currently indicated within this dDCO)?

sub-list (g) - It is not clear what the level of parking will need to be at this stage. Various documents refer to 150 car parking spaces on the principal site, but there is also reference made to potentially 400 staff at any one time, which is likely to require far more parking than 150 spaces on the principal site. Furthermore, there will need to be sufficient parking on all secondary sites too, although due to a lack of information it is not clear at this stage what that level of parking will need to be. The LHA are of the view that once a phasing plan/programme of works is submitted and approved, this will help identify the level of parking required throughout the lifetime of the construction phase.

Requirement 13 Construction traffic management plan

Requirement noted. The LHA note that the current Construction Management Plan (oCMP) is an outline document and expect an updated and fully detailed version to be submitted for approval by the Local Planning Authority. Is this understanding correct?

In terms of the details within the current oCMP, the LHA are not satisfied that the current description of the wheelwash is adequate and request that the oCMP be updated to show a fully jetted drive-thru wheelwash system and a traffic management system forcing all outbound vehicles to pass through said wheelwash facility. There is no mention of any wheelwash facilities on any of the secondary compounds, which the LHA object to. Due to the nature of these developments on agricultural land and the types of vehicles that will be entering and exiting the sites, it is considered essential by the LHA that all accesses to all compounds have a

wheelwash facility. A fully jetted drive-thru style wheelwash must be installed on all secondary compounds together with hard standing between the wheelwash facilities and the public highway for the duration of construction work on that area/phase of works. Wheelwash provision will also be required for decommissioning and any wholesale replacement on the site.

Requirement 18 Decommissioning and restoration

The decommissioning stage will require a full Transport Assessment based on the current highway network at that time. Could this provision be included within Requirement 18?

Additional Note on Requirements

There appears to be no provision or requirement for wholesale replacement of the equipment. Like the decommissioning stage, a full Transport Assessment would be required in order to assess the impact on the surrounding highway network.

Schedule 5 Part 2 Alteration of Streets

The LHA are of the view that if this development is permitted, the provision of the passing bays should remain a permanent feature rather than removing them and reconstructing them again for the decommissioning period and removing them and potentially again if wholesale replacement is required. Whilst the LHA acknowledge there will be a negative impact to the verge ecology initially, leaving the passing bays in-place will reduce the negative impact of removing them and reconstructing them for the decommissioning stage and potentially when a wholesale replacement is carried out. This will also have a cost benefit to the developer and users of this part of the public highway will have more potential passes places when approaching other large vehicles like farm vehicles. As such, the LHA respectfully requests that these items become permanent alterations under Part 1 of Schedule 5 if you are minded to approve this application.

Likewise with the junction improvements, listed as the last two items in this section, there is no reason why these works cannot remain in place permanently, which would avoid the need for removal and re-installment for both decommissioning and when/if wholesale replacement is carried out. So, again the LHA respectfully request that the junction widening/improvement works be made permanent under Part 1 of Schedule 5, if you are minded to approve this application.

However, if you are minded to leave these features as temporary, there would need to be a trigger point for their removal and re-installment prior to decommissioning / any wholesale replacement, and a further removal point.

Schedule 7 Access to Works

Each of the items listed refer to 'The provision of a *permanent* means of access...'. The LHA remain confused about whether this development is for 40 years as stated in some documents or whether this is a permanent development. Assuming this development will have an end of life, the provision of some of the accesses may need to temporary in nature unless they will continue to be used as field accesses post decommissioning.



Rutland
County Council

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