

Nationally Significant Infrastructure Project: EN01027 Mallard Pass Solar Farm

Post Hearing Submission prepared by Lincolnshire County Council Issue Specific Hearings & Action Point Responses – October 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:

- ISH4 – Environmental Matters Scope of the Proposed Development, Need, Site Selection and Alternatives
- ISH5 – Environmental

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

ISH4 – Environmental Matters

Agenda Item	Summary of comments
4. Matters relating to the scope of the Proposed Development	<p>(b) LCC would agree given the response provided by NGET in response to EXQ2 1.0.8 [REP5-34] clarification needs to be provided as to whether the grid connection agreement offered to connect to the Ryhall substation will require further works to be carried out. If so, details should be provided on:</p> <ul style="list-style-type: none">• what these are likely to entail (even if only indicative);• whether these can be accommodated within the substation footprint;• confirmation on whether these would require further consents/approvals;• an assessment/consideration of what the in-combination and cumulative effects of these might be. <p>It needs to be clear that a ‘Change Application’ to the current DCO is not necessary in order to accommodate any further works otherwise this has implications on the delivery of Mallard Pass project within the in timeframe committed.</p>
5. Water & Flood Risk	<p>(a) LCC would submit that FRA assumed 40 yr operational life not 60 yrs so would suggest any time-limit being proposed should therefore reflect the 40 yrs assessed to date in the absence of further information.</p> <p>(b) LCC is satisfied about the approach taken in respect of the application of the sequential and</p>

	<p>exception tests given the vast majority of the site lies within FZ1 with only a very small part within FZ2 which is not considered significant.</p> <p>(c) LCC has reviewed the updated outline surface water drainage management and water management plans and confirms these are acceptable at this stage accepting final plans will be a DCO Requirement.</p>
<p>6. Archaeology</p>	<p>a & b) The Outline Written Scheme of Investigation [REP5-075] is not agreeable in its current form. Although the oWSI suggests that further trial trenching could be undertaken pre-construction and site specific WIS's submitted and agreed with the LPAs, paragraph 3.2 of the oWSI states that trenching will not be used in areas where activities involve piling as such works are likely to avoid all or any surviving remains. LCC has explained in earlier submissions why we disagree with this sweeping assumption and why additional trenching is needed. Although it was confirmed by the Applicant at the ISH that paragraph 3.7 of the oWSI is to be removed, the current oWSI is still not acceptable because the effect of paragraph 3.2 essentially rules out any possibility of further trenching being carried out across the PV array areas - which are a large proportion of the site.</p> <p>Consequently, the Council's position remains as stated in response question Q5.2.5 of our response to the ExAs second set of written questions [REP5-019] in particular in respect of alternative drafting for Requirement 10 given the absence of a sufficient WSI at this stage.</p>
<p>7. Land use and Soils</p>	<p>b) LCC advised that we will review the latest versions of the oLEMP and oOEMP and provide feedback but would like to see more certainty about the mechanism to secure sheep grazing given this is being offered as a 'benefit' to the scheme and as such needs to be confident this can be secured in order to be afforded appropriate weight in the planning balance.</p>
<p>8. Landscape and Visual</p>	<p>b) LCC maintain it would be beneficial to clarify if security fencing is required as opposed to deer fencing recognising the design parameters set heights etc because they are visually different and distinct and so the concern is that if the decision is taken to install security fencing at DCO Requirement stage then could be considered likely to given rise to materially different effects and therefore potential rejection of those schemes . The lack of need for security fencing</p>

	therefore assumes other security measures such as CCTV are effective.
9. Biodiversity and ecology	b) LCC welcome the revisions made to the Requirements 5 & 7 in respect of increase and commitment to higher BNG % and recognise and will be a benefit of the scheme which can be afforded great weight in the planning balance
10. Transportation and traffic	b)(ii)LCC agreeable to the revisions made in the updated oCTMP and will seek to confirm in amended SoCG. c) LCC agreeable to the revisions made in the updated oOEMP with regard capping the number of HGV movements to no more than 5 daily in connection with maintenance.
11. Socio-economics	a) LCC will review management plans and update SoCG in light of the DL6 versions of documents. As confirmed in our response to the ISH4 Action Point 22 the width of PRoW and Bridleways should be increased to 2m and 3m respectively and therefore the current wording contained within the oOEMP updated.

ISH5 - Environmental Matters & Draft Development Consent Order

Agenda Item	Summary of comments
4. Articles	
Article 2 – Interpretation	LCC agreeable to revised definition of maintain especially when taking into account control in OEMP re HGV movements and welcome suggested agreement that LPA will be able to approve (in the sense of confirm) that the maintenance schedule does not give rise to materially different effects. The sub-agreement within the OEMP would then follow process under Schedule 16.
Articles 9, 10 & 13 – power to alter layout, etc of streets / construction and maintenance of altered streets	LCC advised that we have yet to see the proposed side agreement however in the absence of this are content with the revised wording of the dDCO submitted at DL5 which has been updated to confirm that the powers conferred cannot be exercised without the consent of the street authority and that

	<p>such consent is to be in a form reasonable required by the street authority. This therefore provides LCC with sufficient comfort those works cannot take place until some form of agreement is secured whether this be via the side agreement or not.</p>
<p>Article 11 – Temporary stopping up of and permitted in vehicular use on public rights of way</p>	<p>LCC confirmed this Article is agreed but requested clarification on how sub-agreements/approvals relating to PRow or permissive path closures or diversions as referenced in Table 3-4 of the oOEMP would be processed. For example, would these sub level agreements follow the same approval route as DCO Requirements under Schedule 16 or the route for certain other approvals under Part 6, Article 43?</p> <p>It is recommended that the wording of the within this table be amended to make this clear. Suggested drafting could read:</p> <p><i>The detailed OEMPs will require that if at any time in the operational phase, the existing PRow or new permissive paths need to be diverted or temporarily closed to facilitate maintenance activities, this will require approval of the local planning authority. Such approval will be sought and processed in accordance with the provisions of Schedule 16 (or) Part 6, Article 43 of the Development Consent Order.</i></p> <p>This is only likely to be required for a limited number of temporary PRow diversions to allow the potential for access tracks to be repaired where they cross PRow. The PRow and diversions will be managed throughout the repair work to ensure that they can continue to be used safely.</p> <p>The existing PRow will be reinstated when repairs to access tracks have been completed, albeit public access will be retained throughout as a result of the PRow diversions. The minimum legal PRow widths of 2m for footpaths and 3m for bridleways will be maintained.</p> <p>The proposed internal access tracks will cross the following PRow within the Order Limits:</p> <ol style="list-style-type: none"> a. Bridleway E169/1 b. Bridleway BrAW/1/1 <p>Should a diversion be required it will be clearly marked out, along with appropriate signage at either end of the diversion which will take the most direct route possible. The diversion routes will be agreed with the relevant local authority <i>with such approval will be sought and processed in accordance with the provisions of</i></p>

	<i>Schedule 16 (or) Part 6, Article 43 of the Development Consent Order.</i>
Article 12 - Claimed public right of way	LCC content with provisions in general and agreed to submit some suggested revised wording to dDCO Art 12 to the Applicant in advance of DL7 for consideration and inclusion in revised dDCO. Will also seek to include reference in the SoCG to confirm whether any revise drafting is agreed or not.
6. Requirements	<p>As identified in REP[4-044] it would be preferable for LCC to be named as a “<i>relevant planning authority</i>” and therefore the discharging authority for requirements in relation to highways and rights of way and archaeology. However, as this has not been agreeable we welcome the revised wording of Requirements 7, 8, 11, 12 and 18 which make clear that Lincolnshire County Council is now at least a specified consultee.</p> <p>LCC disagree with the drafting for Requirement 10. As per comments above (made in relation to Agenda Item 6 of ISH4) the Council’s position remains as stated in response question Q5.2.5 of our response to the ExAs second set of written questions [REP5-019] in particular in respect of alternative drafting for Requirement 10 given the absence of a sufficient WSI at this stage.</p> <p>LCC confirmed we will review drafting of all requirements and aim to update and clarify position in an updated SoCG at DL7/DL8.</p>
9. Procedure for discharge of requirements	<p>LCCs position regarding the timeframe for discharge of requirements remains unchanged from that set out previously – i.e. we maintain this should be 10 week for all requirements especially given the need to carry out consultation with interested parties on these requirements. A longer period therefore would allow sufficient time for this. Like the Applicant, LCC position on this matter is unchanged and therefore will for the ExA and the SoS to decide as parties cannot agree.</p> <p>Regarding fees it is noted that the dDCO submitted at DL5 now includes reference to fees. This is welcomed but the fee amount proposed will need to be reviewed and LCC will provide comments on this (along with any suggested revised wording) through an updated SoCG.</p>

Actions

ISH4 (Day 1) – Environmental Matters

Action Point 9 - LCC has reviewed the updated outline surface water drainage management and water management plans submitted at DL6 and can confirm these are acceptable at this stage accepting final plans will be a DCO Requirement. However, please note it is intended to update the SoCG once final versions of all outline management plans have been submitted at DL7 and LCC will endeavour to review any updated drafting and respond substantively on all changes within the SoCG to be submitted at DL8.

ISH4 (Day 2) – Environmental Matters

Action Point 4 – LCCs position remains as stated in response question Q5.2.5 of our response to the ExAs second set of written questions [REP5-019] and in particular in respect of alternative drafting for Requirement 10 given the absence of a sufficient WSI at this stage. On the basis that this drafting were to be adopted then LCC would suggest that the drafting of Requirement 6 could simply be updated to read as follows:

*(2) The details submitted must accord with the design guidance and the parameters and with any details approved under requirements 7, 8, 9(1) and 10 and demonstrate how they have taken account of the results of any archaeological investigations or archaeological evaluations carried out pursuant to the ~~outline~~ written scheme of investigation **approved under requirement 10**.*

Action Point 21 – LCC has reviewed the updated outline construction traffic management plan submitted at DL6 and can it is acceptable at this stage accepting a final plan will be a DCO Requirement. However, please note it is intended to update the SoCG once final versions of all outline management plans have been submitted at DL7 and LCC will endeavour to review any updated drafting and respond substantively on all changes within the SoCG to be submitted at DL8.

Action Point 22 – the wording contained within Table 3-4 of the oOEMP submitted at DL6 [REP6-009] should be revised to broaden the width of PRow and Bridleways to 2m and 3m respectively. Recommended revised wording to be included is a follows:

*The existing PRow will be reinstated when repairs to access tracks have been completed, albeit public access will be retained throughout as a result of the PRow diversions. The minimum legal PRow widths of **±2m** for footpaths and **±3m** for bridleways will be maintained.*

Action Point 26 – no comments at this stage however it is intended to update the SoCG once final versions of all outline management plans have been submitted at DL7. LCC will therefore endeavour to review any updated drafting and respond substantively on all changes within the SoCG to be submitted at DL8.

ISH5 - Environmental Matters and the draft Development Consent Order

Action Point 1 – LCC is content with the Applicant's updated Cumulative Scheme Long List submitted at DL6 [REP6-004a] however has following the ISH asked the Applicant to update this list at DL7 to reflect another NSIP solar project known as One Earth which lies on the Lincolnshire/Nottinghamshire border. This project is at non-stat stage and is over 10km from the Mallard Pass project but should be included for completeness.

Action Point 4 – LCC is agreeable to the revisions made in the updated oOEMP at DL5 with regard capping the number of HGV movements to no more than 5 daily in connection with maintenance works. However, LCC disagree that the maintenance schedule does not need to be approved by the relevant planning authorities. It is therefore suggested that para 2.2.2 of the oLEMP be amended to make it clear that any planned maintenance activities and schedule for the forthcoming year will require approval. Such approval could follow the procedure set out under Part 6, Article 43 of the dDCO which will give the undertaker confidence that request/approval would be dealt with within a clear timeframe. Suggested revised wording for the oLEMP is therefore as follows:

2.2.2 *During the operational lifetime of the Proposed Development, the Applicant will **submit for approval** ~~provide notification, which is not subject to approval,~~ **a schedule** of planned maintenance activities to South Kesteven District Council and Rutland County Council for the forthcoming year on an annual basis (from the first anniversary of the approval of the first detailed Operational Environmental Management Plan). Alongside the maintenance schedule, the Applicant will provide supporting environmental and traffic information to evidence that there are no materially new or materially different environmental effects arising from any planned maintenance activities when compared to the ES. This supporting information must include confirmation that the traffic movements associated with the planned maintenance activities will be no more than 5 daily HGV two-way movements and that the approach to maintenance set out in the schedule is consistent with Section 5.17 of Chapter 5 of the ES [REP2-012]. **The maintenance schedule shall be processed in accordance with the provisions of Part 6, Article 43 of the Development Consent Order.***

Action Point 12 – LCC has provided the Applicant with suggested revised wording for Article 12 and has met and discussed this matter on 04/10/23 where progress has been made towards a resolution. It is hoped that LCC will be in apposition to agree any amended drafting further to the Applicants DL7 submission.