



Sarah Price
Mallard Pass Solar Farm Limited
111 Park Street
Mayfair, London
W1K 7JF

12 July 2024

Dear Sarah Price,

PLANNING ACT 2008

APPLICATION FOR DEVELOPMENT CONSENT FOR THE MALLARD PASS SOLAR FARM PROJECT

1. Introduction

- 1.1. I am directed by the Secretary of State for Energy Security and Net Zero (“the Secretary of State”) to advise you that consideration has been given to the Examining Authority’s (“ExA”) report dated 16 February 2024. The ExA consisted of two examining inspectors: David Cliff and Mark James. The ExA conducted an Examination into the application submitted on 24 November 2022 (“the Application”) by Mallard Pass Solar Farm Limited (“the Applicant”) for a Development Consent Order (“the Order”) under section 37 of the Planning Act 2008 (“the 2008 Act”) for the Mallard Pass Solar Farm and associated development (“the Proposed Development”). The Application was accepted for Examination on 21 December 2022. The Examination began on 16 May 2023 and closed on 16 November 2023. The Secretary of State received the ExA’s Report on 16 February 2024 and the statutory deadline for making the decision was 16 May 2024.
- 1.2. On 13 March 2024 the Secretary of State issued a letter seeking information updates from the Applicant, Network Rail Infrastructure Limited (“Network Rail”), Rutland County Council (“RCC”) and Lincolnshire County Council (“LCC”). Responses were received on 27 March 2024 from the Applicant, RCC and LCC. On 2 April 2024, Interested Parties (“IPs”) were invited to comment on the responses received. The statutory deadline was then extended by the Secretary of State to 13 June 2024. As this date fell within the pre-General Election period, immediately after the General Election the Secretary of State again extended the statutory deadline to allow this decision to be made. A Written Ministerial Statement (“WMS”) to announce this extension will be made once Parliament returns.
- 1.3. The Order, as applied for, would grant development consent for the Proposed Development, which consists of the construction, operation and maintenance, and decommissioning of a solar photovoltaic array electricity generating facility with a total capacity exceeding 50 MW and export connection to the National Grid [ER 1.3.6]. The Proposed Development works comprise [ER 1.3.8]:

- Work No.1: A ground mounted solar photovoltaic generating station (including solar modules fitted to mounted structures, invertors, transformers, switchgear and electrical cables);
- Work No.2: Onsite substation (near the existing National Grid Ryhall substation) including transformers, switchgear, control buildings, ancillary buildings and metering equipment as required to facilitate the export of electricity from the Proposed Development to the National Grid;
- Work No.3: Works to lay high voltage electrical cables, access and temporary construction compound laydown areas for the electrical cables, to connect to the existing Ryhall substation;
- Work No.4: Works to lay electrical cables including electrical cables connecting Work No.1 to Work No.2;
- Work No.5: Temporary construction and decommissioning compound and laydown areas;
- Work No.6: Works to facilitate access to Work Nos. 1 to 5; and
- Work No.7: Works to create, enhance and maintain green infrastructure.

1.4. The Applicant also seeks compulsory acquisition (“CA”) and temporary possession (“TP”) powers [ER 6.1.1], set out in the draft Order submitted with the Application.

1.5. Published alongside this letter on the Planning Inspectorate’s National Infrastructure Planning website¹ is a copy of the ExA’s Report of Findings and Conclusions and Recommendation to the Secretary of State (“the ExA’s Report”). The ExA’s findings and conclusions are set out in Chapters 3-7 of the ExA Report, and the ExA’s summary of conclusions and recommendation is at Chapter 8.

2. Summary of the ExA’s Report and Recommendation

2.1. The principal issues considered during the Examination on which the ExA has reached conclusions on the case for development consent are set out in the ExA Report under the following broad headings:

- The principle of the development
- Air quality
- Ecology and biodiversity
- Historic environment
- Landscape and visual
- Land use and soil
- Noise and vibration
- Socio-economics
- Traffic and transportation
- Water and flood risk
- Other matters

¹ <https://infrastructure.planninginspectorate.gov.uk/projects/east-midlands/mallard-pass-solar-project/>

- Interactions of effects and cumulative effects
- 2.2. The ExA concludes that the case for the Proposed Development has been made and recommends that the Secretary of State should grant consent for the Proposed Development in the form of the Order attached at Appendix D of the ExA's Report [ER 8.3.1].
- 2.3. This letter is intended to be read alongside the ExA's Report and, except as indicated otherwise in the paragraphs below, the Secretary of State agrees with the findings, conclusions and recommendations of the ExA as set out in the ExA Report, and the reasons for the Secretary of State's decision are those given by the ExA in support of the conclusions and recommendations.

3. Summary of the Secretary of State's Decision

- 3.1. The statutory framework for deciding Nationally Significant Infrastructure Projects ("NSIPs") applications where there is no relevant designated National Policy Statement ("NPS"), such as for solar farms, is set out in section 105 of the 2008 Act. In deciding the application, the Secretary of State must have regard to:
- any Local Impact Report ("LIR") submitted before the deadline specified under s60(2) of the 2008 Act;
 - any matters prescribed in relation to development of the description to which the application relates; and
 - any other matters which the Secretary of State thinks are both important and relevant to their decision.
- 3.2. The Secretary of State has considered the above matters, the ExA's Report, and all other material considerations, including further representations received after the close of the ExA's examination ("the post-examination representations"). The Secretary of State's detailed consideration of these matters is set out below. All numbered references, unless otherwise stated, are to paragraphs of the ExA's Report ["ER *.*.*"]. This letter is a statement of the reasons for the Secretary of State's decision for the purposes of section 116 of the 2008 Act and the notice and statement required by regulations 31(2)(c) and (d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the "EIA Regulations").
- 3.3. The Secretary of State has considered the overall planning balance and, for the reasons set out in this letter, has concluded that the public benefits associated with the Proposed Development outweigh the harm identified, and that development consent should therefore be granted.
- 3.4. The Secretary of State has decided under section 114 of the 2008 Act to make, with modifications, an Order granting consent for the proposals in the Application. In making the decision, the Secretary of State has complied with all applicable legal duties and has not taken account of any matters which are not relevant to the decision.

4. The Secretary of State's Consideration of the Application

- 4.1. The Secretary of State has considered the ExA's Report and all other material considerations. This includes 1223 Relevant Representations ("RRs") submitted to the ExA in respect of the Application from January 2023 to beginning of March 2023 and the ExA has included a summary of common themes [ER 1.4.1 et seq]. Written Representations ("WR"), responses to questions and oral submissions made during the Examination were also taken into account by the ExA. The Secretary of State has had regard to the LIR submitted by RCC, LCC and South Kesteven District Council ("SKDC"), environmental information as defined in regulation 3(1) of the EIA Regulations and to all other matters which are considered to be important and relevant to the Secretary of State's decision as required by section 105 of the 2008 Act including relevant policy set out in the NPS for Energy ("NPS EN-1" (July 2011)) and NPS for Renewable Energy Infrastructure ("NPS EN-3" (July 2011)).
- 4.2. The Secretary of State has considered all representations received. Representations have been received from a number of IPs, including Mallard Pass Action Group ("MPAG"), and from the local constituency MP for Rutland and Stamford, Alicia Kearns, who have raised concerns about a number of issues, including (but not limited to) the ethical procurement of solar panels, the loss of agricultural land, the large size of the development, the lifetime of the Proposed Development and negative impacts on landscape, heritage assets and the community.
- 4.3. On 20 March 2024, Alicia Kearns MP presented a petition to Parliament that was signed by 3,414 individuals. The petition stated the Proposed Development should be refused due to its scale, impact on community, loss of agricultural land, impact on landscape and biodiversity and environment, damage to historical environment, and risk of solar panels produced by forced labour.
- 4.4. The Energy White Paper, *Powering Our Net Zero Future*, was published on 14 December 2020. It announced a review of the suite of energy NPSs but confirmed that the current NPSs, designated in 2011, were not being suspended in the meantime. The ExA has referred to these 2011 NPSs ("2011 NPSs") as NPS EN-1, NPS EN-3 and NPS for Electricity Networks ("NPS EN-5" (July 2011)). This letter refers to them in the same way. Draft NPSs were published on 6 September 2021 and subject to a consultation which closed on 29 November 2021. Updated versions of these draft NPSs were published on 30 March 2023 and subject to a further consultation which closed on 23 June 2023. The ExA makes reference to the March 2023 draft NPSs throughout the Examination and Report and the draft March 2023 versions of EN-1 ("2023 draft EN-1"), EN-3 ("2023 draft EN-3") and EN-5 are considered important and relevant.
- 4.5. Revised draft NPSs were released on 22 November 2023 and designated in Parliament on 17 January 2024 ("2024 NPSs"). The ExA notes these versions were not before the Examination and so neither the Applicant nor IPs have had the opportunity to comment on any implications of them [ER 2.4.4] and the ExA have not had regard to them in their consideration of the planning issues in Chapters 3 and 5 of the ExA Report [ER 2.4.5]. However the ExA notes that its *recommendation takes into account as important and relevant considerations the designated July 2011 EN-1 and the draft March 2023 versions of EN-1, EN-3 and EN-5. We go on to comment on the potential implications of the 2024*

suite of NPSs in Chapter 8.” [ER 2.4.5]. The ExA concludes that the January 2024 versions of the NPSs, would strengthen the case for low carbon Nationally Significant Infrastructure Projects, and that the Proposed Development is clearly justified on the basis of the versions of the NPSs that were before it during the Examination. The ExA does not consider there is anything contained within 2024 EN-1 (“2024 EN-1”), EN-3 (“2024 EN-3”) and EN-5 that would lead it to alter its overall conclusions on the Proposed Development [ER 8.2.13].

- 4.6. The ExA notes that the Secretary of State will need to consider whether the 2024 NPSs have any implications for their decision and the extent to which they are relevant [ER 8.2.11, 8.2.13]. The Secretary of State has had regard to the 2024 NPSs in deciding the Application but does not consider that there is anything contained within them that would lead the Secretary of State to reach a different decision on the Application than has been reached by relying on the 2011 NPSs. The Secretary of State has also had regard to the updated National Planning Policy Framework (“NPPF”) from December 2023 which was released after the close of the Examination and similarly finds that there is nothing which would lead the Secretary of State to reach a different decision on the Application. The ExA discuss that there is nothing in the revised NPPF published December 2023 that would lead them to alter their overall conclusion on the Proposed Development [ER 8.2.14]. The Secretary of State has also had regard to the British Energy Security Strategy (“BESS”) published on 7 April 2022, which outlined the steps to accelerate the government’s progress towards achieving Net Zero by 2050 and a long-term shift in delivering cheaper and cleaner power. The ExA discuss that the Proposed Development is justified on the basis of the versions of the NPSs that were before them during the Examination and all other important and relevant matters, including relevant Government policy such as the BESS [ER 8.2.13].
- 4.7. The Secretary of State agrees with the ExA’s conclusions and the weight it has ascribed in the overall planning balance in respect of the following issues:
- Air quality (neutral weight) [ER 3.3.34].
 - Noise and vibration (neutral weight) [ER 3.8.49].
 - Traffic and transportation (neutral weight) [ER 3.10.119].
 - Water and flood risk (neutral weight) [ER 3.11.122].
 - Other matters - glint and glare (neutral weight) [ER 3.12.43].
 - Other matters - waste (neutral weight) [ER 3.12.51]
 - Other matters - good design (neutral weight) [ER 3.12.57].
 - Interactions of effects and cumulative effects - residential living conditions (little negative weight) [ER 3.13.10].
 - Interactions of effects and cumulative effects - health and wellbeing (moderate negative weight) [ER 3.13.23].
 - Interactions of effects and cumulative effects - cumulative effects (neutral weight) [ER 3.13.28].
- 4.8. The paragraphs below set out the matters where the Secretary of State has further commentary and analysis to add beyond that set out in the ExA report. This includes matters where the Secretary of State feels it is necessary to provide further detail on the rationale for the Secretary of State conclusions.

Operational time period

- 4.9. At the outset of the Examination, the Applicant did not seek a time limited consent [ER 2.8.5]. The Environmental statement (“ES”) was prepared on this basis, and therefore generally assesses permanent effects of the operational phase [ER 2.8.5]. At deadline 5, the Applicant proposed a 60-year time limit to the operational phase and provided an initial assessment of the implications of this change for the ES [REP5-012] [ER 2.8.5].
- 4.10. A number of IPs have raised concerns in relation to the proposed operational time period, including MPAG who suggested that 30 years would be an appropriate time limit, and SKDC, RCC and LCC who consider a 40-year rather than a 60-year operational time period is appropriate [ER 3.2.112].
- 4.11. Paragraph 2.10.65 of the 2024 EN-3 says an upper limit of 40-years is typical, although applicants may seek consent without a time period or for differing time periods of operation, and paragraph 2.10.67 acknowledges that solar panel efficiency deteriorates over time and Applicants may elect to replace panels during the lifetime of the site.
- 4.12. The ExA considered the 60-year time period implications, taking account of the Applicant’s Statement on 60-Year Time Limit [REP7-38] and the concerns raised by IPs in this regard including the requests for a shorter 40-year time [ER 3.2.114]. The Applicant’s Statement on 60-Year Time Limit notes that 60-years is classified as semi-permanent [REP7-38]. The ExA notes that a 40-year time period would, itself, be of considerable length, with the proposed 60-year period yet more, effectively covering two generations, and states that the implications of and effects arising under both scenarios would be long term in either case [ER 3.2.114].
- 4.13. The ExA has considered the impacts of the Proposed Development based on the worst-case scenario as assessed in the ES [ER 5.3.8] and concludes that there is not an overriding reason to limit the operational period to less than 60-years [ER 3.2.121]. The ExA found that the difference between a 40 and 60-year operational time period would not be likely to lead to any material changes to the assessment of effects [3.2.116]. The ExA acknowledges that a 60-year period would, in its view, increase the likelihood of solar panels being replaced (over and above general maintenance) during operation, and notes that relevant measures have been put in place in the outline Operational Environment Management Plan (“OEMP”), including to limit the maximum number of daily HGV movements during operation to ensure that no additional significant effects would result in this regard [ER 3.2.117].
- 4.14. The ExA agrees with MPAG that this could result in a situation where, if all or most panels were to be replaced, this would have to be done so on a gradual basis over a considerable period of time under the terms of the Order. The Applicant argues that this would not lead to any material new or materially different environmental effects than those identified in the ES for the operation of the Proposed Development [ER 3.2.118].
- 4.15. The ExA recommends the addition of wording as Requirement 12 of the Order, requiring that the OEMP must include details of road routes to and from the site for any heavy goods vehicles required during operation. The ExA acknowledge there would be separate controls to ensure that effects during operation do not result in materially new or different

environmental effects and there would be a limit of no more than five two-way HGV movements per day. However, given the potential for panel replacement (which could result in daily HGV movements over a period of time) and the constraints of some local roads, the ExA consider it necessary to ensure that HGV routing is controlled to minimise any effects from HGV movements during operation [ER 7.4.70].

- 4.16. The outline OEMP was updated to require that the relevant planning authority must first confirm that any maintenance activities involving panel replacement would not lead to such materially different effects, and the definition of maintain in the Order was amended to make it clear that maintenance does not allow the replacement of all the whole of Work No.1 at the same time [ER 3.2.118 et seq.].
- 4.17. The Secretary of State has noted that concerns have been raised by IPs, including by MPAG, in respect of the 60-year operational period. The Secretary of State agrees with the ExA on this matter and considers that there is no reason to limit the operational period to less than 60-years. The Secretary of State notes that the impacts have been assessed on the basis of the worst-case, permanent scenario and that the Order adequately secures that the panels will not be all be replaced at the same time.

The principle of the development

- 4.18. The ExA notes that concerns were raised regarding the large scale of the Proposed Development by the host local authorities in their respective LIRs and this was a major concern raised by many IPs, including MPAG [ER 3.2.93]. The ExA acknowledges that the Proposed Development is of substantial scale but not significantly larger in terms of acres per megawatt peak when compared with other solar NSIPs [ER 3.2.159]. The ExA notes overplanting of solar panels is proposed and this does have the consequence of increasing the size of the Order limits and photovoltaics (“PV”) array area, however, the concept of overplanting is supported by 2023 draft EN-3 [ER 3.2.159].
- 4.19. The ExA notes that representations including those from MPAG noted the lack of a Battery Energy Storage System as a reason why the Proposed Development and grid connection is sub-optimal and less beneficial to meeting needs [ER 3.2.104]. The ExA notes that a Battery Energy Storage System is not included and so the Proposed Development may not contribute as much towards the National Grid as a project with the ability to import and export electricity, but that it does utilise the existing infrastructure at the Ryhall National Grid substation and the provision of the necessary upgrades to support a Battery Energy Storage System would delay the point at which energy is generated. Furthermore, the ExA notes that whilst national policy recognises the benefits of co-location with energy storage, there is no requirement for this to be provided [ER 3.2.160].
- 4.20. The ExA is satisfied that the Applicants site selection has met the requirements of national policy and broadly adheres to relevant local policies [ER 3.2.158]. The ExA is satisfied that alternatives, including alternative technologies have been considered in accordance with requirements [ER 3.2.161]. The ExA concludes that the Proposed Development would make a demonstrable contribution to the urgent need for utility scale solar PV in order to meet the Government’s net zero and energy security objectives [ER 3.2.156-7]. The ExA concurs with the Applicant’s conclusions in the ES that the net carbon benefit of the Proposed

Development would be a material change to the UK's emissions of greenhouse gases leading to a moderate beneficial effect, and notes that the cumulative effect along with other renewable energy schemes will contribute to the UK's aims to reduce carbon emissions [ER 3.12.29]. The ExA states that it is clear that there is an urgent need for utility scale solar PV in order to meet the Government's net zero and energy security objectives as well as its legal obligations [ER 3.2.156]. The ExA ascribes substantial positive weight to the benefits of the Proposed Development [ER 3.2.163].

- 4.21. The ExA notes even the most cautious of the Applicant's calculations indicate that the Proposed Development would make a sizeable contribution towards the UK's energy needs and it would power the broad equivalent of all of the households in Rutland and South Kesteven [ExA 3.2.92]. The ExA writes that the Applicant has demonstrated that there would be a substantial net carbon benefit over both a 40 and a 60-year period [ExA 3.12.27]. The Applicant also drew comparison with calculations applied in three other solar NSIP projects [ExA 3.12.17] and the assumptions applied reflect a conservative approach [ExA 3.12.27]. The ExA notes it is satisfied that the Applicant has taken reasonable steps to reduce carbon emissions during the lifetime of the Proposed Development in accordance with the NPSs [ExA 3.12.29]. The ExA notes with regard to climate change and carbon effects during construction, operation and decommissioning, the ExA is satisfied that the Applicant has taken reasonable steps to reduce carbon emissions during the lifetime of the Proposed Development in accordance with the NPSs [ER 5.2.60]. The implications of climate change for flood risk are considered separately in Section 3.11 of the ExA report on water and flood risk issues. The Secretary of State notes that the ExA had a section titled Climate change and carbon (ExA 3.12.2 et seq) and the ExA concludes that the Applicant has taken reasonable steps to reduce carbon emissions and ascribed moderate positive weight to the net carbon benefit of the Proposed Development. However, the Secretary of State considers such benefit to be intrinsic to the need for the Proposed Development, to which the Secretary of State ascribes substantial positive weight.
- 4.22. The Secretary of State notes that paragraph 3.2.3 of NPS EN-1 states that "the weight which is attributed to considerations of need in any given case should be proportionate to the anticipated extent of a project's actual contribution to satisfying the need for a particular type of infrastructure". The Secretary of State has, therefore, considered whether there is any reason why the Secretary of State should not attribute substantial weight to the Development's contribution to meeting the identified need in this case. The Secretary of State concludes that the Proposed Development will make a substantial contribution to the urgent need for utility scale solar PV, and will generate up to 350 MW, and therefore agrees with the ExA's assessment that there is an urgent need for the Proposed Development and attributes this matter substantial positive weight, inclusive of considerations relating to climate change.

Ecology and biodiversity

- 4.23. In relation to Great Crested Newts ("GCN"), the ExA references that Natural England ("NE") did not raise any concern with the Applicant's proposal to seek to enter into a District Level Licencing ("DLL") agreement, but the Secretary of State notes that NE's full advice [REP9-019] stated that where an Impact Assessment and Conservation Payment Certificate

("IACPC") is issued, NE would not raise any further concern. An IACPC had not been issued by the close of Examination.

- 4.24. The Secretary of State notes NE's full advice and that the Applicant relies on mitigation which will be secured via the DLL scheme to mitigate what may otherwise be significant adverse effects on GCN at a site level [APP-037]. Therefore, and in accordance with good practice², on 13 March 2024 the Secretary of State requested an update from the Applicant regarding whether a draft GCN district level license application had been made and if an IAPC had been issued.
- 4.25. The Applicant responded that it has 'continued the process to seek to obtain an IAPC from NE, but has not yet received it'. The Applicant states it is committed to being part of the DLL scheme and has updated the Outline Construction Environmental Management Plan ("CEMP") (Revision P10) which is secured via Requirement 11 of the Order. This now secures that a DLL must be obtained prior to commencement of construction of the Proposed Development.
- 4.26. Noting the updates received and responses received from IPs, the Secretary of State considers that the Outline CEMP secured in Requirement 11 of the Order to be approved by the relevant planning authority provides sufficient control to give confidence that a GCN district level license will be obtained. Furthermore, without prejudice to the subsequent and separate decision of NE, the Secretary of State sees no reason to suggest, at this time, that a GCN licence would not be forthcoming.
- 4.27. The Secretary of State agrees with the ExA on all other ecology and biodiversity matters not mentioned above and agrees that such matters carry little positive weight in the planning balance.

Historic environment

Impacts on archaeological remains

- 4.28. The ExA notes that concerns were raised by host local authorities and IPs, in particular MPAG raised concerns of the impact of piling and their replacement [ER 3.5.58 and ER 3.5.47], the host local authorities in their respective LIRs raised concerns with insufficient evaluation of the extent of buried archaeology [ER 3.5.32-34]. The ExA held concerns regarding the Applicant's evaluation of potential archaeological remains and limited extent of trial trenching [ER 3.5.83] and the ExA considers there is a risk of disturbance to as yet undiscovered remains from piling associated with the construction of the solar PV arrays [ER 3.5.83].
- 4.29. The ExA recommend the Applicant's 'without prejudice' version of Requirement 10 (Archaeology) which would provide an opportunity for further trial trenching to take place [ER

² <https://www.gov.uk/government/publications/nationally-significant-infrastructure-projects-advice-note-eleven-working-with-public-bodies-in-the-infrastructure-planning-process/nationally-significant-infrastructure-projects-advice-note-eleven-annex-c-natural-england-and-the-planning-inspectorate>

3.5.84]. However, it noted that the Applicant's 'without prejudice' drafting of Requirement 10 provides for the provision of any further trial trenching to be approved by the Secretary of State post-consent instead of the relevant local authorities, as the Applicant says that the local authorities may be highly likely to reject any proposals put forward by the Applicant at that stage [ER 3.5.44].

- 4.30. The ExA notes Requirement 10 to be approved by the Secretary of State post-consent would be inconsistent with that of the other Requirement approvals [ER 7.4.68]. The ExA notes that the general appeal mechanism is available as with other requirements, and does not agree with the Applicant that there are sufficient grounds for requiring a bespoke requirement for approval by the Secretary of State [ER 7.4.68]. The ExA's amended Requirement 10 provides that the relevant local planning authorities are the discharging authorities for this requirement. The ExA concludes that, with its version of Requirement 10 in place, there would no conflict with the relevant provisions on archaeology of the existing and draft NPSs, or the relevant provisions of the Development Plan [ER 3.5.84].
- 4.31. The ExA concludes, taking all the matters into account, and with the draft wording of Requirement 10 in place making provision for further trial trenching as appropriate, that it is satisfied that the Proposed Development would be capable of appropriately safeguarding archaeological assets at the site [ER 3.5.60].
- 4.32. The Secretary of States agrees with the ExA and has accepted the ExA's drafting of Requirement 10. The Secretary of State ascribes the matter of impacts on archaeological remains neutral weight in the planning balance.

Impacts on Braceborough Grange and Banthorpe Lodge

- 4.33. The ExA concludes that the minor harm to the significance of the non-designated Braceborough Grange and the less than substantial harm to the significance of the designated, Grade II listed Banthorpe Lodge weighs against the proposal [ER 3.5.85].
- 4.34. The Secretary of State notes that when considering the impact of a proposed development on the significance of a designated heritage asset the 2024 EN-1 paragraph 5.9.27 states that great weight should be given to the asset's conservation. Paragraph 5.9.28 goes on to state that the Secretary of State should give considerable importance and weight to the desirability of preserving all heritage assets and the Secretary of States does so in this case in relation to each of the individual heritage impacts identified. The Secretary of State notes further that NPS EN-1 paragraph 5.8.15 states that the greater the harm the greater the justification will be needed for any loss. Therefore, the Secretary of State concludes that the harm to Braceborough Grange and Banthorpe Lodge weigh against the Proposed Development in and ascribes the issue of historic environment overall a moderate negative weighting in the planning balance.

Conclusion

- 4.35. The 2024 EN-1 paragraph 5.9.32 states that where the proposed development will lead to less than substantial harm to the significance of designated heritage assets, that harm should be weighed against the public benefits of the proposal. The ExA notes this, and

concludes that the less than substantial harm it has identified on the historic environment should be weighed against any public benefit of the development [ER 5.2.22]. The ExA concludes that the harms are outweighed by the substantial public benefit from the provision of low carbon energy to meet the need identified in the NPS EN-1 and the 2023 draft EN-1 and by the other public benefits of the Application [ER 8.2.3].

- 4.36. The Secretary of States agrees with the ExA's conclusion that the harms to heritage assets are outweighed by the benefits of the Proposed Development.

Landscape and visual

- 4.37. A number of IPs have raised concerns in relation to negative landscape and visual impacts. MPAG has raised concerns in relation to scale, as it considers that the scale is unprecedented [ER 3.2.94]. The host local authorities also raised concerns regarding the scale of the Proposed Development [ER 3.2.73 et seq.].
- 4.38. The ExA notes the Applicant selected twenty viewpoints to inform the assessment of visual effects [ER 3.6.30]. The Applicant submitted a Residential Visual Amenity Assessment to assess visual effects with 19 residential properties assessed [3.6.34]. MPAG maintained its objections throughout examination that the Proposed Development would have substantial adverse impacts on the landscape and visual amenity [ER 3.6.48 et seq.].
- 4.39. The ExA notes that the Proposed Development is large in scale and extent and would result in considerable change to the existing landscape character and visual amenities of the area on a long term basis [ER 3.6.96]. The ExA finds the Application details might have gone further in terms of seeking to minimise the visual effects of the proposed substation [ER 3.6.99]. The ExA notes that greater consideration could have been given to the Design Guidance for the proposed solar stations, with little attempt to ensure that these elements are in keeping with local vernacular [ER 3.6.99]. However, the ExA acknowledges that detailed matters would subsequently fall for the local authorities to consider, pursuant to Requirement 6 of the Order, and the ExA is satisfied overall that these design matters are capable of being adequately resolved to minimise the adverse effects [ER 3.6.99].
- 4.40. The ExA notes the Applicant has also sought to reduce its visual and landscape effects through the retention of key landscape features, buffer areas from roads and Public Rights of Way, and proposed planting [ER 3.6.97]. The ExA notes that the layout of the Proposed Development has taken into account and sought to minimise adverse effects, for example, the substantial setbacks from Essendine are important in protecting the character and setting of the village [ER 3.6.97].
- 4.41. The ExA notes that generally, the mitigation measures proposed are reasonable in seeking to minimise the adverse effects, though significant residual adverse landscape and visual effects would remain [ER 3.6.98]. The ExA notes that whilst the effects would be reversible after decommissioning, the long operational period means that this makes no material difference to its assessment of effects [ER 3.6.98].
- 4.42. The ExA concludes the Applicant's approach to minimise the harm, including the proposed mitigation, would be in general accordance with NPS EN-1, along with both the 2023 draft

EN-1 and 2023 draft EN-3 [ER 3.6.102], having noted that NPS EN-1 recognises that national significant infrastructure projects are likely to have adverse landscape and visual effects [ER 3.6.97].

- 4.43. The ExA finds moderate adverse effects would result at year 1 of operation at a limited number of residential properties and these effects would decrease once the proposed landscaping has matured [ER 3.6.100].
- 4.44. The ExA concludes that, in terms of local policy, the Proposed Development will be contrary to the relevant policies of the Development Plan, including where they seek to maintain and enhance landscape character and local distinctiveness which the Proposed Development would not achieve [ER 3.6.103]. The ExA concludes the Proposed Development would not accord with several design aims of the NPPF, including to add to the overall quality of the area and to be sympathetic to local character [ER 3.6.103].
- 4.45. The ExA concludes that landscape and visual matters weigh moderately against Development Consent being granted [ER 3.6.104].
- 4.46. The Secretary of State agrees with the ExA and concludes that there would be considerable change to the existing landscape character and visual amenities. The Secretary of State ascribes this matter moderate negative weight in the planning balance.

Land use and soil

Policy considerations

- 4.47. NPS EN-1 and 2024 EN-1 both contain policy relevant to the consideration of land use and soils for energy NSIPs.
- 4.48. As acknowledged by the ExA, paragraph 5.10.8 of NPS EN-1 requires Applicants to minimise impacts on Best and Most Versatile (“BMV”) agricultural land (defined as grades 1, 2 and 3a of the Agricultural Land Classification (“ALC”)) and to preferably use land in areas of poorer quality (grades 3b, 4 and 5) except where this would be inconsistent with other sustainability objectives, and that effects on soil quality should also be identified with measures to mitigate impacts [ER 3.7.3]. The 2024 EN-1 takes forward similar principles but provides additional policies in respect of both the use of agricultural land and soils management. It requires justification for the use of BMV land and directs the Secretary of State to take account of the economic and other benefits of that land.
- 4.49. Paragraph 5.11.4 of 2024 EN-1 acknowledges that development of land will affect soil resources, including physical loss of and damage to soil resources, through land contamination and structural damage. Indirect impacts may also arise from changes in the local water regime, organic matter content, soil biodiversity and soil process. In this context, paragraph 5.11.12 states that Applicants should seek to minimise impacts on the BMV agricultural land (defined as land in grades 1, 2 and 3a of the ALC) and preferably use land in areas of poorer quality (grades 3b, 4 and 5).

- 4.50. Furthermore, paragraph 5.11.13-14 of 2024 EN-1 states that Applicants should seek to minimise impacts on soil health and protect and improve soil quality, the preparation and implementation of a Soil Management Plan (“SMP”) is encouraged, and the sustainable re-use of soil also needs to be considered as well as measures to protect soil during construction.
- 4.51. The 2024 EN-3 reflects the overarching approach established in 2024 EN-1. In paragraph 2.10.29 it states that whilst land type should not be predominating factor in determining the suitability of the site location, where possible previously developed, contaminated or industrial land should be utilised. Where the use of agricultural land is shown to be necessary, poorer quality land should be preferred, avoiding the use of BMV land where possible. However, paragraph 2.10.30 goes on to make it clear that whilst solar developments are not prohibited on BMV land, the impacts of such should be considered. Paragraph 2.10.31 also recognises that at NSIP scale, it is likely that some agricultural land may be used.
- 4.52. Both 2024 EN-1 and 2024 EN-3 require the Secretary of State to take into account the economic and other benefits of BMV land when schemes are to be located on it. Paragraph 4.2.6 of 2024 EN-1 states that the overarching need case for each type of energy infrastructure and the substantial weight which should be given to this need in assessing applications, as set out in paragraphs 3.2.6 to 3.2.8 of EN-1, is the starting point for all assessments of energy infrastructure applications.
- 4.53. On 15 May 2024, a WMS was published on solar infrastructure and protecting food security and BMV land. This emphasised certain aspects of the policy set out in the 2024 NPSs, including that BMV land should be avoided where possible, and preferably use poorer quality land. The statement also emphasised that due weight needs to be given to the proposed use of BMV land when considering whether planning consent should be granted for solar developments.

IP concerns

- 4.54. A number of IPs have raised concerns in relation to the Proposed Development’s impact on soil quality, loss of agricultural land, and food security. The risk of soil compaction was identified as a concern by IPs including MPAG. MPAG also raised concerns that taking soil out of agricultural production for a long period would also be detrimental to soil fertility [ER 3.7.55]. The loss of BMV land was raised as a significant issue of concern for IPs in terms of food production and security, as well as impacts on related businesses [ER 3.7.78].
- 4.55. RCC, LCC and SKDC’s LIRs concluded that the Proposed Development would have negative impacts as a result of the use of agricultural land and raised concerns in relation to the fact that originally, no time limit was placed on the Proposed Development within the Order [ER 3.7.31, ER 3.7.33, ER 3.7.36]. The impacts identified regarding the use of agricultural land remained as a concern for all three local authorities at the close of the Examination [ER 3.7.38].

Natural England's final position

4.56. NE identified several agricultural land and soils matters that needed to be addressed by the Applicant both prior to, and during, the course of the Examination. However, by the end of the Examination, agreement had been reached with the Applicant. As set out in its final Statement of Common Ground ("SoCG"), NE confirmed that it had no outstanding concerns regarding the Applicant's ALC survey, and that the cumulative assessment in relation to the use of BMV land and measures to manage and restore soil quality as set out in the SMP and Decommissioning Environmental Management Plan ("DEMP") are appropriate [ER 3.7.39].

Site selection

4.57. In relation to site selection, the 2024 EN-3 outlines factors and associated policies that are likely to influence the site selection process as well as design:

- Irradiance and site topography;
- Network connection;
- Proximity of a site to dwellings;
- Agricultural land classification and land type;
- Accessibility;
- Public rights of way; and,
- Security and lighting.

4.58. Paragraph 2.10.29 of 2024 EN-3 states that: *"While 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. 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. Best and Most Versatile agricultural land is defined as land in grades 1, 2 and 3a of the ALC."*

4.59. Paragraph 2.10.30 states that: *"Whilst the development of ground mounted solar arrays is not prohibited on Best and Most Versatile agricultural land, or sites designated for their natural beauty, or recognised for ecological or archaeological importance, the impacts of such are expected to be considered and are discussed under paragraphs 2.10.73 – 92 and 2.10.107 – 2.10.126."* Paragraph 2.10.32 requires that consideration may be given as to whether the proposal allows for continued agricultural use and/or can be co-located with other functions such as storage to maximise the efficiency of land use.

4.60. The Applicant's Site Selection Assessment identified Lincolnshire as a good broad location to locate a solar farm for a variety of reasons, including; the level of irradiance, topography, available grid connections, a sparse settlement pattern and the relative lack of Grade 1 agricultural land. No comment is offered in relation to the suitability of the county of Rutland. Site selection criteria developed by the Applicant are intended to reflect key factors identified in 2023 draft EN-3 [ER 3.2.64].

- 4.61. Paragraph 4.3.1 of the ES [APP-034] summarises the key reasons for selecting the site, including the proximity to the Ryhall National Grid substation which has available capacity and there are higher levels of irradiance in the region. Furthermore, the land is not within the Green Belt or designated landscape, it is predominantly within Flood Zone 1, it is within close proximity to the A1 which provides good accessibility and the Proposed Development “avoids the use of large areas of best and most versatile (BMV) agricultural land”. The ES also cites limited conflict with development plan allocations, displacement of business and a limited number of residential properties in the immediate vicinity of the Order limits [ER 3.2.65].
- 4.62. The availability of willing landowners and a relative lack of previously developed sites within a sufficient distance of the Ryhall substation are also cited as factors. Previously developed land registers held by SKDC and RCC identified 22 hectares (“ha”) and 3.4ha of such land respectively [ER 3.2.66]. Larger sites, either fully or partially previously developed, at Woolfox Depot (486ha), North Luffenham (300ha) and Cottesmore (115ha) are briefly considered by the Applicant. All are further away from the Ryhall substation than the Order limits and are discounted by the Applicant for a variety of reasons, including availability [ER 3.2.67].
- 4.63. The Applicant’s approach to site selection and consideration of alternatives was contested during the Examination by IPs, including RCC, SKDC and MPAG. No agreement was reached on the matter by the parties by the close of the Examination. The extent to which the Applicant considered agricultural land and land use in this process was particularly prominent [ER 3.2.123].
- 4.64. The ExA notes as a starting point in the site selection process that the Applicant sought to identify a suitable grid connection point. An Early Site Environmental Red Flag Review was then undertaken by the Applicant on available land to identify key constraints [ER 3.2.125]. In ExQ1 (question 1.3.2), the ExA sought details from the Applicant on ten other potentially available substations with the capacity for large scale solar within 80km of the National Grid Ryhall substation as referenced in the Site Selection Assessment [Appendix 1 of APP-203]. The Applicant responded and confirmed that none were deemed to be alternatives to the Ryhall substation. None were considered capable of supporting additional connections before 2030 (in contrast to the 2028 connection agreement at the Ryhall substation) [ER 3.2.127].
- 4.65. The ExA is satisfied that the availability of the grid connection at Ryhall is a significant factor in the site selection process and that there are no other realistic alternatives that would meet the same objectives of the Proposed Development [ER 3.2.128].
- 4.66. MPAG and LCC, amongst others, raised concerns that a smaller site had not been considered. The ExA also sought clarification on the approach taken by the Applicant in this regard at ExQ1. In response the Applicant, referred to NPS EN-1 which does not set a general requirement to consider alternatives or to establish whether a development represents the best option. In addition, it drew attention to NPS EN-1 and 2023 draft EN-1 that indicate that only alternatives delivering the same infrastructure capacity (including energy security and climate change benefits) should be considered. Smaller alternatives would not deliver the same capacity. In this context, the ExA is content that the lack of

consideration of smaller sites should not weigh against the Proposed Development [ER 3.2.129].

- 4.67. Having reviewed the respective points of view on this issue, the ExA considers that whilst agricultural use should not be a predominant factor in determining the suitability of the site, it is a significant one that needs to be considered in the context of wider policy. The 2023 draft EN-3 does not state that the use of agricultural land, including BMV should be a predominant factor. Indeed, it recognises that *“the development of ground mounted solar arrays is not prohibited on agricultural land classified 1, 2 and 3a...”* [ER 3.2.143].
- 4.68. At ISH1 [REP4-022], the Applicant and IPs, including RCC agreed that the 2015 WMS which requires “compelling evidence” to justify the use of BMV agricultural land should be given weight alongside the draft NPSs. The WMS is now over eight years old and pre-dates more recent expressions of Government policy and legislation such as the British Energy Security Strategy and Climate Change Act 2008 (2050 Target Amendment) Order 2019 [ER 3.2.144]. Turning to the remaining agricultural land and land type factors influencing site selection as detailed in the 2023 draft EN-3, the ExA notes that paragraph 3.10.14 requires that “where possible” previously developed, industrial and contaminated land should be considered. The Applicant’s Planning Statement sets out why such opportunities have not been utilised and the ExA considers that appropriate consideration has been given to such opportunities [ER 3.2.145].
- 4.69. The ExA notes that the Applicant has explained its choice of site in its Planning Statement that in order to deliver the capacity available from the grid connection, BMV land is required to be used. The Applicant has also demonstrated that through the design process, areas of Grade 2 agricultural land have been removed to reduce the amount of BMV land to be used. Whilst fields consisting of Grade 3a, and mixed Grade 3a and 2 remain, their removal would reduce the contribution of the Proposed Development to the achieving net zero and energy security. Similarly, reducing the size of the Proposed Development would not achieve the same level of benefit in this regard [ER 3.2.146].
- 4.70. The ExA also notes that 2023 draft EN-3 is clear that solar is not prohibited on BMV land and that it is likely some agricultural land may be used for projects at this scale [ER 3.2.147].
- 4.71. The ExA is satisfied that the approach to site selection, including the consideration of agricultural land, satisfactorily adheres to 2023 draft EN-3. The ExA notes that the 2015 WMS requires compelling evidence to justify the use of BMV agricultural land. The ExA concludes that although soil surveys were not undertaken outside of the Order limits to identify other potential areas of lower grade agricultural land, the approach taken is considered to be proportionate in drawing upon existing mapping data as a starting point for site selection purposes. As the ExA considers that the Applicant has reasonably and satisfactorily justified the use of BMV land, taking into consideration the relevant 2023 draft NPS tests, it is satisfied that that the Proposed Development generally accords with the 2015 WMS [ER 3.2.149].

ALC survey

4.72. Chapter 12 of the Applicant's ES covers Land Use and Soils and includes an assessment of potential impacts on agricultural land, soils, and agricultural businesses. It is supported by a number of appendices including an ALC survey. This survey was undertaken by a soil scientist. [ER 3.7.16 et seq.]. The table below provides a breakdown of the Applicant's ALC results for the Order limits and the solar PV site area.

Table 1: Applicant's ALC results for the Order limits and the solar PV site area [PDA-012]

ALC	Order limits		Solar PV site and field margins		Area for biodiversity and arable	Area affected by substation and fixed equipment
	Area (Ha)	Area (% of total site)	Area (Ha)	Area (% of total site)	Area (Ha)	Area (Ha)
Grade 1	0	0%	0	0%	0	0
Grade 2	100	11.7%	35	6.6%	65	0.5
Grade 3a	260	30.5%	181	34.1%	79	3.7
Grade 3b	439	51.5%	297	55.9%	142	9.9
Grade 4	18	2.1%	18	3.4%	0	0.3
Grade 5	0	0%	0	0%	0	0

4.73. 360ha of the Order limits as a whole is classified as BMV land with a ALC as follows:

- Grade 2 - 100ha
- Grade 3a - 260ha

4.74. Of this BMV land, a total of 216ha falls within the PV array areas and field margin:

- Grade 2 - 35ha
- Grade 3a - 181ha

4.75. Non-BMV land within the site is also used for agricultural purposes, with a further 439ha of Grade 3b and 18ha Grade 4 land identified across the Order limits [ER 3.7.77].

4.76. Table 12-3 in Chapter 12 of the ES provides the following information, drawing on data from NE [ER 3.7.23]:

- 42% of agricultural land in England is of BMV quality;
- In Lincolnshire the proportion of BMV rises to 71.2%;
- In Rutland, the proportion of BMV land is 45.2%.

4.77. Insert 12.4: Extract Predictive BMV, of Chapter 12 of the ES, provides an extract of NE's predictive BMV mapping from 2017. The Applicant explains that this shows the Order limits

as lying within an area shown as the lowest probability of BMV land with much of the surrounding area shown as being of moderate or high probability of BMV quality.

- 4.78. Section 12.3 of the ES [APP-042] explains that the ALC survey influenced the layout of the Proposed Development with the removal of all fields that consisted entirely of Grade 2 from the PV array area. Solar stations are intended to be located on poorer quality areas as far as practicable with existing access tracks being used on a similar basis. The exact location would be determined at the detailed design stage [ER 3.7.26].
- 4.79. During the Examination, MPAG commissioned a soil consultant to undertake further soil surveys within the Order limits. A review of the Applicant's soil surveys and conclusions was also undertaken. [ER 3.7.43]. MPAG's report was informed by additional soil testing in Fields 2 and 3 within the Order limits. Amongst the conclusions of the report is an indication that there is a larger area of Grade 2 agricultural land within Field 2 than that identified by the Applicant. Conversely, it considered that the amount of Grade 3b and Grade 4 land within Field 2 may have been over-estimated by the Applicant. The report also states if MPAG's own survey results "...were extrapolated, it is likely that there is more than 50% BMV on the site, overall" [ER 3.7.44].
- 4.80. A lack of soil pits assessed by the Applicant within Field 2 is also cited as a concern by MPAG along with call for a more detailed assessment across the Order limits. Furthermore, the MPAG report provided an analysis of the reduction in BMV land identified by the Applicant between initial ALC surveys undertaken in support of the Preliminary Environmental Impact Report ("PEIR") and Stage 2 ALC surveys which it was claimed were not substantiated by the survey results reported in the ES. The MPAG report also highlighted limitations identified by a peer review of the Applicant's PEIR undertaken on behalf of RCC and SKDC. Nevertheless, it does acknowledge that "our findings across the site broadly indicate that the KCC (Applicant's) report is correct in that it presents the ALC grades in accordance with the guidelines" [ER 3.7.45].
- 4.81. In response to the ExA's request for comments on MPAG's report, NE [REP8-029] stated that it was inappropriate to draw the conclusion that "the land remains mostly BMV quality, with around 50% of the site Grade 3a and a small quantity of Grade 2" due to the limited nature of the MPAG survey. NE confirmed that although it considered that with measures in the SMP, soils would be safeguarded, it did acknowledge the downgrading of some agricultural land by the Applicant as highlighted by MPAG needed explanation [ER 3.7.46].
- 4.82. The Applicant provided a response to the issues raised in MPAG's report at Deadline 8 [REP8-019]. This specified that there is no sampling density set out in the ALC of England and Wales: revised guidelines and criteria for grading the quality of agricultural land (MAFF, October 1988), which is the methodology used for ALC. Whilst NE's Technical Information Note 49 refers to a "frequency of one boring per hectare for a detailed assessment", the Applicant's position is that not every survey needs to be detailed. It also states that the level of detail of a survey can reflect circumstances where the ALC grading would not be lost or downgraded as is the Applicant's and NE's conclusion, subject to mitigation [ER 3.7.48].
- 4.83. The Applicant also provided an explanation of the boundary changes for BMV land between the different surveys as requested by NE and MPAG. Changes were made to address

several issues including alignment with field boundaries, field walk overs findings and additional surveying. It also stated that there was no factual basis for the MPAG report to extrapolate its soils survey finding across the Order limits to suggest a higher proportion of BMV land. The Applicant concludes by stating that even if MPAG's suggestion of a higher level of BMV land were accepted, as there is no impact on the quality of soil, any potential alterations to the proportion of BMV land would not affect the protection of BMV as a resource [ER 3.7.49].

- 4.84. Having considered the respective submissions on this matter, the ExA is satisfied that the Applicant's soil surveys are sufficiently detailed, and that the commitments for more detailed surveys in advance of the construction of the substation as secured by the outline SMP pursuant to Requirement 14 of the Order are noted as well as the final position of NE on the matter. On this basis, the ExA accepts the Applicant's conclusions in relation to the amount of BMV land present across the Order limits and consider the ALC survey to fulfil the requirements of 2023 draft EN-3 as well as the South Kesteven Local Plan [ER 3.7.51]. The ExA does not consider it appropriate to extrapolate MPAG soils survey findings across the entirety of the Order limits and attach little weight to the speculative conclusion that it is likely that more than 50% of the Order limits is BMV [ER 3.7.52].

Soil quality

- 4.85. The final outline SMP [REP8a-004] as secured by Requirement 14 of the Order, provides measures to retain and restore soil quality across the construction and operational phases with an outline for decommissioning. This includes provisions to avoid trafficking or handling soils when wet and restoring soils in trenches in the same order that they came out. Measures are also reflected in the outline CEMP, OEMP and DEMP [ER 3.7.27].
- 4.86. The ExA is satisfied with the measures set out in the SMP, as secured by Requirement 14 of the Order, that there would not be any down grading or permanent loss of agricultural land or soil quality [ER 3.7.100]. The ExA concludes that matters relating to avoiding and mitigating soil compaction, as well as for establishment of grassland in the PV array area, are appropriate [ER 3.7.100]. The ExA notes that the SMP includes plans for the sustainable re-use of soil and to protect soil during construction [ER 3.7.101].

Impacts on BMV land, farming, and food production

- 4.87. The Applicant's ES acknowledges that the continuation of arable farming would not be possible within the PV arrays areas and field margins (531ha). Land within the Enhancement and Mitigation Area (approximately 239ha) would continue to be available for arable production [ER 3.7.80]. Table 12-10 of the ES provides an estimate of potential production that would be lost in the PV array and field margin area based on a three-year crop rotation and average yields for wheat (3,020t), barley (660t) and oilseed rape (310t), indicating a total production of 4,000t [ER 3.7.81]. Whilst the Applicant explains that it is not aware of research that identifies yield differences between BMV and non-BMV land, Table 12-11 of the ES estimates the potential increased production of these crops applying increased yields on the 216ha of BMV land within the PV array and field margin area as follows; wheat (202t), barley (34t), oilseed rape (18t). Thus, a total additional 254 tonnes of production is estimated on BMV land [ER 3.7.82].

- 4.88. The Applicant clarifies in its Closing Summary Statement that the effect of moving the PV arrays to non-BMV land in the vicinity would be a related increase in production i.e. approximately 254 tonnes. This is deemed by the Applicant to be negligible in the context of approximately 21 million tonnes of cereal production in the UK in 2022 as referenced in paragraph 12.4.76 of the ES [ER 3.7.83].
- 4.89. The ExA acknowledges that the Proposed Development allows for continued agricultural use in the form of arable farming within the Enhancement and Mitigation Areas, and the potential for sheep farming within the PV array areas [ER 3.7.103]. Notwithstanding the potential effects on arable production, the ES indicates that large areas of the PV array area would continue to support agriculture and would be farmed by way of sheep farming or fodder production. The PV arrays are cited as being of sufficient height to allow sheep to move freely underneath the panels and the Applicant highlights other solar farms where sheep grazing is undertaken [ER 3.7.84]. The Applicant confirmed the possibility of sheep farming should be considered as a benefit rather than a mitigation measure and whilst the outline Landscape Environmental Management Plan would enable sheep farming in the event of market interest, the activity is not secured, and therefore ExA affords this benefit a little weight [ER 3.7.85].
- 4.90. The ExA concludes that the overall impact of the Proposed Development in relation to food production in the national context is negligible, and that in isolation, and in-combination with other NSIP projects considered, the BMV land resource would not be significantly affected and there is no compelling evidence that UK food security would be undermined [ER 3.7.91].
- 4.91. However, the ExA acknowledges that there is a corresponding degree of conflict with the Government's Food Strategy aim of broadly maintaining domestic production at current level, and that there is a potential higher agricultural yield and associated economic benefit from the farming of BMV land that would be lost but this is not significant [ER 3.7.92]. Further, the ExA notes that there is also some conflict with South Kesteven Local Plan Policy SP1 (Spatial Strategy) which states that proposals should "...protect opportunities for food production and the continuance of the agricultural economy", and that whilst the soil would be maintained or restored to its original quality at decommissioning, the land with the PV array and field margin area would be taken out of arable food production for a period of 60-years which is a considerable period of time [ER 3.7.93].
- 4.92. The ExA considers that this weighs against the Proposed Development. However, given that the soil quality would be restored to the same quality at decommissioning (as set out in the outline SMP), the harm is not permanent, albeit it would be long term, and the ExA has therefore ascribed the harm identified to land use and soil section little weight in the planning balance [ER 3.7.94].

Cumulative effects

- 4.93. The cumulative agricultural land appraisal submitted by the Applicant at Deadline 3 [Appendix I of REP3-037] considers the possible effects of the Proposed Development and other solar projects across Lincolnshire and Rutland [ER 3.7.88]:

Table 2: Agricultural Land Cumulative Impacts Table [REP3-037]

Site	Area and BMV Area (Grades 1, 2 and 3a)
Little Crow	37 ha Subgrade 3a (16% of site).
Tillbridge	1,400 ha, ALC quality not stated in Scoping Report.
Gate Burton	652 ha, of which 74 ha is Subgrade 3a (BMV).
West Burton	200 ha of Grades 1, 2 and 3a across 758 ha site.
Cottam	48 ha Grades 2 and 3a.
Springwell	Scoping shows 497 ha provisionally Grade 2, 1,020 ha
Beacon Fen	LRA ALC identified 7 ha Grade 2, 226 ha Subgrade 3a.
Heckington Fen	58 ha Grade 1, 39 ha Grade 2, 160 ha Grade 3a (49% of Proposed Panel Area).
Temple Oaks	Scoping Report states all land is Subgrade 3b.
Mallard Pass	360 ha Grade 2 and 3a (42% of site)

- 4.94. Based on available information and assumptions made by the Applicant, it is estimated that the projects, including the Proposed Development, include approximately 2,114ha of BMV land. This would represent around 0.5% of the BMV land across Lincolnshire and Rutland. Around 42ha of BMV land is estimated across the projects to be occupied by fixed equipment such as tracks and substations. The appraisal concludes that individually and cumulatively, there would be no significant effects or loss of BMV agricultural land [ER 3.7.88].
- 4.95. The ExA concludes that the effects in terms of a loss of food production in isolation or in combination with other potential solar projects in Lincolnshire and Rutland are not significant [ER 3.7.103].

Secretary of State conclusions

- 4.96. The Secretary of State has considered all relevant policy contained within the 2011 and 2024 NPSs relating to solar and land use as important and relevant considerations within the decision making process. The Secretary of State recognises that the 15 May 2024 WMS³ emphasises elements of the 2024 NPSs.

³ <https://questions-statements.parliament.uk/written-statements/detail/2024-05-15/hcws466>

- 4.97. The Secretary of State notes paragraph 5.11.34 of 2024 EN-1 which states that the Secretary of State must ensure that Applicants do not site their scheme on BMV land without justification, and where schemes are to be sited on BMV land, the Secretary of State should take into account the economic and other benefits of the land.
- 4.98. The Secretary of State agrees with the ExA's conclusion that the economic effect of the use of BMV land is not significant, and that whilst there would inevitably be some loss of production for individual farms due to the removal of land from production for 60-years, the majority of the farmland would still be capable of arable cultivation because only 17.4% of the total combined area of the four farms lies within the Order limits as a whole [ER 3.7.86]. The Secretary of State agrees with the Applicant that the potential production that would be lost in the PV array and field margin area based on a three-year crop rotation and average yields is negligible in the context of approximately 21 million tonnes of cereal production in the UK in 2022.
- 4.99. The Secretary of State acknowledges the loss of agricultural land including the loss of BMV land for 60-years however agrees with the ExA that the use of agricultural land had been shown to be necessary and the design evolution of the Proposed Development led to removal of all fields that consisted entirely of Grade 2 from the PV array area. Some grade 2 land is still used for the PV array area, but only where the land consists of a mixture of grading. The Applicant notes if the use of BMV parcels within the Order limits was to be avoided further the Proposed Development would be more spread out, with a longer cable route to connect to the Ryhall substation and therefore more land would be required [ER 3.2.134].
- 4.100. The Secretary of State also notes that the Applicant considered the possible effects of other solar projects across Lincolnshire and Rutland and estimated that the projects, including the Proposed Development, include approximately 2,114ha of BMV land which would represent around 0.5% of the BMV land across Lincolnshire and Rutland. The Secretary of State agrees with the ExA that the impact of the Proposed Development in relation to food production in the national context is negligible.
- 4.101. The Secretary of State has considered submissions regarding the Applicant's soil surveys and concludes that the soil surveys are sufficiently detailed. Further, the Secretary of State notes that there are commitments secured by the outline SMP pursuant to Requirement 14 of the Order for more detailed surveys in advance of the construction of the substation. The Secretary of State accepts the surveys were undertaken by a professional soil scientist and accepts the Applicant's conclusions in relation to the amount of BMV land present and considers the ALC survey to fulfil the requirements of 2024 EN-3 as well as the South Kesteven Local Plan.
- 4.102. The Secretary of State welcomes the suggestion for sheep grazing under the solar panels but considers that, as this benefit is not secured, it should not be ascribed weight in the planning balance.
- 4.103. The Secretary of State concludes that the siting of the Proposed Development on BMV land has been justified. The Secretary of State is satisfied with the approach to site selection and considers that the Applicant has reasonably and satisfactorily evidenced the use of BMV

land, taking into consideration the relevant 2024 NPS tests. However, the Secretary of State acknowledges that there are harms due to the long term use of BMV and non-BMV agricultural land, and considers that the matter of land use and soil should be ascribed moderate negative weight in the planning balance.

Socio-economics

- 4.104. A number of IPs raised concerns in relation to the ethical procurement of solar PV panels, including WRs from MPAG and Alicia Kearns MP [ER 3.9.89]. A potential risk that forced labour might be used in the supply chain was alleged [ER 3.9.89]. The ExA notes that the concerns of Alicia Kearns MP and MPAG remained at the close of the Examination, as set out in MPAG's Final Position Statement. MPAG considered that the updated outline Employment, Skills and Supply Chain Plan ("ESSCP") would not be effective in ensuring no use of forced labour or monitoring thereof [ER 3.9.92].
- 4.105. The ExA notes the final ESSCP is subject to approval by the local planning authorities and secured by Requirement 17 of the Order, which includes a commitment to require any supplier to upload its modern slavery and human trafficking statement annually to the Home Office Register to enable monitoring by the local planning authorities [ER 3.9.91]. To further facilitate monitoring, a list of suppliers would also be made available to the local planning authorities prior to commencement [ER 3.9.91].
- 4.106. The ExA consider that the sourcing of materials, including solar panels, is not a matter that is raised in 2023 draft EN-3 as being of relevance in this regard [ER 3.9.93]. Whilst the carbon implications of the sourcing of materials along with any transport implications are relevant [ER 3.9.93], as assessed in the Applicants assessment of climate change effects and greenhouse gas emissions [APP-043] [REP7-038] [REP8a-010], the ExA considers that wider sourcing of materials in general is not a matter that would generally be given significant weight in the determination of an application for development consent. The ExA concludes this matter would, if necessary, most suitably be regulated by wider restrictions or controls outside the remit of this Application. The ExA gives very minimal weight to the concerns raised in respect of ethical procurement and do not consider it affects its overall conclusions on the Application [ER 3.9.93].
- 4.107. The Secretary of State agrees with the ExA that the implications of materials sourcing have been reasonably assessed where relevant to other topics, notably on the potential climate change implications of the Proposed Development. However, the Secretary of State does not consider that ethical procurement is a relevant planning matter in itself in the determination of this Application and, whilst noting the concerns of IPs, this matter is therefore not ascribed any weight in the planning balance.

Conclusion

- 4.108. The ExA identifies minor economic benefits in terms of employment generation and Gross Value Added ("GVA") alongside minor adverse effects for tourism. The ExA concludes that, overall, taking account of the mix of adverse and beneficial effects, whilst the effects on Public Rights of Way have been reasonably minimised, such effects leads it to conclude that

socio-economic matters weigh to a little degree against the Proposed Development [ER 5.2.47].

4.109. The Secretary of State concludes that whilst there are minor socio-economic benefits in terms of employment and GVA, noting the adverse impacts, the matter of socio-economic impacts should be ascribed little negative weight in the planning balance.

5. Habitats Regulations Assessment

5.1. This is a record of the Habitats Regulations Assessment (“HRA”) that the Secretary of State has undertaken under the Conservation of Habitats and Species Regulations 2017⁴ as amended (“the Habitats Regulations”) in respect of the Proposed Development and its associated infrastructure. For the purposes of these Regulations the Secretary of State is the competent authority.

5.2. The Habitats Regulations aim to ensure the long-term conservation of certain species and habitats by protecting them from possible adverse effects of plans and projects. Following the United Kingdom’s departure from the European Union, these domestic regulations continue to apply. The Habitats Regulations provide for the designation of sites for the protection of habitats and species of international importance. These sites are called Special Areas of Conservation (“SACs”). They also provide for the classification of sites for the protection of rare and vulnerable birds and for regularly occurring migratory species within the United Kingdom and internationally. These sites are called Special Protection Areas (“SPAs”). SACs and SPAs together form part of the UK’s National Site Network (“NSN”).

5.3. The Convention on Wetlands of International Importance 1972 (“the Ramsar Convention”) provides for the listing of wetlands of international importance (“Ramsar sites”). Government policy is to afford Ramsar sites in the UK the same protection as sites within the NSN (collectively with SACs and SPAs referred to in this decision letter as “protected sites”).

5.4. Regulation 63 of the Habitats Regulations provides that: “... *before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which (a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in-combination with other plans or projects), and (b) is not directly connected with or necessary to the management of that site, [the competent authority] must make an appropriate assessment of the implications for that site in view of that site’s conservation objectives.*” And that: “*In the light of the conclusions of the assessment, and subject to regulation 64 (considerations of overriding public interest), the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).*”

5.5. The Proposed Development is not directly connected with, or necessary to the management of a protected site. Therefore, under regulation 63 of the Habitats Regulations, the Secretary of State is required to consider whether the Proposed Development would be likely, either alone or in combination with other plans and projects, to have a significant effect on any

⁴ <https://www.legislation.gov.uk/ukxi/2017/1012/contents/made>

protected site. If likely significant effects (“LSE”) cannot be ruled out, the Secretary of State must undertake an appropriate assessment (“AA”) addressing the implications for the protected site in view of its conservation objectives.

- 5.6. The Secretary of State may grant development consent only if it has been ascertained that the Proposed Development will not, either on its own or in-combination with other plans or projects, adversely affect the integrity (“AEoI”) of protected sites, unless the Secretary of State chooses to continue to consider further tests laid down in regulations 64 and 68 of the Habitats Regulations. The complete process of assessment is commonly referred to as an HRA.
- 5.7. The ExA produced a Report on the Implications for European Sites (“RIES”) [PD-016]. The purpose of the RIES was to compile, document and signpost information submitted by the Applicant and IPs during the examination (until Deadline 6 on 19 September 2023). It was issued to set out the ExA’s understanding on HRA-relevant information and the position of the IPs in relation to the effects of the Proposed Development on protected sites, at that point in time. Consultation on the RIES was undertaken between 6 October and 25 October 2023. Comments were received from NE [REP8-029] at Deadline 8. No other comments on the RIES were received during examination.
- 5.8. The Applicant’s assessment of effects was described in their Shadow HRA (“sHRA”) in Appendix 7.5 of the ES [APP-063]. This was further updated at Deadline 5 [REP5-054].
- 5.9. No LSE on protected sites in other European Economic Area (“EEA”) States were identified in the Applicant’s sHRA. Only UK protected sites are addressed in this report. No such impacts were raised for discussion by any IPs during the Examination
- 5.10. The sHRA considered the potential for LSE on protected sites within 10km of the Order Limits boundary. The Applicant considered the following sites in its screening exercise:
 - Rutland Water SPA, approximately 5.6km to the west of the Order limits (8.65km from the Solar PV);
 - Rutland Water Ramsar, approximately 5.6km to the west of the Order limits (8.65km from the Solar PV);
 - Baston Fen SAC, approximately 6.1km north east of the Order limits;
 - Grimsthorpe SAC, approximately 4.6km north of the Order limits; and
 - Barnack Hills and Holes SAC, approximately 6.8km south of the Order limits.
- 5.11. NE [RR-0823] confirmed that it was satisfied that the Applicant had identified the correct protected sites and qualifying features on which LSE could occur as a result of the Proposed Development. The ExA agreed [ER 4.4.8].
- 5.12. The Secretary of State has carefully considered the information presented before and during the Examination, including the ES, sHRA, representations made by IPs, and the ExA’s Report. The Secretary of State has considered the conservation objectives and qualifying features for each of the five protected sites against the potential effects of the Proposed Development.

Effect pathways

- 5.13. Effects during the operational phase were scoped out by the Applicant due to the nature of the Proposed Development, as stated in paragraph 6.5 of the sHRA.
- 5.14. The pathways through which the Applicant assessed the Proposed Development might have an effect on the protected sites were:
- loss of land used by species which form part of the designated ornithological features of the Rutland Water SPA and Ramsar site at construction); and
 - changes in hydrology or degradation (e.g. water levels, nutrient levels or pollutants) of the Baston Fen SAC (at construction and decommissioning).
- 5.15. Other effect pathways that were scoped out of the Applicants assessment were:
- direct impacts as a result of habitat losses or damage to any site;
 - displacement or disturbance of birds which form the interest feature of the SPA and Ramsar sites within the European site itself; and
 - adverse impacts to the structure and diversity of the grasslands within Grimsthorpe SAC and Barnack Hills and Holes SAC.
- 5.16. Dr Williams from MPAG raised concerns over an additional impact pathway of potential nutrient runoff from the creation of wildflower grassland and the storage of its arisings. The Applicant responded [REP4-041] that the arisings will be cut and used to create habitat piles, and any nutrients leaching into the soil will be minimal compared to what is added to arable land for farming under its current use. NE [REP5-037] and RCC [REP5-024] agreed.

LSE from the Proposed Development alone

Rutland Water SPA and Ramsar site – Loss of Functionally Linked Land used by qualifying bird species

- 5.17. In its sHRA, the Applicant assessed that the installation of Solar PVs will result in the loss of large areas of arable land, but concluded that this loss of land would not cause any LSE on any protected sites, as the current habitats are unsuitable for the birds for which the sites are designated, and that even if suitable, given the distance from the sites and the low numbers of recorded birds during wintering surveys, it is highly unlikely that any significant effects could occur. The Secretary of State agrees with this reasoning and concludes no LSE from this impact pathway from this Proposed Development alone.

Baston Fen SAC – Changes in hydrology or degradation

- 5.18. The Applicant assessed that there was a possible effect pathway due to the hydrological connectivity from the Order Limits to the SAC via the West Glen River, which could result in pollution or hydrological changes.
- 5.19. However, the Applicant concluded that no significant effects would be experienced due to the lack of use of chemicals or avenues for additional run off. The Applicant noted that the

normal design proposals show that construction will be set back from the river and its tributaries, and additional planting of more natural habitats will create increased permanent vegetation cover when compared to the current seasonally exposed arable fields.

- 5.20. Additionally, given the length of the connective waterways to the SAC and the associated dilution, the Applicant concluded that any small amounts of pollutants or changes to hydrology would not result in a LSE on the SAC.
- 5.21. The Secretary of State agrees that the proposals embedded into the design process are not considered mitigation and agrees that no LSEs are likely to occur on the Baston Fen SAC from the Proposed Development alone.

LSE from the Proposed Development in-combination

- 5.22. In the sHRA, the Applicant screened out in-combination effects arising from the Proposed Development on the basis that it would not have any effects on protected sites alone, and therefore could not add to any effects from other plans or projects.
- 5.23. The Applicant did not provide a methodology to support this statement and did not list out any plans or projects in the area with the potential for effects which could interact with those of the Proposed Development.
- 5.24. During Examination, the ExA [PD-008] and NE [REP2-093] requested further information about how the Applicant considered other plans and projects, but the Applicant replied [REP3-026] stating that further information was not necessary. The ExA sought further information from the Local Planning Authority's [PD-014] on other plans or projects which should be included in an assessment, but no plans or projects were suggested.
- 5.25. Although disputing the Applicants rationale for ruling out in-combination effects, NE acknowledged [REP5-009] that they did not believe that in-combination effects would occur, and in [REP9-019] continued that whilst multiple insignificant effects may add up to cause a significant effect, in this case, the possible impact of the Proposed Development on Baston Fen SAC is so small it is immeasurable and the Proposed Development's embedded mitigation further reduces the magnitude of any effect. As such, NE agreed that using this rationale, this Proposed Development would not cause any effect in-combination with other plans or projects.
- 5.26. The Secretary of State shares NE's view that the Applicant's rationale for coming to its conclusion of no in-combination LSE is not reasonable, and the Secretary of State notes that it is not the standard approach when dealing with in-combination effects. However, the Secretary of State acknowledges that there is likely to be no realistic pathway through which an in-combination LSE could occur, and concludes no LSE will arise from the Proposed Development in-combination with other plans or project.

The Secretary of State's Conclusion on the HRA

- 5.27. The Secretary of State considers that the Proposed Development, either alone or in combination with other plans or projects, is not likely to have a significant effect on any

protected site due to the absence of any realistic effect pathways and that an AA is therefore not required. This conclusion is consistent with the advice provided during the examination by NE [REP9-019] and the ExA's recommendation [ER 4.5.7]. The Secretary of State notes that mitigation measures have been proposed by the Applicant to avoid local environmental effects. The Secretary of State agrees with the inclusion of these measures, but whilst they strengthen the above conclusions they are not intended or necessary to avoid significant effects on protected sites, nor have they been considered when reaching the above conclusion.

- 5.28. The Secretary of State agrees with the ExA that sufficient information has been provided for the Secretary of State to fulfil their duties under the Habitats Regulations and determine that an AA is not required.

6. Compulsory Acquisition and Related Matters

- 6.1. The Secretary of State notes that to support the delivery of the Proposed Development, the Applicant is seeking powers of CA and TP of land and rights. The Applicant is seeking the following powers [ER 6.4.3]:
- 6.2. The acquisition of all interests in land, including freehold, shown edged red and shaded pink on the Land Plans (Article 19 of the Order);
- Permanent acquisition of new rights, shown edged red and shaded blue on the Land Plans (Article 22); and
 - Temporary use of land to permit construction or maintenance, including where the Applicant has not yet exercised powers of compulsory acquisition (Articles 29 and 30) and extinguishment and/or suspension of rights (Article 23) and overriding of easements and other rights (Article 26) – shown edged red and shaded yellow on the Land Plans.
- 6.3. The ExA considered the representations submitted in relation to the following Affected Persons: Mr R Williams [ER 6.5.42 et seq.], Mr and Mrs Beamish [ER 6.5.56 et seq.], Mrs H Woolley [ER 6.5.63 et seq.], and Mr Chapman [ER 6.5.67 et seq.]. The ExA conclude in regards to Mr R Williams and Mr and Mrs Beamish the land is required and there is a compelling case in the public interest for the acquisition of new rights [ER 6.5.55, ER 6.5.62], and for Mrs H Wooley and Mr M Chapman the TP powers sought would be proportionate and justified [ER 6.5.66, ER 6.5.67].
- 6.4. The ExA is satisfied of the following matters:
- There is a compelling case for the need for further solar electricity generation [ER 3.2.156];
 - The Applicant's overall approach to the consideration of site selection and of alternatives. [ER 6.5.8, ER 6.5.38-39];
 - That no powers are sought over Crown land and consequently s135 of the 2008 Act does not apply [ER 6.6.24];
 - That no powers are sought over any special category land and consequently s130, 131 and 132 of the 2008 Act do not apply [ER 6.6.25];
 - That the necessary funds would be available to the Applicant to cover the likely costs of CA [ER 6.5.18];

- That the proposed interference with individuals' rights would be lawful, necessary, proportionate and justified in the public interest and therefore consider the CA and TP powers sought are compatible with the Human Rights Act [ER 6.6.21];
- The Applicant has demonstrated what the land would be used for [ER 6.4.1];
- The land is required for, or to facilitate or incidental to, the Proposed Development to which the development consent relates, and meets the requirements of Sections 122(2) the 2008 Act [ER 6.5.12, ER 6.5.55, ER 6.5.62, ER 6.5.70];
- Protective Provisions ("PP") have been agreed by the Applicant with Statutory Undertakers ("SU") [ER 6.6.9 et seq.];
- In regards to Section 127 of the 2008 Act, there are no outstanding matters of relevance raised by any Statutory Undertaker at this stage and it is satisfied that the relevant Protective Provisions contained within Schedule 15 of the Order would ensure that an appropriate degree of protection would be given to the affected SUs, such that there would be no serious detriment to the carrying out of their undertakings. [ER 6.6.10];
- Conclude that the tests set out in Sections 127(3) and/or 127(6) (as appropriate) can be met [ER 6.6.11];
- In accordance with Section 138(4), that the extinguishment of the SU rights, and removal of the SU apparatus is necessary and proportionate for the purpose of carrying out the development to which the Order relates [ER 6.6.12];
- The Applicant's conclusions on the generality of the case for CA and TP [ER 6.5.19]; and
- That there is a compelling case in the public interest for all of the land identified to be acquired compulsorily [ER 6.6.21].

6.5. Overall, the ExA concludes the following [ER 6.7.1]:

- The application site has been appropriately selected;
- All reasonable alternatives to CA have been explored;
- The Order provides a clear mechanism whereby the necessary funding can be guaranteed;
- There is a clear need for all the land included in the Book of Reference to be subject to CA or TP;
- There is a need to secure the land and rights required to construct the Proposed Development within a reasonable timeframe, and the Proposed Development represents a significant public benefit to weigh in the balance;
- The private loss to those affected has been mitigated through the selection of the land; the minimisation of the extent of the rights and interests proposed to be acquired and the inclusion, where relevant, of PPs in favour of those affected;
- The powers sought satisfy the conditions set out in s122 and s123 of the 2008 Act as well as the CA Guidance; and
- The powers sought in relation to SUs meet the conditions set out in s127 and s138 of the 2008 Act and the CA Guidance

6.6. The ExA concluded that, considering the above factors together, there is a compelling case in the public interest for the CA and TP powers sought in respect of the relevant land shown in the land plans [ER 6.7.2].

- 6.7. At the close of the examination a number of parties had unsigned agreements, and the ExA recommended that the Secretary of State should seek updates. On 13 March 2024, the Secretary of State wrote to the relevant parties seeking updates.
- 6.8. With regards to Affected Person Mr R Willaims, the Applicant confirmed on 15 April 2024 that an agreement had been reached.

Cable crossing of the East Coast Main Line

- 6.9. With regard to the proposed cable crossing of the East Coast Mainline Railway, the ExA notes that the Applicant has committed to providing an update to the Secretary of State on this matter as it expected to have an agreed Option for Easement with Network Rail soon after the Examination [ER 6.5.24]. The ExA also notes that the Applicant has provided without prejudice alternative Order drafting that it considers would be appropriate to be added once an Option for Easement Agreement has been signed with Network Rail before the end of the decision period [ER 6.5.24]. The ExA concludes that it may therefore be necessary to insert the Applicant's additional drafting into Article 22 dependent on the Applicant's updates in the decision-making period [ER 7.4.36].
- 6.10. The ExA concludes whilst the East Coast Mainline culvert option is preferable to avoid disturbance that would result from the A6121 Essendine option, the Applicant still requires the flexibility of two options, so that if Network Rail does not agree to an aspect of the detailed design for the use of the culvert/archway, then the Applicant can still use the Essendine option [ER 6.5.39]. The ExA states they are satisfied from the information before them, taking account of the proposed mitigation measures, that both options for the cable railway crossing route (through Essendine via the A6121 or through the culvert under the East Coast Mainline) can reasonably be included in the Order [ER 8.2.15]. The ExA states the Applicant has introduced measures to reasonably minimise effects on Affected Parties and others [ER 6.5.39]. The ExA conclude they are satisfied that the relevant land is required to facilitate or is incidental to the development and that there is a compelling case in the public interest for the proposed acquisition of the new rights [ER 6.5.40].
- 6.11. Noting the Applicant's intention to update the Secretary of State on this matter, the Secretary of State requested an update from the Applicant and Network Rail on 13 March 2024.
- 6.12. On 27 March 2024, the Applicant noted that it is currently negotiating and working to progress the Option for Easement agreement with Network Rail and that it is confident that an agreement can be reached and completed over the coming weeks. The Applicant also noted that it is still of the same view as it set out during the Examination that it does not agree that drafting should be inserted into the Order to limit the Applicant's choice about the cabling route to choose one of two routes until the full range of initial agreements are in place with Network Rail. The Applicant further noted that, towards the end of examination, the ExA requested and the Applicant provided 'without prejudice' drafting in relation to limiting the developer's choice of the cabling route to one of two options. The Applicant states that it made clear when providing this drafting that it would only be content for this to be included in the Order if the option agreement was signed before the end of examination period, or the decision period, as the Applicant would know for certain that Network Rail were committed from both an asset protection (with the BAPA/Framework Agreement that is already signed) and a property (the Option for Easement) position on the option that puts all cables under

the railway. As this has not yet occurred, it is still the Applicant's preference that this without prejudice drafting is not included within the Order.

- 6.13. Network Rail did not reply to the Secretary of State's 13 March 2024 update request.
- 6.14. On 15 April 2024 the Applicant noted discussions with Network Rail were continuing but the position in respect of them is unchanged.
- 6.15. The Secretary of State has noted the ExA's conclusion that drafting should be inserted as Article 22 (3) and (4) [ER 7.4.32] dependent on the Applicant's update [ER 7.4.36]. Noting the Applicant's update, as set out above, the Secretary of State has retained the drafting as recommended by the ExA at Article 22 (3) and (4). After considering the Applicant's update and concerns raised from the responses of IPs, the Secretary of State concludes that, despite the fact that negotiations are ongoing in relation to the Option for Easement with Network Rail, this issue is sufficiently addressed via the drafting inserted into the Order.

Side agreements with Rutland County Council ("RCC") and Lincolnshire County Council ("LCC")

- 6.16. With regard to the side agreements with RCC and LCC relating to highways matters the ExA notes that RCC, LCC and the Applicant have agreed to the principle of a side agreement to address concerns regarding highway matters but notes that the final wording has not been agreed [ER 3.10.58 et seq.]. The ExA notes that LCC confirmed that the updates to Articles 9, 10 and 13 of the Order ensure that powers conferred cannot be exercised without consent of the highway/street authority which provides LCC with sufficient confidence that they can be controlled, and no outstanding areas of disagreement are identified in the SoCG [ER 3.10.59].
- 6.17. The ExA notes that the Applicant confirmed in its Closing Summary Statement that it intends on completing the side agreements with RCC and LCC in time to update the Secretary of State on this matter prior to a decision being taken on the Application [ER 8.2.18]. Noting this, the Secretary of State requested updates from the Applicant, RCC and LCC on 13 March 2024.
- 6.18. LCC replied 27 March 2024 stating negotiations are on-going. The Applicant also confirmed it is currently negotiating with LCC in respect of reaching an agreement to deal with highways matters.
- 6.19. On 27 March 2024, RCC stated that a side agreement relating to highways matters has not yet been reached with the Applicant and the local Highways Authority has indicated a number of fundamental issues remain unresolved and an agreement would not be likely to be completed within a period of two months.
- 6.20. The Applicant responded saying the fact that negotiations are ongoing should not delay the Secretary of State from making a decision on the Proposed Development as article 9 (power to alter layout, etc. of streets), article 10 (construction and maintenance of altered streets) and article 13 (access to works) of the Order provides that the works carried out under those articles is to be "in a form reasonably required by the... authority". The Applicant also noted that this means that works cannot take place until some form of agreement is secured that

is agreeable to the local authorities, whether by the agreement discussed above or such other form that may be later agreed.

- 6.21. After considering the updates and concerns raised from the responses of IPs, the Secretary of State concludes that although negotiations in relation to the side agreements are ongoing, this matters is sufficiently addressed via the Order and therefore considers this matter satisfactorily resolved.

The Secretary of State's overall conclusion on CA and TP

- 6.22. The Secretary of State agrees with the ExA that the case for the requested CA and TP powers has been made, and that these powers should therefore be granted.
- 6.23. The Secretary of State has no reason to believe that the grant of the Order would give rise to any unjustified interference with human rights so as to conflict with the provisions of the Human Rights Act 1998.

7. Secretary of State's Consideration of the Planning Balance and Conclusions

- 7.1. The ExA concludes that the case for the Proposed Development has been made and recommends that the Secretary of State makes the Mallard Pass Solar Farm Order [ER 8.3.1].
- 7.2. The Secretary of State agrees with the ExA's conclusions and the weight it has ascribed in the overall planning balance in respect of the following issues:
- Air quality (neutral weight)
 - Noise and vibration (neutral weight)
 - Traffic and transportation (neutral weight)
 - Water and flood risk (neutral weight)
 - Other matters - glint and glare (neutral weight)
 - Other matters - waste (neutral weight)
 - Other matters - good design (neutral weight)
 - Interactions of effects and cumulative effects - residential living conditions (little negative weight) [ER 3.13.10].
 - Interactions of effects and cumulative effects - health and wellbeing (moderate negative weight) [ER 3.13.23].
 - Interactions of effects and cumulative effects - cumulative effects (neutral weight) [ER 3.13.28].
- 7.3. The paragraphs below set out the matters where the Secretary of State has further commentary and analysis to add beyond that set out in the ExA report.
- 7.4. The Secretary of State, in agreement with the ExA, has concluded that there is no reason to limit the operational period to less than 60-years, noting that the impacts have been assessed on the basis of the worst-case, permanent scenario.
- 7.5. The Secretary of State agrees with the ExA in regards to the principle of the development that there is an urgent need for the Proposed Development and ascribes this need

substantial positive weight in the planning balance. The Secretary of State notes that the ExA had a section titled Climate change and carbon (ExA 3.12.2 et seq) and the ExA notes that the Applicant has taken reasonable steps to reduce carbon emissions and ascribed moderate positive weight to the net carbon benefit of the Proposed Development. The Secretary of State considers the net carbon benefit to be intrinsic to the need for the Proposed Development, to which the Secretary of State ascribes substantial positive weight, inclusive of considerations relating to climate change.

- 7.6. With regards to ecology and biodiversity, the Secretary of State considers that the updated Outline CEMP secured in the Order provides sufficient control to give confidence that a GCN district level license will be obtained. The Secretary of State agrees with the ExA on ecology and biodiversity matters and agrees that such matters carry little positive weight in the planning balance.
- 7.7. With regards to the historic environment, the Secretary of State agrees with the ExA's conclusions on archaeological remains and has accepted the ExA's drafting of Requirement 10. The Secretary of State ascribes the matter of impacts on archaeological remains neutral weight in the planning balance. The Secretary of State concludes that the less than substantial harm to Braceborough Grange and Banthorpe Lodge weigh against the Proposed Development in the planning balance and, whilst giving considerable importance and weight to those individual heritage impacts, ascribes the issue of historic environment overall a moderate negative weighting. The Secretary of State concludes that the less than substantial harm to these heritage assets is outweighed by the benefits of the Proposed Development.
- 7.8. The Secretary of State agrees with the ExA that there would be considerable change to the existing landscape character and visual amenities. The Secretary of State ascribes these landscape and visual harms moderate negative weight in the planning balance.
- 7.9. The ExA conclude the harm identified to land use and soil section has a little weight in the planning balance, however due to some residual harm due to the use of BMV land over the operational period, the Secretary of State has amended the matter of land use and soil weighting to moderate negative weight in the planning balance. The Secretary of State welcomes the suggestion for sheep grazing under the solar panels but considers that, as this benefit is not secured, it should not be ascribed weight in the planning balance.
- 7.10. With regards to socio-economics, the Secretary of State agrees with the ExA and concludes there are minor economic benefits in terms of employment generation and GVA, and minor adverse effects for tourism, and moderate negative effects on PRow users. Having considered the socio-economic benefits against the adverse effects, the Secretary of State ascribes socio-economic impacts little negative weight in the planning balance. The Secretary of State does not consider that ethical procurement is a relevant planning matter in itself and the Secretary of State therefore does not ascribe this any weight in the planning balance.
- 7.11. The Secretary of State acknowledges that all NSIPs will have some potential adverse impacts. In the case of the Proposed Development, most of the potential impacts have been assessed by the ExA as having not breached NPS EN-1 and NPS EN-3, or those contained

in the 2023 draft NPSs, subject in some cases to suitable mitigation measures being put in place to minimise or avoid them completely as required by NPS policy. The Secretary of State considers that these mitigation measures have been appropriately secured.

- 7.12. For the reasons given in this letter, the Secretary of State concludes the benefits of the Proposed Development outweigh its adverse impacts. The Secretary of State does not believe that the national need for the Proposed Development as set out in the relevant NPSs is outweighed by the Proposed Development's potential adverse impacts, as mitigated by the proposed terms of the Order. Consequently, the Secretary of State concludes that development consent should be granted for the Mallard Pass Solar Farm.
- 7.13. In reaching this decision, the Secretary of State confirms that regard has been given to the ExA's Report, the relevant Development Plans, the LIRs submitted by RCC, LCC and SKDC, the NPSs, 2024 NPSs, and to all other matters which are considered important and relevant to the Secretary of State's decision as required by section 105 of the Planning Act 2008. The Secretary of State confirms for the purposes of regulation 4(2) of the EIA Regulations that the environmental information as defined in regulation 3(1) of those Regulations has been taken into consideration.
- 7.14. The Secretary of State has therefore decided to accept the ExA's recommendation to make the Order granting development consent, including the modifications set out in section 9 of this document.

8. Other Matters

Equality Act 2010

- 8.1. The Equality Act 2010 includes a public sector "general equality duty" ("PSED"). This requires public authorities to have due regard in the exercise of their functions to the need to eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Equality Act 2010; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not in respect of the following "protected characteristics": age; gender; gender reassignment; disability; marriage and civil partnerships⁵; pregnancy and maternity; religion and belief; and race.
- 8.2. In considering this matter, the Secretary of State (as decision-maker) must pay due regard to the aims of the PSED. This must include consideration of all potential equality impacts highlighted during the Examination. There can be detriment to affected parties but, if there is, it must be acknowledged and the impacts on equality must be considered.
- 8.3. The Secretary of State has had due regard to this duty and has not identified any parties with a protected characteristic that might be discriminated against as a result of the decision to grant consent to the Proposed Development.

⁵ In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

- 8.4. The Secretary of State is confident that, in taking the recommended decision, the Secretary of State has paid due regard to the above aims when considering the potential impacts of granting or refusing consent and can conclude that the Proposed Development will not result in any differential impacts on people sharing any of the protected characteristics. The Secretary of State concludes, therefore, that granting consent is not likely to result in a substantial impact on equality of opportunity or relations between those who share a protected characteristic and others or unlawfully discriminate against any particular protected characteristics.

Natural Environment and Rural Communities Act 2006

- 8.5. The Secretary of State notes the “general biodiversity objective” to conserve and enhance biodiversity in England, section 40(A1) of the Natural Environment and Rural Communities Act 2006 and considers the application consistent with furthering that objective, having also had regard to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when making this decision.
- 8.6. The Secretary of State is of the view that the ExA’s Report, together with the Environmental Impact Assessment considers biodiversity sufficiently to inform the Secretary of State in this respect. In reaching the decision to give consent to the Proposed Development, the Secretary of State has had due regard to conserving biodiversity.

Environmental Principles Policy Statement

- 8.7. From 1 November 2023 Ministers are under a legal duty to give due regard to the Environmental Principles Policy Statement when making policy decisions. This requirement does not apply to planning case decisions, and consequently the Secretary of State has not taken it into consideration in reaching the decision on this application.

9. Modifications to the draft Order

- 9.1. Following consideration of the draft Order provided by the ExA, the Secretary of State has made modifications to the draft Order as set out below.
- 9.2. The references in Art 11 and elsewhere to “temporary stopping up” of streets have been amended to “temporary closure”.
- 9.3. The original Article 17 (in relation to human remains and burial grounds) has been removed. There are no known burial grounds within the Order limits, and provisions for any remains should be included in the written scheme of investigation. There has been some re-numbering of other articles as a consequence.
- 9.4. In Article 35, the ability of the undertaker to transfer the benefit of the Order to a subsidiary company without the consent of the Secretary of State has been removed.
- 9.5. The reference in Schedule 13 to the Outline CEMP has been updated to version 10 of that document.

9.6. In addition to the above, the Secretary of State has made various changes to the draft Order which do not materially alter its effect, including changes to conform with current drafting conventions, changes made in the interests of clarity and consistency, and changes to ensure that the Order has its intended effect.

10. Challenge to decision

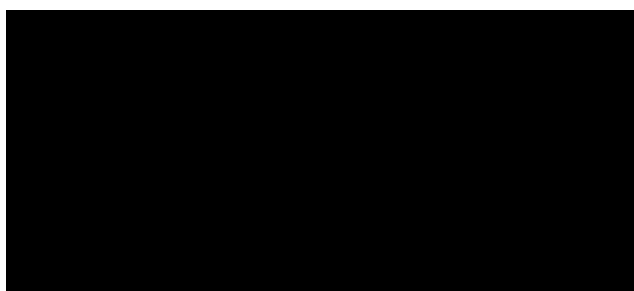
10.1. The circumstances in which the Secretary of State's decision may be challenged are set out in Annex A to this letter.

11. Publicity for decision

11.1. The Secretary of State's decision on this Application is being publicised as required by section 116 of the Planning Act 2008 and regulation 31 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

11.2. Section 134(6A) of the Planning Act 2008 provides that a compulsory acquisition notice shall be a local land charge. Section 134(6A) also requires the compulsory acquisition notice to be sent to the Chief Land Registrar, and this will be the case where the Order is situated in an area for which the Chief Land Registrar has given notice that they now keep the local land charges register following changes made by Schedule 5 to the Infrastructure Act 2015. However, where land in the Order is situated in an area for which the local authority remains the registering authority for local land charges (because the changes made by the Infrastructure Act 2015 have not yet taken effect), the prospective purchaser should comply with the steps required by section 5 of the Local Land Charges Act 1975 (prior to it being amended by the Infrastructure Act 2015) to ensure that the charge is registered by the local authority.

Yours sincerely,



David Wagstaff OBE

Deputy Director for Energy Infrastructure Planning

Department for Energy Security and Net Zero

ANNEX A: LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the Planning Court during the period of 6 weeks beginning with the day after the day on which the Order or decision is published. The decision documents are being published on the date of this letter on the Planning Inspectorate website at the following address:

<https://infrastructure.planninginspectorate.gov.uk/projects/east-midlands/mallard-pass-solar-project/>

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655).

ANNEX B: LIST OF ABBREVIATIONS

Abbreviation	Reference
AA	Appropriate Assessment
AEoI	Adverse Effects on Integrity
ALC	Agricultural Land Classification
Applicant	Mallard Pass Solar Farm Limited
BESS	British Energy Security Strategy
BMV	Best and Most Versatile
CA	Compulsory Acquisition
CEMP	Construction Environmental Management Plan
DEMP	Decommissioning Environmental Management Plan
DLL	District Level Licencing
EEA	European Economic Area
EIA	Environmental Impact Assessment
EIA Regulations	Infrastructure Planning (Environmental Impact Assessment) Regulations 2017
ExA	The Examining Authority
ES	Environmental Statement
ESSCP	Employment, Skills and Supply Chain Plan
GVA	Gross Value Added
GCN	Great Crested Newts
ha	Hectare
HRA	Habitats Regulations Assessment
IAPC	Impact Assessment and Conservation Payment Certificate
IP	Interested Party
LIR	Local Impact Report
LCC	Lincolnshire County Council
LSE	Likely Significant Effect
MPAG	Mallard Pass Action Group
NE	Natural England
Network Rail	Network Rail Infrastructure Limited
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NPS EN-1	National Policy Statement for Energy 2011
NPS EN-3	National Policy Statement for Renewable Energy Infrastructure 2011
NPS EN-5	National Policy Statement for Electricity Networks 2011
NSN	National Site Network
NSIP	Nationally Significant Infrastructure Project
OEMP	Operational Environment Management Plan
Order	Development Consent Order
PEIR	Preliminary Environmental Impact Report

PSED	Public Sector Equality Duty
PV	Photovoltaics
Ramsar sites	Listing of wetlands of international importance
RIES	Report on the Implications for European Sites
RCC	Rutland County Council
RR	Relevant Representation
SAC	Special Area of Conservation
sHRA	Shadow HRA
SKDC	South Kesteven District Council
SoCG	Statement of Common Ground
SMP	Soil Management Plan
Secretary of state	Secretary of State for Energy Security and Net Zero
SPA	Special Protection Area
the Habitats Regulations	Conservation of Habitats and Species Regulations 2017
the 2008 Act	The Planning Act 2008
the Ramsar Convention	The Convention on Wetlands of International Importance 1972
TP	Temporary Possession
WMS	Written ministerial statement
WR	Written Representations
2023 draft EN-1	National Policy Statement for Energy March 2023
2023 draft EN-3	National Policy Statement for Renewable Energy Infrastructure March 2023
2024 EN-1	National Policy Statement for Energy 2024
2024 EN-3	National Policy Statement for Renewable Energy Infrastructure 2024