

Gate Burton Energy Park EN010131

Consents and Agreements Position Statement
Document Reference: EN010131/APP/6.3
January 2023

APFP Regulation 5(2)(q)
Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009



Prepared for:

Gate Burton Energy Park Limited

Prepared by:

Gate Burton Team

This document has been prepared by the Gate Burton Team for sole use of our client (the "Client") in accordance with generally accepted consultancy principles. Any information provided by third parties and referred to herein has not been checked or verified by the Gate Burton Team, unless otherwise expressly stated in the document. No third party may rely upon this document without the prior and express written agreement of the Gate Burton Team



Table of Contents

1.	Consents and Agreements Position Statement	4
1.1	Introduction	4
1.2	Purpose of this document	4
1.3	Consenting requirements incorporated within the draft DCO	5
1.4	Consents	6
1.5	Other consents and licences	9
1.6	Agreements	9

Figures

No table of figures entries found.

Tables

Table 1-1: Summary of Additional Consents and Licences which may be Required.....	10
---	----

1. Consents and Agreements Position Statement

1.1 Introduction

- 1.1.1 This document has been prepared by Gate Burton Energy Park Limited (“**the Applicant**”). It forms part of the application (“**the Application**”) for a development consent order (“**DCO**”) that has been submitted to the Secretary of State for Business, Energy and Industrial Strategy (“**the Secretary of State**”) under section 37 of the Planning Act 2008.
- 1.1.2 The Applicant is developing Gate Burton Energy Park (“**the Scheme**”). The Scheme comprises the construction, operation, maintenance and decommissioning of a solar photovoltaic (PV) electricity generating facility and energy storage facility with a total capacity exceeding 50 megawatts (MW) and an underground approximately 7.5km 400kV electrical connection to the National Grid Substation at Cottam Power Station (Cottam National Grid Substation). Further details on the Scheme are provided in Environmental Statement Chapter 2 - The Scheme [EN010131/APP/3.1].

1.2 Purpose of this document

- 1.2.1 The purpose of this document is to provide information on the additional consents and licences that are or may be required to construct and operate the Scheme.
- 1.2.2 Section 37 of the Planning Act 2008 (“**PA 2008**”) governs the content of an application for a DCO, including the requirements for the necessary accompanying documents specified in the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (“**APFP Regulations**”).
- 1.2.3 Regulations 5 and 6 of the APFP Regulations provide the statutory requirements for what must accompany a development consent application. Guidance issued by the Department for Communities and Local Government: 'Planning Act 2008: Application Form Guidance' (June 2013) (paragraphs 45 and 46) requires that:

"Where the proposed development will also require other consents, licences, permits, etc, to enable it to be constructed and/or operational, and for which the Secretary of State is not the authorising body under the Planning Act, then the applicant must list and briefly describe these in Box 24. Reference should be made to any that have already been applied for, and a copy enclosed of any that the applicant may already be in the possession of.

The applicant should also, either in Box 24 or elsewhere in one of their application documents, set out whether there are, in principle, any reasons why such consents etc. might not be granted. In providing this information the applicant should reference responses received from the relevant authorising bodies regarding the likelihood of such consents etc. being granted."

- 1.2.4 This document lists those consents which the Applicant currently anticipates could be required. Further consents may be required as the project develops due to unforeseen circumstances and the Applicant will keep the Examining Authority up to date with any such developments.

1.3 Consenting requirements incorporated within the draft DCO

- 1.3.1 Section 33 of the PA 2008 makes it clear that there is no requirement for certain principal conventional consents to be obtained where a DCO is required to authorise a project (as is the case for the Scheme).
- 1.3.2 Part 7 of the PA 2008, in particular section 120, makes it clear that the following can be included within a DCO:
- Ancillary matters (including those listed in Part 1 of Schedule 5 to the PA 2008);
 - The application, modification or exclusion of statutory provisions for which the provision may be made in the DCO;
 - Amendment, repeal or revocation of any local legislation, where thought necessary or expedient by the Secretary of State in consequence of or in connection with the DCO; and
 - Incidental, consequential, supplementary, transitional or transitory provisions and savings.
- 1.3.3 Section 150 of the PA 2008 states that a requirement to obtain certain prescribed consents, or authorisations, under the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015 can be removed by the DCO with the consenting body's agreement.
- 1.3.4 From the above, it is clear that the intention of the PA 2008 is to encourage as many consents to be 'wrapped up' in a DCO as possible creating a 'one-stop-shop' approach for construction related consents.
- 1.3.5 The Applicant believes that the approach to including consents with a DCO should apply for both those that do, and those that do not, require the agreement of the relevant body under section 150 in order for them to be included in the DCO. The Applicant envisages the approach being as follows:
- The DCO contains an express provision disapplying the requirement for the consent in question.
 - In exchange, the DCO includes 'protective provisions' for the benefit of the body concerned.

- These protective provisions are specifically stated to have effect unless otherwise agreed between the Applicant and the body concerned.
 - Compliance with the provisions is a matter as between the parties and can be enforced accordingly.
 - Either way, the protective provisions provide a means for the body concerned to monitor, enforce compliance and to review the effectiveness of the approval regime enshrined in the protective provisions.
 - The mechanism of approval being given under the protective provisions allows the body concerned to approach a project in two stages (i) the DCO application stage, where the principle of the project is accepted by the body concerned and the detail of the protective provision is negotiated and (ii) the subsequent approval stages under the protective provisions which cannot be unreasonably refused but when detailed matters going to construction can be properly considered.
- 1.3.6 This is a tried and tested approach adopted in numerous local and public (hybrid) Acts, Harbour Act Orders, Transport and Works Act Orders for many decades and which is now firmly established in the case of DCOs.
- 1.3.7 The Applicant is also seeking provision deeming a marine licence to have been granted (as provided for under section 149A of the PA 2008) under section 65 of the Marine and Coastal Access Act 2009 and a deemed marine licence is included at Schedule 9 of the draft DCO.

1.4 Consents

- 1.4.1 The principal consent for the Scheme will be a DCO. The DCO process enables land acquisition, along with many consents and powers, to be dealt with at the same time. The DCO application may, however, need to be supplemented by other applications because:
- A particular consent cannot be contained in the DCO;
 - A consenting authority declines to allow a consent to be contained in the DCO; or
 - It is not desirable or it is inappropriate to include a consent within the DCO due to the stage of design development and the level of detail available at the time the DCO is made.
- 1.4.2 The majority of consents required are included, or addressed, within the draft DCO, as permitted by various provisions of the PA 2008, although discussions in some of these respects are continuing with the principal stakeholders. These fall into the following categories:
- Authorisation of all permanent and temporary works for the Scheme which are described as the "authorised development" in Schedule 1 to the draft DCO (equivalent to planning permission). Article 3 is the principal power in this respect;

- Compulsory acquisition of land and of rights over land, and the temporary possession of land. Articles 20 to 33 of the draft DCO provide these powers;
- Consent to carry out street works. Article 8 of the draft DCO provides this power;
- Traffic regulation measures required during construction that are equivalent to Traffic Regulation Orders made under the Road Traffic Regulation Act 1984. Article 15 of the draft DCO provides this power;
- Consent to alter the layout of streets and to form new, or alter or improve existing, accesses to the highway. Article 9 provides this power;
- Land drainage consent(s) under section 23 of the Land Drainage Act 1991 for works affecting the flow in ordinary watercourses (disapplication of that requirement requires the consent of the relevant body). Article 6 provides this power;
- Flood risk activity permit(s) from the Environment Agency under the Environmental Permitting Regulations (England and Wales) 2016 in connection with drainage outfall installation (disapplication of that requirement requires the consent of the relevant body). Article 6 provides this power;
- Water activity permit(s) from the Environment Agency under the Environmental Permitting Regulations (England and Wales) 2016 for temporary construction and permanent operational discharges (disapplication of that requirement requires the consent of the relevant body). Article 6 provides this power;
- Trade effluent consent under the Water Industry Act 1991 for the purposes of discharging trade effluent from welfare facilities during construction (disapplication of that requirement requires the consent of the relevant body). Article 6 provides this power;
- Full or temporary water abstraction licence(s) under section 24 of the Water Resources Act 1991 (if more than 20m³/d is to be dewatered / over-pumped and exemptions do not apply) (disapplication of that requirement requires the consent of the relevant body). Article 6 provides this power;
- Temporary water impoundment licence under section 25 of the Water Resources Act 1991 in connection with the laying of cables. (disapplication of that requirement requires the consent of the relevant body). Article 6 provides this power; and
- Requirement of licence for felling under section 9 of the Forestry Act 1967. Article 6 provides this power.

1.4.3 Some of these consents are prescribed in the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015. As a result, under section 150 of the PA 2008, the relevant consenting body must agree to the inclusion of these consents within (i.e. disapplied by) the DCO. Where this applies, this is indicated in the list above. Discussions between the Applicant and these consenting bodies are ongoing, and the Applicant is confident that the necessary agreements will be obtained before

or during the examination of its application, in exchange for the Applicant including in the DCO appropriate protective provisions.

1.5 Other consents and licences

- 1.5.1 A summary of the additional consents and licences likely to be required is set out in Table 1-1 below.
- 1.5.2 Table 1-1 lists the type of consent or licence required, the relevant consenting body, any agreement that has been reached with that body, actions to be undertaken and the status of the relevant application (e.g. whether the consent or licence has been granted or the anticipated application submission date).

1.6 Agreements

- 1.6.1 Agreements with third parties may be required in parallel to the DCO process and may take a variety of forms.
- 1.6.2 A fundamental part of the DCO process is the preparation and agreement of Statements of Common Ground (SoCG) with third parties to identify the matters on which we are in agreement, in order to narrow the focus for examining the Application concerned and to make the examination process more efficient. These will be progressed by the Applicant where appropriate.

Table Error! No text of specified style in document.-1: Summary of Additional Consents and Licences which may be Required

Nature of Consent/Licence	Key Legislation	Consenting Authority	Status/Comment
1. Electricity Generation Licence	Electricity Act 1989	Office of Gas and Electricity Markets (OFGEM)	Required for electricity generation. An application for a generation licence was granted on 26 January 2022
2. Bilateral Connection Agreement	N/A	National Grid	The Applicant accepted a grid connection offer during March 2021, thereby securing a Bilateral Connection Agreement (BCA) to the existing Cottam National Grid Substation.
3. Water abstraction or impoundment licence	Water Resources Act 1991 (as amended by the Water Act 2003), Environment Act 1995, Water Resources (Abstraction and Impounding) Regulations 2006	Environment Agency	If groundwater pumping / dewatering is required then applications to be made by the contractor before the abstraction or impoundment commences as appropriate.
4. Water discharge	Environmental Permitting (England and Wales) Regulations 2016	Environment Agency	If water discharge activities are required then an application for water discharge activity environmental permit will be made by the contractor before water is discharged.
5. Permit for transport of abnormal loads For delivery by road of loads that fall outside standard practice (if required)	Road Vehicles (Authorisation of Special Types) (General) Order 2003 or with authorisation from the Secretary of State under the Road Traffic Act 1988	Department for Transport, National Highways, Local Highway Authority or the police and bridge owners (if any) as appropriate	Appropriate applications, in accordance with the Construction Traffic Management Plan, will be made by the contractor in advance of the delivery of abnormal load.
6. Section 61 consent Control of noise on construction sites	Control of Pollution Act 1974	Relevant local authority	Applications will be made by the contractor a minimum of 28 days before construction commences.
7. Health and Safety related consents	Health and Safety at Work Act 1974 and subsidiary legislation	Health and Safety Executive (HSE)	Applications to be made by the contractor before construction commences as appropriate.
8. Protected species licence	The Conservation of Habitats and Species Regulations 2017	The Secretary of State, the MMO or Natural England	It is proposed that the formal application process will take place and licence granted prior to the commencement of construction

Nature of Consent/Licence	Key Legislation	Consenting Authority	Status/Comment
	Wildlife and Countryside Act 1981 Protection of Badgers Act 1992		The Applicant is not aware of any reason why a licence would not be granted should one be required.