

Application by Gate Burton Energy Park Limited for an Order Granting Development Consent for Gate Burton Energy Park

Agenda for Issue Specific Hearing 1 (ISH1): Draft Development Consent Order (dDCO)

Hearing	Date and Time	Location
Issue Specific Hearing 1 on the draft Development Consent Order	Wednesday 5 July 2023 Hearing Starts at 10.00am Registration and seating available at venue from 9.30am and virtual Registration Process from 9.30am	Blended event at: DoubleTree Hilton, Brayford Wharf North Lincoln LN1 1YW and By virtual means using Microsoft Teams

Attendees

The Examining Authority (ExA) would be assisted by attendance of representatives of the following parties:

- The Applicant
- Lincolnshire County Council
- Nottinghamshire County Council
- West Lindsey District Council
- Bassetlaw District Council
- Canal and River Trust
- Environment Agency
- Marine Management Organisation
- Historic England
- Statutory Undertakers

In addition, all Interested Parties (IP) are welcome to attend and make oral representations on the matters set out in the agenda, subject to the ExA's ability to control the Hearing. Confirmation of your wish to attend this hearing was required to be provided by **Procedural Deadline A - 14 June 2023**

Anyone wishing to attend the Hearing in person, who has not already advised the Case Team of this, should do so as soon as possible.

The event will be livestreamed and a link for watching the livestream will be posted on the project webpage of the National Infrastructure Planning website closer to the Hearing date. IPs and members of the public who wish to observe the Hearing can therefore view and listen to the Hearing using the livestream, or view and listen to the recording, after it has concluded.

Agenda

1. Welcome, introductions, arrangements for the Hearing

2. Purpose of the Issue Specific Hearing

The ExA will explain the purpose of the hearing, during which it will seek responses from the Applicant and IPs. IPs will also be invited to ask questions of clarification in relation to the draft Development Consent Order (DCO) Articles and Schedules.

3. General introduction to dDCO

The Applicant will be asked to provide a very brief overview of each part of the dDCO and the Schedules. To set the scene and describe what the dDCO is seeking to provide for.

4. Scope of the proposed development

The ExA will ask questions to understand the nature and scope of the proposed development for which consent is sought and the general parameters included within the provisions of the dDCO.

4.1	Generating capacity
	The Applicant will be invited to explain the generating capacity of the proposed generating station including: <ul style="list-style-type: none">• why there is no upper limit specified in the dDCO;• whether an upper limit could be secured through the dDCO;• any issues that may arise from imposing an upper limit.
4.2	Associated Development – Battery Energy Storage System (BESS)
	The Applicant will be asked to explain why the BESS is considered to be necessary associated development or whether it is an aim in itself. In particular commenting on: <ul style="list-style-type: none">• The storage capacity of the BESS and its relationship to the generating station.

	<ul style="list-style-type: none"> • The time duration for storage. • The link to the grid (any grid connection limits). • The importation of electricity from the Grid and not solely charging from the Generating station (for grid balancing purposes).
4.3	Operational Life time of the Proposed Development
	<p>The Applicant will be asked to comment on the indicative 60 year life span of the proposed development and whether this should be secured within the DCO. The Applicant should address whether it would be appropriate to include any of the following, and if not why not:</p> <ul style="list-style-type: none"> • A time limited consent; • A specific Article requiring decommissioning after 60 years (from when first commissioning?) • An additional Requirement or changes to the existing Requirements to secure a pathway to decommissioning?
4.4	Decommissioning
	<p>Is the decommissioning provided for in Requirement 19 fit for purpose and sufficient to address any potential impacts.</p> <p>Does the lack of a time limit or decommissioning date undermine the Rochdale Envelope approach and have consequences for some of the Environmental Assessments.</p> <p>What would the effect be of the company failing and how would decommissioning be secured. Should there be a bond secured within the dDCO to pay for future decommissioning.</p>

Notes on Item 4:

- The submitted application documents should be taken as read and need not be repeated in oral submissions, although signposting to key documents may assist.
- Whilst this item is principally directed to the Applicant, other participants may also raise any relevant matters through the ExA.

5. Draft Development Consent Order

The ExA will ask questions regarding the powers in the dDCO relating to the following matters

5.1	Articles of the dDCO
	<p>The ExA will ask questions in respect of the Articles of the dDCO. Interested Parties will also be invited to raise any matters in relation to the draft Articles. Discussion will include (but not be limited to) the following matters.</p>

Article 2: Interpretation

- To test the adequacy of definitions relating to, amongst other things, 'Environmental Statement' 'maintain', 'Permitted Preliminary Works', 'date of decommissioning' and 'relevant planning authority' (Lincolnshire County Council).
- To explore whether additional terms should be defined in Article 2, such as 'Design and Access Statement'.

Article 3 – Development Consent etc granted by this Order

- To explore the justification and operation of Article 3(2) and
- the relationship with 'limits of deviation' as referred to in the Explanatory Memorandum (EM).
- Explore whether the Applicant is seeking to include 'limits of deviation'.

Article 6 – Application and modification of statutory provisions

To explore the Statutory provisions that the Applicant is seeking to disapply including:

- 6 (1) (d) section 24 (restrictions and abstraction) of water Resources Act.
- 6 (1) (e) section 25 (restrictions and abstraction) of water Resources Act.
- 6 (1)(h) regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(c) and,
- the local legislation identified in Schedule 3.

Articles 38 and 39 Felling or lopping of trees and removal of hedgerows and trees subject to tree preservation orders

- For the Applicant to explain the extent to which section 22 of Advice Note 15 has been followed, particularly in respect of a schedule within the dDCO.

	<ul style="list-style-type: none"> • To understand the justification for the broad scope of the Article. <p>[APP-187] although titled TPO and Hedgerow removal plan only provides an identification of Hedgerows, TPO and TPO woodland order and the DCO has no schedule and makes no reference to it.</p> <p>Article 40 – Certification of plans and documents</p> <ul style="list-style-type: none"> • To review the list of documents to be certified and consider whether any additional documents should be included, such as the Design and Access Statement, Indicative Site layout Plan and Mitigation Schedule. <p>Article 49 – Crown Rights</p> <p>The ExA will seek to understand and obtain an update on progress towards obtaining the appropriate consent from the Crown Estate and an understanding of timescales.</p>
5.2	Schedules of the dDCO
	<p>The ExA will ask questions in respect of the Schedules of the dDCO. IPs will also be invited to raise any matters in relation to the draft Schedules. Discussion will include (but not be limited to) the following Schedules.</p> <p>Schedule 2 - Requirements</p> <p>The Applicant will be asked to provide an overview of the Requirements.</p> <p>The ExA will then ask questions including on matters such as:</p> <ul style="list-style-type: none"> • Requirement 6 should the relevant parties identified as consultees be approving authorities given the nature of the matter addressed. • Requirement 9 (3) relationship between commence and permitted preliminary works and the trigger for when the Requirement would be operational • Whether Requirement 11 is sufficient in coverage and control. • Whether Requirement 19 should include a trigger for decommissioning.

The Council's, Statutory Parties and other Interested Parties will also be invited to raise any matters in relation to the draft Requirements.

Schedule 16 – Procedure for discharge of Requirements

The ExA will ask whether there are concerns in principle with the proposed approaches taken to the discharge of requirements including timescales for consultation, or for managing appeals or disputes under the dDCO.

Schedule 9 and Article 44 – Deemed Marine Management Organisation (MMO) licence

The ExA will seek to understand and obtain an update on progress towards obtaining the appropriate consent from the MMO and an understanding of timescales.

Schedule 13 – Documents and plans to be certified

To review the list of documents to be certified and consider whether any additional documents should be included, such as the Environmental Statement, Design and Access Statement and Embedded Measures Schedule.

Schedule 15 - Protective provisions.

The ExA will seek to understand and obtain an update on progress between parties regarding protective provisions; an explanation of any important differences of view and a timescale for resolution.

The ExA will also seek to understand whether any further parties should have protective provisions provided for:

- Canal and Rivers Trust
- Tillbridge Solar

Note on Item 5:

- IPs will be given an opportunity to ask questions and/or comment on the above.

6. Review of issues and actions arising

7. Any other business

8. Close

Purpose of ISH

This early hearing on the scope of the Proposed Development is being held to address matters and questions identified by the ExA through its reading and site inspections to date, and during the formulation of the Initial Assessment of Principal Issues as set out in Annex D of the Rule 6 letter [PD-005]. The ExA considers that it would be expedient to examine these matters orally at the outset of the Examination in order to ensure that the nature and scope of the Proposed Development is understood as early as possible.

The main purpose of the first dDCO hearing is to undertake an examination of the dDCO articles and schedules. In particular, to consider:

- issues around how the dDCO is intended to work – what would be consented,
- the extent of the powers and what requirements and agreements are proposed;
- any possible issues of prevention, mitigation or compensation which are not covered by the dDCO as currently drafted;
- the justification for any changes from established practice;
- the need for changes to other legislative provisions;
- the need for protective provisions and their scope; and
- the initial views of other IPs as to the appropriateness, proportionality or efficacy of the proposals.

Discussion at the hearing will be held without prejudice to the ExA's final recommendation about whether or not the dDCO should be made. In addition to the DCO matters requiring oral examination above, further matters pertaining to the dDCO will be the subject of written questions from the ExA.

This hearing will not examine the detailed content of provisions relating to the Compulsory Acquisition of land or rights or Temporary Possession of land. The draft Examination Timetable proposes separate Compulsory Acquisition Hearing(s) on these topics and they may also be returned to in subsequent DCO ISHs.

As a general rule, the ExA will seek to issue hearing agendas at least one week prior to hearings take place. The agenda provided above is indicative and may be subject to change on the day.

Discussion at the hearing may refer to the following documents, amongst others, an electronic or hard copy of which participants should have to hand:

- draft Development Consent Order [APP-215];
- Explanatory Memorandum [APP-216];
- Outline Design Principles [APP-007];
- Indicative Site Layout Plan [APP-033];
- Works Plan [APP-209]; and
- Mitigation Schedule [APP-008].

The ExA has sought to provide sufficient detail to assist the parties to prepare for the Hearing. The details set out above are indicative and the ExA may find it necessary to include additional Agenda items or to amend the order in which the items are dealt with.

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Registration Process

Parties who have registered to speak (both in person and virtually) will receive a Joining Instruction email shortly before the Hearing which will include a link to the virtual event on Microsoft Teams, and a telephone number should they need to participate by telephone. To enable the Hearing to start on time at **10.00am** those attending virtually should join promptly at **9.30am** to ensure that all virtual attendees can complete the Registration Process in good time.

Procedure at ISH

Guidance under the Planning Act 2008 and the Infrastructure Planning (Examination Procedure) Rules 2010 provides that it is for the ExA to probe, test and assess the evidence through direct questions of persons making oral representations at Hearings. Questioning at the Hearing will be led by the ExA. Cross questioning of a person giving evidence by another person will only be permitted if the ExA decides it is necessary to ensure representations are adequately tested or that an IP has had a fair chance to put its case.

The hearing will finish as soon as the ExA deems that all those present have had their say and that all matters have been covered. If there are additional matters to be dealt with, it may be necessary to defer some matters to written questions. The evidence presented orally at ISH1 should be included in post-hearing submissions and submitted by **Deadline 1 (Tuesday 18 July 2023)**.