

APPLICATION BY GATE BURTON ENERGY PARK LIMITED

POST HEARING SUBMISSIONS

ON BEHALF OF LINCOLNSHIRE COUNTY COUNCIL

AT DL1

Introduction

1. Lincolnshire County Council (“LCC”) attended the Preliminary Meeting (PM) and first Issue Specific Hearing (ISH) on the draft DCO held on 4th and 5th July 2023 respectively. A summary of LCC’s oral representations for both hearings appears below.

Preliminary Meeting

2. LCC remains concerned to ensure that members of the public wishing to participate in the examination of this and other DCO applications should be able to participate meaningfully and easily. LCC’s concerns were highlighted and shared by members of the public, 7000 Acres and West Lindsey District Council (WLDC). 7000 Acres in particular noted the feeling of disenfranchisement which remains a concern of LCC.
3. This arises particularly in relation to the assessment of cumulative effects. LCC is host authority for a number of existing and forthcoming NSIP scale solar projects and is concerned to ensure that as a matter of substance, cumulative effects are considered holistically and thoroughly, and that as a matter of procedure, thought is given to how this might be best achieved in a way which encourages rather than discourages public participation. Specifically, LCC is concerned to ensure that interested parties don’t succumb to “consultation fatigue” and/or assume incorrectly that representations made to one ExA in relation to cumulative effects, for example, will automatically be taken into account by others.
4. One potential practical solution would be to hold a linked session with other extant examinations. This would be a visible statement to members of the public that cumulative effects are being given careful attention. By October 2023, 3 or 4 other examinations are likely to be underway and it would give LCC’s Members and members of the public great comfort if a join session were to be held. However, this is not the only means of achieving the aim of procedural fairness. Even if the ExA were to stop short of holding a formally linked ISH, cumulative effect ISHs for a number of projects could be held at the same location on the same

day or over consecutive days. This would give comfort to members of the public that a “joined up” approach was being taken and a “siloes” approach avoided.

5. At present, there is a real risk that a hypothetical member of the public wishing to object to the cumulative effects of projects in Lincolnshire would need to attend 8 or 9 separate examinations and up to 18 sets of ISHs to make potentially the same point. We note this was a point strongly supported by members of the public at the PM.
6. Otherwise, LCC has no particular comments to make in relation to the specific deadlines proposed in the R6 letter but would highlight the workload likely to be faced by LCC over the coming months as 12 solar DCOs and 2 other projects are currently in the pipeline and clashes between hearings or even between written deadlines and hearings would cause capacity issues.

ISH1 – the draft DCO

Agenda items 4.1 and 4.2

7. LCC agrees with the Applicant that no upper generating capacity limit is required to make the development acceptable and that the BESS, as a matter of principle, is capable of falling within the definition of “associated development”.

Agenda item 4.3

8. LCC considers that the dDCO should be amended to specifically include reference to a 60 year time limit and a requirement to decommission the apparatus within this timeframe. The ES assesses a temporary scheme of this time period and consent has not been expressly sought for a permanent installation. The project has been assessed by the Applicant and all IPs on this basis. It is therefore necessary to reflect this in the DCO to avoid consent being granted for more than has been applied for and assessed within the ES.

Agenda item 4.4

9. Requirement 19 should be amended to include the following:
 - a. Express reference to the need for a decommissioning travel management plan and waste management plan in addition to (or as part of) an environmental management plan. Including references to these documents within a secured document is (1) to treat

decommissioning differently to construction and (2) raises questions as to the degree to which these, as sub-documents, are properly secured. They should be expressly referenced in Requirement 19 to avoid doubt.

- b. A requirement to submit a decommissioning plan 12 months prior to the expiry of 60 years from the date of first transmission and implement that plan as approved by the relevant planning authority.
- c. Delete reference to submission of a plan within 12 months from the applicant deciding to decommission the project. This timescale is essentially meaningless as (1) the Applicant could decide never to decommission, thus avoiding the need to do so entirely and (2) the Applicant is, as presently drafted, not required to record or communicate to anyone its “decision” to decommission so the public and the enforcing authorities are entirely in the dark as to when the 12 month period starts and ends. Finally (3) the 12 month period, or indeed any length of period, is nothing to the point unless it is in relation to a long stop date beyond which the Applicant is required to remove the project and decommission it.
- d. Include a requirement that the Applicant be required to notify the relevant planning authority if any part of the development has ceased to generate electricity and submit a plan for its replacement or decommissioning as appropriate. It is appropriate to address the potential for panels becoming damaged or defunct during the lifetime of the scheme to ensure they are replaced or decommissioned in a timely manner and not left producing visual and other effects whilst not providing any commensurate benefits. It appears that the definition of “date of decommissioning” within Part 1 may have been intended to apply to a similar requirement within Requirement 19 but has not been given effect – it should be.
- e. Either here or potentially more appropriately within a s.106 agreement, to provide for a decommissioning bond to ensure sufficient funds are available to decommission the scheme should the Applicant (or future operator) be financially unable to do so at the point required. Whilst the Applicant has sufficient funds now to deliver the scheme there can be no certainty as to the position in 66 years’ time (assuming grant of consent in 2024, 5 years to implement and a 60 year time period for operation).

Agenda item 5.1

10. LCC would request inclusion as a named relevant planning authority given its expertise in areas relating to various requirements, specifically in relation to highways and rights of way, fire risk, waste, flooding and soils.
11. In relation to Article 40, LCC considers that the BNG Assessment (APP-230) should be secured, or its promised percentage gains specifically secured within the DCO. At present, the Application proceeds upon a promise of circa 70% improvement in habitats units but the document which is proposed to be secured, the Landscape and Ecology Management Plan¹, only promises a 10% gain in line with the Environment Act. The higher figure should be secured either by approval of the BNG Assessment or a specific reference to the percentage gains quoted within it, within Requirement 8.

Agenda Item 5.2

12. LCC considers it should properly be the discharging authority for Requirements 6, 10, 14, 16 and 17. It should be a specified consultee in relation to Requirement 18.
13. In relation to Sch. 16, LCC does not object to the principle of including a deemed discharge provision, however, 6 weeks is an unreasonably short time period. 8-10 weeks would be more realistic and the Applicant should be required to notify relevant consultees to save any delay in this regard.
14. Sch.16 should include standard drafting provisions in relation to fees for discharge applications in line with Appendix 1 to Advice Note 15.

Conclusions

15. Additional drafting comments will be picked up in LCC's Written Representations and LCC will continue to review the draft DCO as it evolves during the examination.

¹ Note this is referred to in the DCO as "Landscape and Ecological Management Plan" but the document is in fact titled "Landscape and Ecology Management Plan" (App-231).