

**Application by Gate Burton Energy Park Limited for Gate Burton Energy Park
The Examining Authority's written questions and requests for information (ExQ2)
Issued on 12 September 2023**

WEST LINDSEY DISTRICT COUNCIL (GABE-ISP002)

Answers to Examining Authority's Questions (ExQ2)

Gate Burton Energy Park EN10131

Deadline 4

Date: 3rd October 2023

Preamble:

This document provides the response of West Lindsey District Council (WLDC) to the Examining Authority's questions.

Abbreviations used

A2008	The Planning Act 2008	LoNI	Letter of No Impediment
AC	Alternating Current	LPA	Local planning authority
ALA 1981	Acquisition of Land Act 1981	MMO	Marine Management Organisation
Art	Article	MP	Model Provision (in the MP Order)
AS	Additional Submissions	MW	Mega Watts
BDC	Bassetlaw District Council	NCC	Nottinghamshire County Council
BESS	Battery Energy Storage System	NE	Natural England
BMV	Best and Most Versatile land	NGED	National Grid Electricity Distribution (East Midlands) Plc
BoR	Book of Reference	NPPF	National Planning Policy Framework
CA	Compulsory Acquisition	NPS	National Policy Statement
CPO	Compulsory purchase order	NRMM	Non-Road Mobile Machinery
CTMP	Construction Traffic Management Plan	NSIP	Nationally Significant Infrastructure Project
dB	Decibels	OLEMP	Outline Landscape and Ecology Management Plan
dDCO	Draft DCO	PoC	Point of Connection
EA	Environment Agency	PSED	Public Sector Equality Duty
EM	Explanatory Memorandum	PV	Photovoltaics
EMF	Electro Magnetic Field	R	Requirement
ERP	Emergency Response Plan	RR	Relevant Representation
ES	Environmental Statement	SI	Statutory Instrument
ExA	Examining authority	SOAEL	Significant Observed Adverse Effect Level
fCEMP	Framework Construction Management Plan	SoR	Statement of Reasons
foEMP	Framework Operational Environmental Management Plan	SoS	Secretary of State
Ha	Hectares	TA	Transport Assessment

HE	Historic England	TP	Temporary Possession
HSE	Health and Safety Executive	TPO	Tree Preservation Order
Kv	Kilo Volt	WFD	Water Framework Directive
LCC	Lincolnshire County Council	WLDC	West Lindsay District Council
LIR	Local Impact Report		

ExQ2 - 12th September 2023:

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EXQ2	Question to	Question	WLDC Response
Q2.1.1	The Applicant, Lincolnshire County Council, Nottinghamshire County Council, West Lindsey District Council Basset law District Council	<p>Overall Policy Background</p> <p>An updated version of the National Planning Policy Framework was published on 5 September 2023 can all parties comment on the implications for their case, if any.</p>	<p>WLDC does not consider that the updated version of the National Planning Policy Framework (NPPF) introduces new material implications for the examination of the Gate Burton Energy Park application, and nor does it materially affect the case put forward.</p> <p>The key updates to the NPPF relate to the implementation of paragraph 155, which states that to help increase the use and supply of renewable and low carbon energy, (development) plans should:</p> <p><i>“provide a positive strategy for energy from these sources, that maximises the potential for suitable development, while ensuring that adverse impacts are addressed satisfactorily (including cumulative landscape and visual impacts)”</i></p> <ul style="list-style-type: none"> • <i>“consider identifying suitable areas for renewable and low carbon energy sources, and supporting infrastructure, where this would help secure their development; and”</i> • <i>“identify opportunities for development to draw its energy supply from decentralised, renewable or low carbon energy supply systems and for co-locating potential heat customers and suppliers”</i> <p>New paragraph 222 in the NPPF (Annex 1: Implementation) states that for the purpose of paragraph 155, such policies only apply to plans that have not reached Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012 (pre-submission) stage, or that reach this stage within three months, of the publication of this version of the NPPF.</p>

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			<p>The current development plan relevant to the application is the Central Lincolnshire Local Plan, which was recently adopted in April 2023. As a consequence there is an up to date development plan and the new paragraph 222 in the NPPF does not have material effect.</p>
Q2.6.5	<p>Lincolnshire County Council, Nottinghamshire County Council, West Lindsey District Council Basset law District Council</p>	<p>Article 46 and Schedule 16 The Applicant made changes to the draft DCO at deadline 3 see dDCO REP3-006 and Explanatory Memorandum REP3-007 in respect of a number of matters but which included changes to Article 46 and schedule 16 and made changes to certain timescales.</p> <p>Can the host Authorities comment on the nature of the changes and whether these address their concerns previously raised.</p> <p>If not identify specific points which remain of concern, state the required amendment considered necessary to make the Article or schedule acceptable and explain the reason and necessity for the proposed changes.</p> <p>Reference has been made to not adopting a one size fits all for the time scales; in which case the reasoning and justification should identify what timescale is appropriate for which requirement.</p>	<p>WLDC note the changes made to the draft DCO at deadline 3.</p> <p>With regard to the amendments made to Article 46 and Schedule 16, the changes do not adequately address the concern of WLDC and an objection to the current draft is maintained.</p> <p>The specific points of concerns are set out below:</p> <p>i) Deemed consent</p> <p><u>WLDC maintains an objection to the deemed consent provision.</u></p> <p>Reasoning: Due to the scale and potential complexity of the details and their importance to ensure that mitigation for a large scale infrastructure project is assessed and implemented, it is wholly unacceptable to impose a deemed consent provision. Additionally, with the potential cumulative impact of having to process subsequent approvals for several similar projects, it is essential that WLDC has sufficient time to make well informed decisions in the public interest.</p>

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			<p>The deemed consent provision also has an impact on WLDC's position with regard to the approval timescales discussed below.</p> <p>ii) Approval timescales</p> <p><u>WLDC maintains an objection to the deemed consent provision.</u></p> <p>Should there be no deemed consent provision, WLDC request that the following timescales be specified:</p> <ul style="list-style-type: none">• Requirement 5 = 13 weeks• Other Requirements = 10 weeks <p>Should there a deemed consent provision be retained, WLDC request that the following timescales be specified:</p> <ul style="list-style-type: none">• Requirement 5 = 16 weeks• Other Requirements 13 weeks <p>Reasoning:</p> <p>The timescales WLDC considers to be acceptable are influenced by whether a deemed consent provision is included in the DCO. If it is retained, a longer period of time is required to enable WLDC to fulfil its duties in the determination of subsequent applications that relate to EIA development.</p> <p>Consistent with the reasons that WLDC object to the deemed consent provision, it is essential that WLDC has reasonable time to interpret, assess, have regard to consultee</p>

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			<p>representation, negotiate and formally determine complex and technical details that are required in order for the project to be acceptable.</p> <p>During the examination, the applicant has referred to the Longfield Solar Farm DCO to justify the proposed timescales. WLDC considers the example of Longfield Solar Farm to not be comparable or serve as a fair precedent with regard to the provisions within the Gate Burton Energy Park DCO due to the unique cumulative situation with other NSIP solar projects.</p> <p>This matter was discussed during Issue Specific Hearing 1 ('Draft DCO) relating to the Cottam Solar Project held on 6th September 2023. The Lead Member of the Examining Authority, Mr Rory Cridland, who was also the Lead Member for the Examining Authority responsible for the Longfield Solar Farm, stated the following during the Hearing (ref: EV-017 Transcript of Recording of Issue Specific Hearing 1 – Part 3 – 6 September 2023, p21) (Appendix 1 to this submission):</p> <p>“00:57:13:03 - 00:57:37:21 <i>Thank you. Just follow up, Mr. Phillips. I think there's a range of different timescales in various different DCS (sic). I'm aware of that. But think some of the recent ones that I've dealt with, I think ten weeks has been around about the time some of them have gone to 13 weeks. I'm not aware of any eight and think Longfield has ten and they didn't have the same challenges that are posed by some of the local authorities here. So think that's something that we'll certainly be bearing in mind.</i>”</p>

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			<p>The comments from Mr Cridland reflect that of WLDC in that Longfield Solar Farm is not an example upon which to set the appropriate timescales for the Gate Burton Energy Park DCO due to the cumulative situation with other solar NSIP projects. Mr Cridland also references that approval timescales have been longer and that 8 weeks is not a period that has been evident or justified on other similar projects.</p> <p>Furthermore, an example of the unreasonableness of the timescales being sought by the applicant, WLDC would like to refer to the Planning Inspectorate's recent consultation on NSIP reform which ran from 25th July 2023 to 19th September 2023. Question 24 of the consultation relates to the proposed options for statutory timescales relating to the determination of non-material changes to DCOs. The options started at 6-8 weeks and ranged up to 10-12 weeks. WLDC consider the approval of DCO 'requirements' to be subsequent approvals that require the analysis of complex information that would go far beyond what would comprise a 'non-material change'. This demonstrates that to restrict the proper assessment of details that are integral to ensuring a DCO is implemented in an acceptable manner (including wide ranging details relating to the design of structures) to the timescales being pursued by the applicant, is wholly unreasonable.</p> <p>WLDC also wish to refer to the Mallard Pass solar NSIP, currently also in examination phase, and whose DCO does not have a deemed approval provision.</p> <p>WLDC notes and welcomes the inclusion of a fee provision based on regulation 16(1)(b) of the Town and Country</p>

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EXQ2	Question to	Question	WLDC Response
			<p>Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012.</p>
Q2.8.1	West Lindsey District Council	<p>Cumulative Health and wellbeing effects: Expand and explain what the ‘wider implications of the Gate Burton scheme cumulatively with the other projects that may occur that are not fully understood’, as referenced in your recent submissions. Clearly identify what areas you consider have not been assessed and are not understood and why.</p>	<p>As set out in WLDC’s Written Representation, WLDC has concerns relating to the adverse impacts upon the culture, mental health, character and way in which local communities engage with, and live within, the district.</p> <p>Policy context</p> <p>The NPPF supports the role of planning to create healthy, inclusive communities and recognises that the design and use of the built and natural environment are major determinants of health and wellbeing. The impact of development on human health and wellbeing is therefore a material consideration in the determination of planning applications. In addition, the Central Lincolnshire Local Plan was adopted on 13th April 2023. The Local Plan includes policies so that new development within Central Lincolnshire can have a positive impact on health and wellbeing.</p> <p>The Central Lincolnshire Local Plan has produced a Supplementary Planning Document (SPD) to help guide developers and decision makers on the implementation of policy S54 Health and Wellbeing in the Central Lincolnshire Local Plan. S54 sets out a requirement for developers to submit a HIA for non-residential development proposals, 5ha or more.</p> <p>The adopted SPD defines Health as a “<i>state of complete physical, mental and social wellbeing. As well as access to good quality healthcare services and lifestyle choices, there</i></p>

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			<p><i>are many factors that affect health and wellbeing. These include the physical and social conditions in which people live, culture, education, housing, transport, employment, crime, income, leisure, and other services. These all influence health in either a positive or negative way, both directly and indirectly. These factors are commonly known as the wider determinants of health.” (page 2).</i></p> <p>WLDC considers that the application must be examined with a strong focus on the impacts it will have on local residents and visitors to the area with regard to the matters described in the above definition.</p> <p>Key issues of concern to WLDC</p> <p>The local community have a strong connection with agricultural culture of the area, which is reflected in its landscape, land use and the way in which people live. The impact on the landscape will be replaced by large scale utilitarian photovoltaic solar arrays and their associated development. This will result significant change for a period of more than half a century which will degrade the character and culture of the West Lindsey and negatively impact the connection communities have with it.</p> <p>Furthermore, communities are particularly dependent upon the use of adopted highways for recreation and leisure purposes. Due to the intensive agricultural character of the district, public rights of way across field are limited. This results in communities using highways for recreational activities with walkers, dog walkers, cyclists and horse riders all sharing roads with vehicular traffic.</p>

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EXQ2	Question to	Question	WLDC Response
			<p>The proliferation of construction traffic for 5 years or more will discourage the use of rural highways for recreation use, resulting in a further negative impact upon the wellbeing and mental health of local residents and people using the district for leisure purposes.</p> <p>WLDC do not believe the Applicant's Human Health and Wellbeing chapter within the ES (Doc. Ref. EN010131/APP/3.1) considers the construction and long term impacts of the cumulative schemes on local residents health and wellbeing who use these roads for recreational purposes. The chapter does not take into account the local amenity impact of the cumulative construction traffic associated with the proposed solar schemes. Whilst it is acknowledged an assessment of access to local health services and work has been undertaken, this does take into account the impact on the mental health that traffic could have on the community.</p> <p>The assessment within the applicant's ES adopts a 500m buffer from certain receptors to assess impacts on human health, followed by professional judgement. WLDC is not clear on the basis of such a buffer and why it is considered a distance beyond which there will be no impacts upon the health of residents in West Lindsey communities. The use of a buffer appears particularly restrictive in that people will experience impacts whilst moving throughout the area, engaging with a variety of cumulative impacts.</p>

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			<p>Moreover, the applicant suggests that they will potentially work together to minimise any cumulative effects. This does not commit the Applicant to a joint Construction Traffic Management Plan. In absence of any commitment to working collaboratively with the other proposed solar schemes, the local community will be uncertain of how construction traffic will be effectively managed. This may also result in conflicting CTMPs which could cause disruption on the local road network meaning that local residents will be deterred from using local roads for leisure activities such as running or cycling.</p> <p>In addition to the uncertainty over traffic management during construction, WLDC accept the Applicant's cumulative assessment of the solar schemes that will result in adverse impacts on the landscape, which is considered significant. This will affect the way that local residents relate to the area that they live in.</p> <p>Cumulative only considers two worst case scenarios of i) 3 projects at the same time and ii) 3 projects in sequence in relation to the cable corridor only. The assessment does not consider the construction of the main arrays and the impact this may have on the wider population. WLDC considers that it is the impact of the whole project in combination with others that has the potential to affect the health, wellbeing and amenity of local communities. These have not been considered in the ES and the ExA has no evidence before them to demonstrate the magnitude of these impacts.</p> <p>The draft DCO removes the ability for persons to make statutory nuisance claims based upon the being a model</p>

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			<p>provision. WLDC have previously questioned this at ISH1. Whilst a model provision that has been adopted within previous DCOs, the cumulative situation applicable to this project is unprecedented. The ability of residents to seek remedy to perceived harm to their health, wellbeing and amenity as a consequence of the project through statutory nuisance processes would provide them with an additional mechanism to protect themselves and ensure the project is implemented in an appropriate manner.</p> <p>In view of the above, WLDC retain their concerns over the impact to the community's health in the long-term, with a focus on cumulative construction traffic on the local highway and the long-term landscape alterations as a result of Gate Burton and the other proposed solar schemes in the area.</p>
Q2.12.2	Lincolnshire County Council, Nottinghamshire County Council, West Lindsey District Council, Basset Law District Council, Natural England	<p>Best and Most Versatile land Do the amendments to the Outline Soil Management Plan REP3-013 and REP3-014 provide confidence for Natural England and the Host Authorities to ensure the correct Agricultural Land Classification (ALC) will be identified and the soil managed to ensure that any disturbed land will be restored to a similar ALC grade. If not please explain why not.</p>	<p>WLDC note the amendments made to the Outline Soil Management Plan.</p> <p>A key amendment is that the pre-construction soil resource survey results within the grid corridor will be shared with Natural England in advance of preparing the detailed Soil Management Plan.</p> <p>WLDC support the carrying out of additional soil surveys within the grid corridor, however it is unclear how the results of the surveys can be used to influence how the project is implemented. If the results reach a different conclusion, the implications for the delivery of the project and the appropriateness of the grid corridor to host the development is unclear.</p>

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EXQ2	Question to	Question	WLDC Response
			<p>If there are any doubts about the baseline data, WLDC consider that more certainty must be provided through such surveys prior to the determination of the DCO.</p>
Q2.12.3	<p>The Applicant, Lincolnshire County Council, Nottinghamshire County Council, West Lindsey District Council, Basset Law District Council, Natural England</p>	<p>Written Ministerial Statement 25 March 2015 Comment on the extent to which the Written Ministerial Statement of 25 March 2015 in relation to BMV is relevant and important to the consideration of the effects of the development on BMV in this case.</p>	<p>The Ministerial Statement states that the National Planning Policy Framework (NPPF) provides strong protections for the natural and historic environment. Local Planning Authorities should therefore take into account the socio-economic and environmental benefits of the best and most versatile (BMV) agricultural land when determining planning applications.</p> <p>With regard to solar energy development, the Minister’s Statement affirms:</p> <ul style="list-style-type: none"> - Local communities have genuine concerns that when it comes to solar farms insufficient weight has been given to these protections and the benefits of high quality agricultural land. - Meeting energy goals should not be used to justify the wrong development in the wrong location and this includes the unnecessary use of high quality agricultural land. - NPPF requires explanation that BMV land is necessary and that poorer quality land is to be used in preference to land of a higher quality. - Any proposal for a solar farm involving the best and most versatile agricultural land would need to be justified by the most compelling evidence.

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			<ul style="list-style-type: none"> - every application needs to be considered on its individual merits. <p>The Ministerial Statement therefore clarifies that the protection of agricultural land from solar development is a material planning issue, and that the need case for solar development should not override impacts on the value of agricultural land.</p> <p>WLDC contend that the Ministerial Statement is an ‘important and relevant’ matter in the context of section 105 and should be given significant weight in the determination of the Gate Burton Energy Park application.</p>
Q2.1.9	Lincolnshire County Council	<p>Cumulative Assessment</p> <p>At paragraph 2 of your written summary of your oral submissions you state suggest a joint hearing on cumulative effects and reference the commencement of Cottam and West Burton examinations. You will be aware that West Burton PM was adjourned and that the examination has therefore not begun. You will also be aware of the restrictions of the Planning Act 2008 in respect of examinations and that there is not an opportunity to hold combined hearings. Notwithstanding these points you state in respect of your suggestion that a hearing on cumulative effects would be beneficial and you state “The benefit of such a joint hearing was demonstrated during the discussions under Items 3 and 7 of Issue Specific Hearing 3 when the cumulative impacts of landscape and</p>	<p>WLDC notes that this question is directed to Lincolnshire County Council; however, as the matter is central to WLDC’s objections to the application, the following response is made.</p> <p>With regard to cumulative hearings, WLDC respects the view that the Planning Act 2008 does not provide for the holding of ‘combined’ hearings. WLDC, however, holds the view that hearings to consider an assessment of all cumulative impacts across the projects, with an invitation for other applicants to attend, can be held.</p> <p>The benefits of such hearings would be to consider each cumulative impact to understand how they relate whether they are acceptable. The benefits would also relate to ensuring consistency in the approach to mitigation and ensure that the drafting of dDCOs are also consistent with each other. WLDC consider this to be logical and essential to ensure that all applications are examined with a full</p>

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		<p>construction traffic were discussed and it was clear that the discussion would have benefited from the other developers being present to provide responses from their perspective”.</p> <p>Can you specifically detail what the benefits are that you are alluding to and what the ‘other developers’ responses are that you suggest would add to the information before this examination?</p> <p>As noted in your submissions the cumulative effects of landscape and traffic were discussed and there was an opportunity for you or other interested parties to raise any other matters on these issues should they have wished to do so. However if there remain matters specifically in respect of cumulative effects that you wish to add to in terms of your LIR, Written Representations, Responses to Written Questions, responses to the applicants answers to other written questions and your contributions to the various Issue Specific Hearings already before the ExA please provide your response by deadline 4 and detail what other effects or impacts may arise from the development in combination with other schemes that you have not previously raised.</p>	<p>understanding of the combined impacts to enable a judgement on their acceptability in planning terms.</p> <p>This examination has not considered the in combination impacts of each project. The examination has also not compared the impacts of each project against each other to provide a view on how GB compares and the impacts of each combination.</p> <p>If all DCO applications are considered individually without proper regard to the cumulative impacts, they may all be considered acceptable as isolated schemes, but with no consideration of whether there is a ‘tipping point’ from acceptability into unacceptability. This approach to decision making is flawed as it would allow projects to progress that could have unacceptable cumulative impacts with each other.</p> <p>WLDC’s strong view is that, in order for the decision maker to have adequate information before them to make a sound decision, a cumulative assessment that addresses the following combinations should be provided as a minimum:</p> <ol style="list-style-type: none"> 1. Gate Burton + Cottam 2. Gate Burton + West Burton 3. Gate Burton + Tillbridge 4. Gate Burton + Cottam + West Burton 5. Gate Burton + Cottam + Tillbridge 6. Gate Burton + West Burton + Tillbridge 7. Gate Burton + Cottam + West Burton + Tillbridge

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			<p>The above combinations relate to what is reasonably required to be assessed by the Gate Burton project. WLDC expect the Cottam, West Burton and Tillbridge project to carry out an assessment of the same combinations in relation to their applications. In WLDC's view, a failure to do so would result in inadequate information being before the Secretary of State to enable them to make an informed decision based upon the actual impacts that will be experienced as a consequence of the projects (three of which are likely to be before them for determination at the same time).</p> <p>The assessment should relate to the entire projects (not just the cable corridor) and cover the scenarios of concurrent construction and in sequence construction (whilst recognising the 5 year commencement limitation for each project).</p> <p>WLDC consider that a Hearing(s) can be held to then examine the details of such an assessment, and representation from the other projects could be invited to participate.</p> <p>Based upon published examination material, it is not clear if the ExA has visited the other cumulative sites relevant to the Gate Burton Energy Park to understand the relationships between the projects and the likely impacts upon communities. WLDC would be grateful if the ExA can confirm that site visits have been undertaken to the cumulative sites in order to make an informed judgement on the likely cumulative impacts.</p>

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			<p>The cumulative impacts are not isolated to solely landscape and traffic (although these are significant impacts of concern). WLDC raised concern about a range of cumulative impacts that have not been considered in the examination beyond written submissions. These are set out in Section 19 of the LIR (Cumulative Impacts) and includes:</p> <ul style="list-style-type: none"> • Ecology and nature conservation; • Landscape and visual; • Traffic and transport; • Socio-economic and Land Use; • Cultural Heritage; and • Human health and Wellbeing. <p>There also remains a deficiency in the Gate Burton ES to consider the impacts of Tillbridge and the other NSIPS in the region.</p>
Q2.13.3	The Applicant	<p>Effects on tourism</p> <p>In terms of 'Tourism' being scoped out of the ES, given the cumulative effects and potential for effects on landscape which may impact visitor numbers what is the Applicants assessment of the effects of the Scheme in combination with other Nationally Significant Solar schemes on the general tourist economy of the wider area and the concerns expressed by the host authorities. Not just on specific individual operators within the immediate locality.</p>	<p>WLDC acknowledges that this question is directed to the applicant; however, wishes to make the following comments.</p> <p>The impact of the application upon tourism and associated linked industry is a matter that WLDC maintain significant concerns.</p> <p>The applicant has not provided a full assessment of the likely impacts on tourism and falls short of the assessments carried out on adjacent projects; Cottam Solar Project in particular.</p> <p>WLDC consider that there is insufficient information on the likely tourism impacts to enable a robust assessment and</p>

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			judgement against policy to determine the acceptability of the project in this regard.