

GATE BURTON ENERGY PARK – EN-010131

WEST LINDSEY DISTRICT COUNCIL – GABE-ISP002

APPLICANT RESPONSES TO ExA’S THIRD WRITTEN QUESTIONS

WLDC Comments

Question Number	Question Summary	Applicant Response	WLDC comments
1, Principle and nature of development			
Q3.1.3	<p>Cumulative Assessments Comment on WLDC’s suggestion that the cumulative assessment for the Proposed Development and other schemes should include 7 various scenarios to cover the various eventualities of the Proposed Development coming forward with one, some or all of the other NSIPs in the area</p>	<p>The Applicant refers to the seven scenarios identified by WLDC in its response to the Examining Authority’s Second Written Questions Q2.1.9 [REP4-046].</p> <p>The Applicant’s view is that this is unnecessary due to the cumulative effects assessment having been carried out on the basis of a “worst case scenario” approach, in accordance with standard industry best practice and a precautionary approach to assessment.</p> <p>The Applicant has assessed “Scenario 7” and presented the worst case cumulative effects of Gate Burton, Cottam, West Burton and Tillbridge, together with the other schemes identified within ES Appendix 16-A [APP-181]. Any other scenario (e.g. if one or more schemes did not come forward) described in Scenarios 1 to 6 by WLDC would result in effects which are equal to or less than the worst case scenario presented.</p>	<p>WLDC does not consider that the applicant’s response addresses the reasoning behind why an assessment of each scenario is required.</p> <p>WLDC has requested that an assessment of various combinations of projects to be carried out beyond a reliance upon a ‘worst case’ assessment of all projects taken together.</p> <p>The reasoning is that, in the event that all three of the current projects in examination (Gate Burton, Cottam and West Burton) are determined at the same time by the Secretary of</p>

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		<p>The cumulative effects of the four DCO applications referred to by WLDC (Gate Burton, Cottam, West Burton and Tillbridge) are comprehensively assessed and presented, with the approach, consultation, methodology, assumptions and conclusions set out within the Environmental Statement discipline chapters 6: Climate Change [APP-015]; Chapter 7: Cultural Heritage [APP-016]; Chapter 8: Ecology and Nature Conservation [APP-017]; Chapter 9: Water Environment [APP-018]; Chapter 10: Landscape and Visual Amenity [APP-019]; Chapter 11: Noise and Vibration [APP-020]; Chapter 12: Socio-Economics and Land Use [APP-021]; Chapter 13: Transport and Access [APP-022]; Chapter 14: Human Health [APP-023]; Chapter 15: Other Environmental Topics [APP-024]; and within the Environmental Statement Chapter 16: Cumulative Effects and Interactions [APP-025].</p> <p>These discipline chapters are supported by the following appendices that also address cumulative effects Appendix 2-B: Grid Connection Construction Method Statement [APP-114]; Appendix 10-H: Landscape and Visual Cumulative Effects [APP-151]; and Appendix 13-D: Transport Assessment [APP-166]. Importantly, each discipline chapter sets out the assessment undertaken with clear conclusions identified within Chapter 16: Cumulative Effects and Interactions [APP-025]. In the case of key areas of interaction such as Landscape and Visual and Traffic and Transport for example, further assessment and collaborative work has been undertaken with a focus on identifying opportunities for combined mitigation and commitments to lower overall effects as set out within the Joint Interrelationships Report [REP4-050 and as amended]. The Cumulative Landscape and Visual Assessment Appendix [APP-151] sets out the schemes agreed in consultation with Lincolnshire and Nottinghamshire Council and the basis of the cumulative assessment. Each of the four schemes referred to by WLDC are included along with several other schemes.</p> <p>The decision maker therefore has comprehensive and robust information before them on which to develop an informed view</p>	<p>State, the environmental information provided only allows for three decision options to be made:</p> <ul style="list-style-type: none"> i. To grant consent for a single project only; or ii. To grant consent for all three projects; or iii. To refuse consent for all three projects. <p>The implications of this are that, when considering the projects cumulatively, the Secretary of State can only make an 'all or nothing' decision; either all of the projects are granted development consent or they are refused.</p> <p>WLDC have consistently requested that the cumulative assessments for all projects assess the various combinations between them. Such an assessment would allow the decision maker, in the event that they find all three projects unacceptable, to consider whether two projects could be granted.</p> <p>Based upon the current approach, such a decision is unable to be made due to the lack of environmental assessment to demonstrate the comparative impacts between each combination to allow a reasoned judgement to be made.</p> <p>This matter was discussed during Issue Specific Hearing 4 for the</p>

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		<p>and base decision making. Any assessment of alternative scenarios referred to by WLDC would serve no useful purpose because the worst case cumulative effects have been identified and clearly set out in accordance with standard industry best practice.</p> <p>The Applicant has nevertheless been discussing this issue with WLDC to see whether any minor amendments can be provided to the Interrelationships Report to help resolve their issue.</p>	<p>examination of the Cottam Solar Project. The ExA understood the position of WLDC and requested this matter be included with the Statement of Common Ground between the applicant and WLDC.</p>
<p>Q3.1.10</p>	<p>Cooperation Agreement: The Joint Report on Interrelationships between NSIPs [REP4-050] contains a copy of the co-operation agreement between the promoters of the various NSIP schemes would it be appropriate to have the co-operation agreement between the parties as a certified document to secure the co-operation between the parties.</p> <p>What would prevent the parties from amending or dissolving the agreement at some future point and if that is the case what weight can be given to the co-operation agreement and is it an important and relevant matter?</p>	<p>It would not be appropriate to condition the cooperation agreement, the effect of which would be to attach criminal liability for breach (further to section 161 of the Planning Act 2008) to a private and voluntary commercial agreement. This would be unnecessary and disproportionate and would have negative implications for future schemes and further efforts between developers to cooperate and to evidence that cooperation.</p> <p>In any case, there is no need for the cooperation agreement to be a certified document. All necessary mitigations for the Scheme are either facilitated through design or secured via DCO requirement. Therefore, even in the unlikely scenario that the cooperation agreement was amended or dissolved, then the local planning authorities may enforce the requirements set out at Schedule 2 of the DCO.</p> <p>The applicants for Gate Burton, Cottam, West Burton and Tillbridge have been working collaboratively to date. This is demonstrated in practice, for example, by the proposals for a shared cable corridor, agreeing protective provisions for the benefit of each of the other schemes, and coordinating to agree protective provisions with third parties. The Applicant's position is that whilst the cooperation agreement it is not an important or relevant matter for the purposes of the decision making in light of the above, by entering into the legal binding agreement the Applicant is giving transparency into the continued commitment of the applicants to work cooperatively.</p>	<p>WLDC welcomes the applicant's clarification on the Joint Report on Interrelationships (JRI).</p> <p>Their response confirms WLDC's view on the status of the document in that does not form part of the Environmental Statement, is not a document that provides mechanisms for control over development and does not have the status of a certified document in the DCO.</p> <p>The JRI is therefore a helpful summary of the reported assessments but does not perform a function beyond that. It cannot be relied upon as a control document to deliver commitments or mitigation. The contents within it, such as the co-operation agreement, can be dissolved at any point as the applicants see fit.</p> <p>Furthermore, as the JRI reports the variance in cumulative assessment conclusions</p>

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			<p>WLDC also notes the applicant’s oral response in the Cottam ISH4 (06/12/23) confirming that the JRI will continue to be updated throughout the examinations for the Cottam, West Burton and Tillbridge applications and that the Gate Burton project will continue to be collaborating as part of those changes (including sign-off).</p>
<p>Q3.6.3</p>	<p>Article 7 Defence to proceedings in respect of statutory nuisance Given the cumulative addition of schemes being simultaneously or sequential detail why the removal of the ability for local residents etc to seek Statutory Nuisance redress is reasonable, proportionate and robust. The Explanatory Memorandum should be updated in this respect.</p>	<p>The Explanatory Memorandum [REP4-026] contains extensive justification for the inclusion of the model provision, which is not repeated in full here.</p> <p>In summary, the Applicant requires certainty that it can defend any statutory nuisance claim relating to noise under the defence available in Section 82(9) Environmental Protection Act 1990. This is robust as it ensures that when any noise arises as a consequence of the construction, maintenance or use of the authorised development, then there is a provision to define its consequences in an appropriate and balanced manner. It is also reasonable and proportionate on the basis that the works authorised by the DCO are subject to the appropriate levels of controls and should be permitted to proceed to construction and operation (and eventually decommissioning). For example, noise is controlled via the mitigation secured in Table 3-6 (Noise and Vibration) of the Framework Construction Environmental Management Plan [REP4-035] (Requirement 12), Table 3-6 (Noise and Vibration) of the Framework Operational Environmental Management Plan [REP2-035] (Requirement 13) and Table 3-6 of the Framework Decommissioning Environmental Management Plan [REP4-037] (Requirement 19).</p> <p>This position aligns with the rationale of paragraph 4.14 of Overarching National Policy Statement for Energy EN-1 (2011) (“NPS EN-1”) and repeated in the latest draft NPS EN-1 (2023). This refers to section 158 of the Planning Act 2008 which confers</p>	<p>WLDC raised concerns on this issue during ISH1 (05/07/2023).</p> <p>WLDC notes the applicant’s response and reliance upon precedent to justify the inclusion of Article 7 and refers to the extensive assessments and control mechanisms to support that view.</p> <p>The situation before the decision maker for this NSIP however is very different to those precedent projects cited. The potential cumulative impacts that may be experienced by local residents is unprecedented in that the construction and operation of several NSIP projects, located near to each other, could occur concurrently. Should harm arise, the practical remedy under the terms of DCO requirements for each project would be cumbersome and the identification of the source of the harm difficult to establish.</p>

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		<p>statutory authority for carrying out development consented to by, or doing anything else authorised by, a DCO for the purpose of providing a defence in any civil or criminal proceedings for nuisance.</p> <p>Article 7 gives specificity to the defence available to the Applicant to proceedings in respect of statutory nuisance for the purposes of the Gate Burton Energy Park.</p> <p>As noted in the Explanatory Memorandum, this article is a model provision and is preceded in all made solar DCOs, including The Cleve Hill Solar Park Order 2020, The Little Crow Solar Park Order 2022 and The Longfield Solar Farm Order 2023. The Applicant has not checked every made DCO but the provision has also been included in all other DCOs granted in 2023 including the Hornsea Four Offshore Wind Farm Order 2023, the Awel Y Mor Offshore Wind Farm Order 2023, the A303 (Amesbury to Berwick Down) Development Consent Order 2023, The Boston Alternative Energy Facility Order 2023, The A38 Derby Junctions Development Consent Order 2023, The A47 Wansford to Sutton Development Consent Order 2023 and The East Northamptonshire Resource Management Facility Order 2023. There is no rational basis for not providing the Applicant with the protection afforded to other undertakers who develop their NSIPs pursuant to the parameters and controls contained within their relevant DCO, and the Applicant should not be put at a disadvantage and at greater risk of attracting liability for statutory nuisance.</p> <p>The Applicant considers that this well preceded position is not altered by virtue of the cumulative relationship with other nearby schemes. As set out in Chapter 16 of the Environmental Statement [APP-025], there are no significant cumulative effects on noise or vibration anticipated for the development. Based on the distances from key project components to cumulative developments, it is considered that any overlapping of construction phases between the Scheme and other developments would not result in any cumulative effects at common noise-sensitive receptors. Further, given the</p>	<p>Furthermore, the environmental assessment submitted in support of the Gate Burton project does not assess the various combinations of each project, and the likely contributions of each project to individual receptors is not known. Were such information available, the likely main contributor to noise levels experienced at properties would more readily be identified.</p> <p>As the applicant cites the comprehensive assessment and control mechanisms that have been submitted as part of the application, it is assumed that they have confidence in being able to meet the noise levels predicted and, commercially, the risk they are fearful of can be considered to be low.</p> <p>The lack of ability to enforce promptly due to multiple noise sources from multiple projects leaves residents with the real potential to be exposed to noise nuisance. The ability for residents to seek alternative remedy through the statutory nuisance process would provide them with a reasonable additional option.</p> <p>WLDC sees no impediment to the applicant to provide local residents with the ability to seek remedy through the statutory nuisance process provided by the Environment Protection Act 1990.</p>

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