

National Infrastructure Planning
Temple Quay House
2 The Square
Bristol
BS1 6PN

Your ref: EN010132

Date: 05 June 2023

Submitted by email: WestBurtonSolarProject@planninginspectorate.gov.uk

Order Granting Development Consent for the West Burton Solar Project (EN0101320)

Dear Sir/Madam

1.0 The Environment Agency's Role

- 1.1. The Environment Agency is an executive non-departmental public body, established under the Environment Act 1995.
- 1.2. We are an adviser to Government with principal aims to protect and improve the environment, and to promote sustainable development. We play a central role in delivering the environmental priorities of central government through our functions and roles.
- 1.3. We are also an adviser to local decision makers in our role as a statutory consultee in respect of particular types of development, as listed in Schedule 4 of the Development Management Procedure Order 2015.
- 1.4. For the purposes of this Development Consent Order (DCO), we are a statutory interested party.
- 1.5. We take action to conserve and secure proper use of water resources, preserve and improve the quality of rivers, estuaries and coastal waters and groundwaters through pollution control powers and regulating discharge consents. We have a duty to implement the Water Framework Directive (WFD).
- 1.6. We have regulatory powers in respect of waste management and remediation of contaminated land designated as special sites. We also encourage remediation of land contamination through the planning process.

1.7. We are the principal flood risk management operating authority. We have the power (but not the legal obligation) to manage flood risk from designated main rivers and the sea. We are also responsible for increasing public awareness of flood risk, flood forecasting and warning and have a general supervisory duty for flood risk management. We also have a strategic overview role for all flood and coastal erosion risk management.

1.8. We have three main roles:

- We are an **environmental regulator** – we take a risk-based approach and target our effort to maintain and improve environmental standards and to minimise unnecessary burdens on businesses. We issue a range of permits and consents.
- We are an **environmental operator** – we are a national organisation that operates locally. We work with people and communities across England to protect and improve the environment in an integrated way. We provide a vital incident response capability.
- We are an **environmental adviser** – we compile and assess the best available evidence and use this to report on the state of the environment. We use our own monitoring information and that of others to inform this activity. We provide technical information and advice to national and local governments to support their roles in policy and decision-making.

2.0 Scope of these representations

2.1 These relevant representations contain an overview of the project issues, which fall within our remit. They are given without prejudice to any future detailed representations that we may make throughout the examination process. We may also have further representations to make if supplementary information becomes available in relation to the project.

2.2 We have reviewed the DCO, Environmental Statement (ES) and supporting documents submitted as part of the above-mentioned application, which we received on the 18 April 2023. Our comments are presented below:

3.0 Ecology and biodiversity

3.1. We would like to make the following comments in relation to the protection of ecology and biodiversity having reviewed the documents listed below:

- Environmental Statement Chapter 9: Ecology and Biodiversity (ref: [REDACTED])
- Environmental Statement Appendix 9.6: Otter and Water Vole Survey Report (ref: [REDACTED])
- Environmental Statement Appendix 9.12: Biodiversity Net Gain Report (ref: [REDACTED])

3.2. We welcome the recommendations in the Otter and Water Vole Survey. However, we would expect to see a best practice water vole survey completed for those watercourses directly impacted by culverting to get a better picture of local water vole populations.

3.3. We require more information on the remedial actions suggested for filamentous algae in ditches to be able to comment on whether the predicted target of 'moderate' for WFD waterbody status can be obtained. We would like to see the actions that would be undertaken at year 4 should it fail to reach moderate status. If the applicant shares the data used to make the ditch assessment, we will be able to comment further.

3.4. The applicant should consider off-site impacts that may alter the water quality of on-site ditches, for example, the use of fertilisers or maintenance requirements.

3.5. We would welcome the creation and enhancement of hedgerows, woodland, wetland and native wildflower meadows which would add multiple benefits in terms of improved water quality and natural flood management (NFM).

3.6. We appreciate that a specialist Modular River Physical (MoRPh) survey of the River Till was not carried out, however, we believe it would be worthwhile exploring improvements on the Till and its tributaries as the site boundary for West Burton 2 runs perpendicular to the river. We would welcome consideration for smaller scale habitat improvements to tributaries of the River Till within the scheme boundary.

- 3.7. Enhancements to habitat quality within ditches and watercourses not only benefits otters and water voles but can achieve an improvement to water quality in the rivers from a WFD perspective.
- 3.8. It is important that the applicant considers the cumulative risk from the construction, operational and decommissioning phases to water quality. Has the applicant considered whether chemicals such as weed killers will be used during the operation, and if so, what will be done to prevent run-off into nearby ditches.
- 3.9. In Chapter 9 of the ES (9.7.68) it says that water quality in field boundary ditches is expected to significantly increase as a result of the change of use from agriculture use to placement of solar panels and the resultant removal of fertilisers/herbicides from the fields. However, as it cannot categorically be said that other fields in the vicinity wouldn't supply run-off we do not think it can be assumed that water quality would be better as a result of the change of use alone.

4.0 Hydrology, flood risk and drainage

4.1 We would like to make the following comments in relation to hydrology, flood risk and drainage having reviewed the documents listed below:

- Environmental Statement Chapter 10: Hydrology, Flood Risk and Drainage (ref: [REDACTED])
- Environmental Statement Appendix 10.1: Flood Risk Assessment and Drainage Strategy Report (ref: [REDACTED])
- Crossing Schedule [REDACTED]

4.2 We note that the applicant wishes to disapply the Environmental Permitting (England and Wales) Regulations 2016 (EPR) and includes this in the DCO (Part 2 Principal Powers) in Article 6(1)(h). As currently drafted this Article seeks to disapply Regulation 12 in its entirety, meaning that the requirement for all types of environmental permit is disapplied. We are unable to agree to this and will only agree to disapply the requirement for a flood risk activity permit once we can reach an agreement regarding the Protective Provisions for the Environment Agency in Schedule 16 Part 9. We are unlikely to agree to the disapplication of other environmental permits under the 2016 Regulations, including a water discharge activity – also see section 6.0 below regarding this. Accordingly, we request that Article 6(1)(h) is amended to read: “regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016, in respect of a flood risk activity permit only”.

- 4.3 We have reviewed the proposed protective provisions (Schedule 16, Part 9) for the protection of the Environment Agency. We do not accept the current wording and will work with the applicant to agree a revised version.
- 4.4 It is understood that no development will be situated within the River Till Flood Storage Area (FSA). For the avoidance of doubt we would ask that the applicant overlay the River Till FSA outline onto the illustrative site layout plan and include it within Appendix 10.5 of the ES.
- 4.5 We welcome confirmation that where river crossings are proposed on the River Till and River Trent these will be carried out using trenchless techniques.
- 4.6 The applicant is advised to follow the [REDACTED] methodology for the proposed river crossings. Carrying the works out in accordance with the methodology within FRA3 will ensure works are done to the required standard in terms of flood risk.
- 4.7 As noted within the ES (Appendix 10.5, paragraph 2.2.9) the scheme has been designed so that in the event of a 0.1% Annual Exceedance Probability (AEP) + 20% Climate Change flood event it would be possible to electrically isolate damaged infrastructure and replace it without affecting the operation of the rest of the scheme. Whilst we accept this approach, it would be up to the Secretary of State to determine whether this is acceptable in line with the development's classification as essential infrastructure and the National Policy Statement's requirement that new energy infrastructure "*should also be designed and constructed to remain operational in times of flood*" (EN-1 Overarching National Policy Statement for Energy, paragraph 5.8.5).
- 4.8 We welcome the embedded mitigation to be adopted within the scheme design as outlined in the ES (10.7), especially the inclusion of an 8-metre easement around all watercourses and the sequential placement of critical infrastructure.
- 4.9 Whilst the photovoltaic panels will be sequentially located in flood zone 1, our interpretation is that some will be located in flood zone 3 for West Burton 1, 2 and 3 (please see Appendix 1 for a visual representation of the area affected). Whilst likely to be negligible, there should be some consideration and calculation of the cumulative loss of floodplain volume from the posts supporting the photovoltaic panels and whether this loss needs to be reasonably compensated for as part of the proposals.
- 4.10 The Book of Reference [REDACTED] refers to Environment Agency rights and easements within the land that the cable route will pass through (land plan

references: 07-106 and 07-107). These are highlighted as ‘*New rights (including restrictions) to be compulsorily acquired and temporary use of land and in relation which it is proposed to suspend or extinguish easements, servitudes and other private rights*’. It is currently unclear how such proposed acquisitions would affect the Environment Agency’s operations, in particular in relation to its flood risk management role. At this stage therefore the Environment Agency must **object** to any acquisition of land or rights in relation to its land interests until it has had a proper opportunity to assess the potential effects of the acquisitions sought by the applicant on its ability to carry out its operations. However, we will continue to work with the applicant to resolve this matter during the Examination period.

5.0 Ground condition and contamination

- 5.1. We would like to make the following comments in relation to ground condition and contamination having reviewed Chapter 11: Ground Conditions and Contamination of the ES (ref: XXXXXXXXXX)
- 5.2. In the ES Chapter 4, Scheme Description, paragraph 4.5.23, piles are mentioned as possible foundation solutions for some elements of the scheme. Reference is made to piles up to 12 metres deep for the energy storage facility. We would expect to see pollution prevention best practice detailed in the Construction Environment Management Plan (CEMP) to cover this scenario in order to avoid creating pathways for the rapid transmission of pollutants.
- 5.3. The CEMP should detail the pollution prevention practices that will be employed to avoid contamination of the underlying aquifer by possible fire-fighting water, which may contain pollutants. Bunding of the Battery Energy Storage System (BESS) is detailed in Chapter 4, section 4.5.33 of the ES.
- 5.4. Section 4.5.47 of the ES states that, “*excavated soil will then be backfilled on top of the installed cables.*” Soil and spoil management is also discussed in this chapter. The CEMP should include information about adhering to waste management legislation if the excavated material is contaminated. It is possible that the CL:AIRE Definition of Waste: Code of Practice will apply. Excavated materials that are recovered via a treatment operation can be re-used on-site under the CL:AIRE. This voluntary Code of Practice provides a framework for determining whether or not excavated material arising from site during remediation and/or land development works are waste.

5.5. Chapter 11, section 11.7.3 of the ES states that a discovery strategy for the identification and management of unsuspected contamination will be included in the CEMP, which we welcome.

5.6. We agree with the conclusion of Chapter 11 of the ES that cumulative effects to human health and controlled waters are deemed to be negligible with the implementation of mitigation measures as detailed in the CEMP.

6.0 Environmental permit

6.1. Under The Environmental Permitting (England and Wales) Regulations 2016 a permit is required for installations, medium combustion plant, specified generator, waste or mining waste operations, water discharge or groundwater activities, or work on or near a main river or sea defence.

6.2. As referred to in paragraph 4.2 above, the disapplication of The Environmental Permitting (England and Wales) Regulations 2016 for work on or near a main river or sea defence (flood risk activity) is the only activity we will agree to disapply (subject to agreement regarding Protective Provisions). The applicant should make it clear that any reference made to The Environmental Permitting (England and Wales) Regulations 2016 within the DCO text is related to flood risk activities only and that any additional permits for water abstraction or discharge would still need to be applied for.

7.0 Development consent order

Application and modification of statutory provisions

7.1. We do not agree to the disapplication of sections 24 (restrictions on abstraction) and 25 (restrictions on impounding) of the Water Resources Act 1991.

7.2. As referred to in paragraphs 4.2 we will not agree to the disapplication of the requirement for any environmental permit, other than a flood risk activity permit in exchange for agreed protective provisions.

7.3. We are considering the disapplication of local legislation listed in Schedule 3 of the DCO. If we have any concerns about this, we will endeavour to include comments in our written representations.

Requirements

- 7.4. The Environment Agency wishes to be a specific named consultee in respect of Schedule 2, Requirement 7 (landscape and ecological management plan); and Requirement 21 (decommissioning and restoration). We welcome our inclusion as a consultee to Requirement 6 (battery safety management plan); Requirement 13 (construction environment management plan); and Requirement 14 (operational environmental management plan). We would request that for the avoidance of doubt the words “following consultation with the Environment Agency” are inserted after “relevant planning authority”. This will give us an opportunity to comment on the detailed mitigation and management schemes, secured post consent, to ensure adequate protection and enhancement of the environment.
- 7.5. Schedule 17: Procedure for Discharge of Requirements – We have concerns that the procedure outlined in this section of the DCO will not provide sufficient time for adequate consultation to take place for the discharge of Requirements. Paragraph 3(3) states that where “*consultation with a requirement consultee is required, the relevant planning authority must issue the consultation to the requirement consultee within five working days of receipt of the application, and must notify the undertaker in writing specifying any further information the relevant planning authority considers necessary or that is requested by the requirement consultee within five working days of receipt of such a request and in any event within 15 working days of receipt of the application*”. If the relevant planning authority does not issue the consultation until day 5, this would only provide the consultee with 10 working days to respond. The Environment Agency requests that this is amended to 20 working days to provide sufficient consultation timescales that align with those in the Development Management Procedure Order 2015, i.e. 21 days (equivalent to 15 working days) in addition to the 5 working days allocated for the relevant planning authority to issue the consultation.
- 7.6. Similarly with Paragraph 4 appeals, (2)(c) should be amended to allow representations to be submitted within 20 working days.
- 7.7. We would also request that for the avoidance of doubt ‘working day’ is included in Paragraph 1 ‘Interpretation’ as ‘any day other than a Saturday, Sunday or English bank or public holiday’.

8.0 Further representations

8.1. In summary, we can confirm that we have no objection to the principle of the proposed development, as submitted. The holding objection and issues outlined above are all capable of resolution and we look forward to receiving additional information to resolve our outstanding concerns. We will also continue to work with the applicant to agree the wording of the protective provisions.

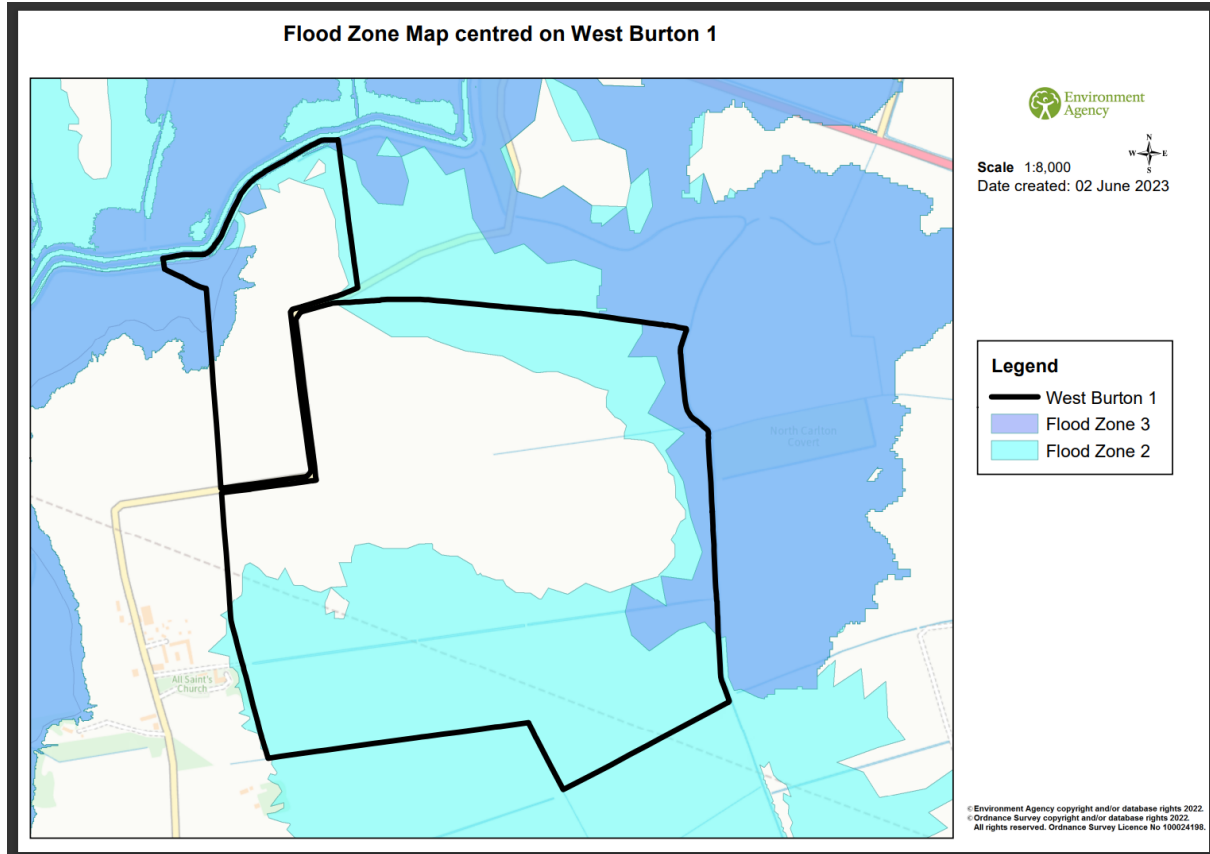
8.2. We reserve the right to add or amend these representations, including requests for DCO Requirements and protective provisions should further information be forthcoming during the course of the examination on issues within our remit.

Should you require any additional information, or wish to discuss these matters further, please do not hesitate to contact me on [REDACTED] [@environment-agency.gov.uk](mailto:[REDACTED]@environment-agency.gov.uk), LNplanning@environment-agency.gov.uk or [REDACTED]

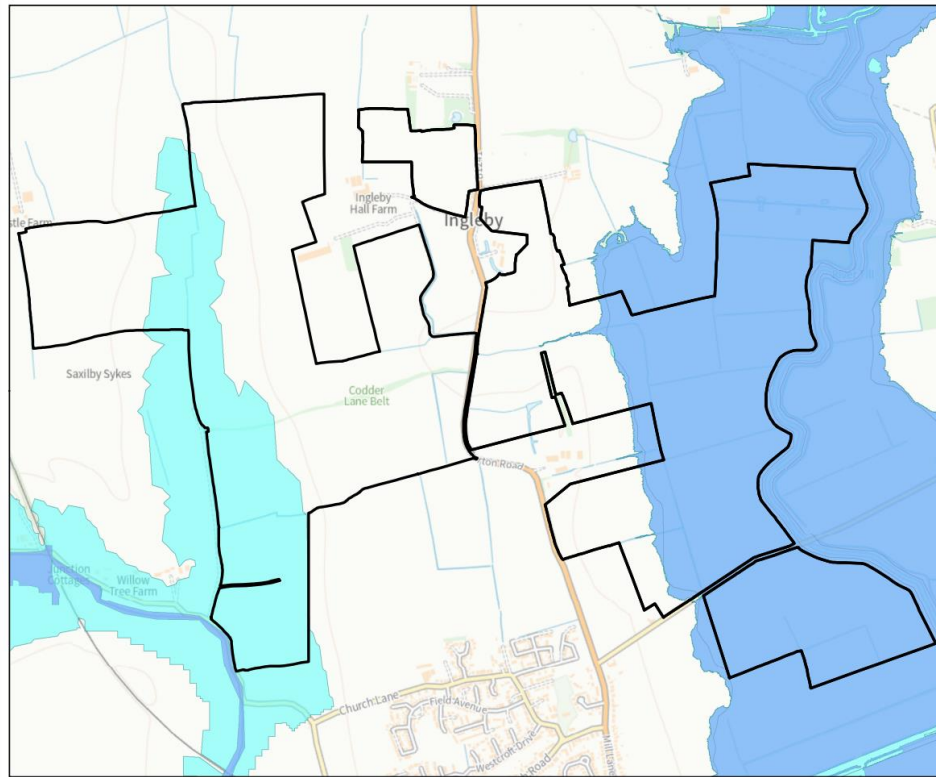
Yours faithfully

Keri Monger AssocRTPI
Sustainable Places – Planning Specialist

Appendix 1



Flood Zone Map centred on West Burton 2



Scale 1:15,500
Date created: 02 June 2023



Legend

- West Burton 2
- Flood Zone 3
- Flood Zone 2

© Environment Agency copyright and/or database rights 2022.
© Ordnance Survey copyright and/or database rights 2022.
All rights reserved. Ordnance Survey Licence No 100024198.

