



The Planning Inspectorate

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

Customer Services: 0303 444 5000
Email:
westburtonsolarproject@planninginspectorate.gov.uk

The Applicant

Our Ref: EN010132

Date: 10 January 2022

Dear Ms Browning

The Infrastructure Planning (Examination Procedure) Rules 2010 – Rule 17

Application by West Burton Solar Project Limited for an Order Granting Development Consent for the West Burton Solar Project

Request for further information: Notification of Intention to submit a request for changes to the Application

We refer to your [letter dated 3 January 2024](#) providing notification of the Applicant's intention to submit a request for changes to the Application (the Change Application). A copy of this can also be viewed under the 'Documents' tab on the [project webpage](#).

More specifically, this letter sets out:

- An outline of the five intended changes, including a description of, and justification for, the proposed changes;
- The proposed approach to consultation, including a summary of the targeted consultation;
- The intention to submit supporting environmental information, to include a revised version of any document forming part of the Environmental Statement or that is referred to in the draft Development Consent Order;
- A proposed timetable for the examination of the Change Application; and,
- Expected supporting documentation.

The Change Notification letter invites the Examining Authority's (ExA) comments including on the proposed timetable and proposed consultation arrangements and any other matters relating to the proposed Change Application. This letter responds to that request. It also sets out further information requested by the ExA to support the assessment of the Change Application.

Summary of the Proposed Changes

The Applicant's Change Notification letter explains that the proposed changes are expected to comprise:

Change 1: An extension to the Order limits along the public highway between West Burton 1 and the A1500 to enable construction access. This possible requirement has been identified following discussions with the Highway Authority in order to address the restricted visibility along parts of this route. This extension would allow for the creation of temporary passing places within the highway boundaries.

Change 2: An extension to the Order limits to the east of the railway line in Stow Park. This would allow the cable route corridor connecting West Burton 2 and West Burton 3 to be widened to enable the Scheme to co-exist with the proposed Stow Park Farm solar farm. An extension to the Order Limits would allow more flexibility in routing the cable for the Scheme in order to co-exist with the Stow Park Farm solar farm in the event that planning permission is granted for the solar farm.

Change 3: An extension to the Order limits at the railway between the east and west parts of West Burton 3 to allow flexibility of the design of the cable crossing beneath the railway. Ongoing discussions with Network Rail and further site surveys have indicated that other methods of constructing the cable under the railway at other locations may be a preferable design solution. An extension to the Order Limits would allow these alternative options to be considered at the detailed design stage.

Change 4: An extension to the Order Limits along A156 High Street to increase the size of the visibility splay for access construction access point reference AC110. A review of the construction access points to ensure coordination with the access points for the Gate Burton Energy Park and Cottam Solar Project has indicated that this access point requires a longer visibility splay to the north.

Change 5: An extension to the Order Limits to include the existing main vehicular access to West Burton Power Station from Gainsborough Road to allow use during construction. The current Order Limits include an access to land to the south of West Burton Power Station for the installation of the cable route corridor. Discussions with EDF have confirmed that whilst the access further south is still required for installation of the cable route corridor, access to West Burton Power Station to complete the grid connection works at the National Grid substation via the existing main West Burton Power Station access road is preferred.

Materiality of the Proposed Changes

The Applicant explains that it considers that the proposed changes are not so substantial as to constitute a materially different project. It is ultimately for the ExA to decide whether or not a proposed change is material.

The Applicant does state that the changes would necessitate the Compulsory Acquisition of land such that The Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (the CA Regulations) would be engaged. This is because the Change Application would include a provision authorising the compulsory acquisition of additional land and consent from all persons with an interest in the land will not be obtained in the time available before submitting the Change Application, and due to the fact that there are also sections of unregistered land and it has not been possible to identify all persons with an interest in the unregistered land. As such, in accordance with Regulation 4 of the CA Regulations, the procedure in Regulations 5 to 19 would apply.

The Applicant also states that that changes would not result in new or materially different environmental effects to those reported in the Environmental Statement (ES). The Applicant's position around environmental effects as a result of the changes is not at this time supported by appropriate evidence, and therefore conclusions cannot be drawn.

On receipt of the formal change request, the ExA will consider whether the changes are substantial such that they would result in a materially different project. Such factors as discussed above may lead the ExA to conclude that the changes are material. This means that before accepting the material changes for examination, the ExA will need to have the information identified in Figure 2b of the Planning Inspectorate's 'Advice Note 16: Requests to change applications after they have been accepted for examination' (AN16). Specifically, this includes:

- Confirmation that the CA Regulations are engaged (see paragraph 5 of Figure 2b of AN16). The Applicant will need to update the information to support CA or TP and whether any additional land is necessary and meets the appropriate tests and any existing land is no longer needed and therefore there is no longer justification for its CA/TP. The Book of Reference, Statement of Reasons and Funding Statement and any other relevant documents should be updated to reflect any conclusions drawn, the information to be included must include that information set out in Regulation 5. Furthermore, the Applicant makes reference to 'unregistered land' so should ensure that the steps taken to identify the potential owners of the plots of unregistered land are set out clearly and what steps have been taken to serve notice on the land and the timescales and how this may impact upon the notification and publicity timelines; and
- Confirmation that any new environmental effects have been adequately assessed and explain any consultation bodies that have been consulted (see paragraphs 6 and 7 of Figure 2b of AN16) or any other parties who have been consulted in order to front load the change application as potentially anticipated by AN16 at step 3 of Figure 1 where it is suggested that step 3 could be initiated earlier in order to potentially save time and inform the Applicant's approach..

Consultation

Whether or not the proposed changes are material, in order to ensure fairness, appropriate and proportionate consultation should be carried out. As the ExA, it is important that we ensure that the rights of Interested Parties (IPs) and anyone else that could be affected by a proposed change are protected. AN16 recommends that, as a starting point, Applicants should consult all those persons prescribed in the PA2008 under section 42(a) to (d) who would be affected by the proposed change. If applicable, applicants should identify any newly prescribed persons (ie those who have been consulted in relation to the requested change but were not consulted on the original application).

The Applicant's Change Notification letter indicates that it is carrying out targeted non-statutory consultation in relation to each of the proposed changes. This includes with the host authorities, a number of statutory undertakers, affected persons, landowners and statutory bodies. It is intended that this will be reported in the Change Application. AN16 makes it clear that if a targeted approach to the identification of those affected by the request to change the application is adopted then detailed justification should be provided why it is deemed unnecessary to consult all of the prescribed persons.

The Applicant does not expect any of the changes would result in any new or different likely significant environmental effects. The Applicant is therefore of the view that it is not necessary or desirable to consult or publicise the supplementary environmental information it is proposed to submit prior to making the Change Application. However, the ExA has not seen this information, nor any targeted consultation that may have been or is proposed to be undertaken in advance of the Change Application and so cannot comment at this stage as to the appropriateness of the scale and nature of consultation that has, or should be, carried out.

We have also noted the Applicant's view that the proposed change would engage the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 ("the CA Regulations") which include opportunities for interested parties and others to comment on the proposed changes.

Overall, our initial view is that further public consultation may not be necessary. However, that will depend on the nature of any application. Full details of all consultation undertaken along with details of any responses received should be submitted along with the Change Application as a Consultation Report. This should explain why the targeted consultation undertaken is appropriate and sufficient to inform the approach adopted, along with copies of any responses and a justification for the position adopted. More specifically, this should:

- list the persons (affected by the changes) under section 42 (a) to (d) who have been consulted (identifying particularly any new persons ie those who were consulted in relation to the proposed change but not in relation to the original application);
- identify (within the above list) those section 42 (d) any persons who are "affected persons", meaning those persons over whose land Compulsory Acquisition powers will be exercised;
- provide justification as to why any person under section 42 (a) to (d) is not affected by the proposed changes and has not therefore been consulted (if any); and
- include details of any consultation responses received.

If we decide to accept the changes into the Examination, all Additional Affected Persons, Additional Interested Parties, Interested Parties and Other Persons will have an opportunity to make representations on the Change Application in writing or orally at hearings as the Examination progresses.

With regard to any notice to be published relating to the proposed changes under the CA Regulations you are advised to contact the Case Team. They will advise on the wording of any such notice to ensure that this identifies the appropriate mechanism for the submission and receipt of any responses. This will ensure they are properly captured as Relevant Representations.

Examination Procedure and Timing

Our initial comments on the Applicant's proposed timetable are set out below:

- Whilst the Applicant's Change Notification letter indicates a date of 19 January 2024 as the latest date for the submission of the proposed Change Application, the next formal Examination Deadline is Deadline 4 on 28 February 2024. The receipt of the Change Application by Deadline 4 would not allow sufficient time for the examination of the Change Application. However, documents can be submitted in advance of formal deadlines, with their acceptance as Additional Submissions being at the discretion of the ExA.
- The Applicant draws attention to the approach adopted by the ExAs in relation to Change Applications for both the Gate Burton Energy Park and Cottam Solar Project examination, where the period for Written Representations (WR) has run concurrently with the period for Relevant Representations (RR). In view of the time remaining in this Examination, the ExA will consider whether such an approach would meet the requirements of the CA Regulations.
- The Applicant proposes to publish notices in accordance with Regulation 8 of the CA Regulations on 15 February and 22 February 2024. The Applicant's Regulation 7 and 8 notices should specify an end date for the RR period, being not earlier than the end of a period of at least 28 days beginning with the day after the day on which the notice is last published. The ExA notes the Applicant's currently proposed end date for RR is 28 March 2024, somewhat more than 28 days.
- Regulation 11 of the CA Regulations provides for a maximum of 28 days for the initial assessment of principle issues following the deadline for receipt of representations. The Applicant's proposed timetable suggests **4 working days** following the deadline for receipt of representations for us to carry out an initial assessment of principle issues, to issue any amended timetable and to provide notification of any hearings. We consider 4 working days may not be sufficient and additional time may be necessary to carry out this work.
- We anticipate that the early publication of a timetable which reserves dates for hearings (with formal notification of the hearings provided at a separate date) and identifies future deadlines (or additional information to be submitted for existing deadlines) may be able to address some of these matters.

Next steps

The Applicant should ensure that any Change Application responds fully to the points made above. In summary, the ExA requests that this includes:

- Confirmation that the CA Regulations are engaged, with the supporting information;
- Confirmation that any new environmental effects have been adequately assessed, with supporting information;
- Submission of a Consultation Report; and
- Further consideration of the proposed timetable.

The ExA requests that this information is submitted as soon as possible.

It is possible that the ExA may consider the proposed changes are not acceptable as a change, or that there is insufficient time within the timetable to accommodate the proper examination of the changes. The Applicant is therefore asked to ensure that all

documentation submitted to support the Change Application is submitted as a discrete and separate contained set of information with each document clearly identified in both the document heading and the file name as relating to the Change Application.

A copy of this letter will be published on the [project webpage](#) of the National Infrastructure Planning website.

If you have any questions, please do not hesitate to contact the Case Team on the details above.

Yours sincerely

Andrea Mageean

Lead Member of the Panel of Examining Inspectors

This communication does not constitute legal advice.
Please view our [Privacy Notice](#) before sending information to the Planning Inspectorate.