

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

Updated Agenda for Issue Specific Hearing 1

The Development Consent Order is the Order which the Secretary of State would make if they decided to grant consent. This hearing will be of a technical nature and will consider the wording of the draft Development Consent Order, including provisions relating to Compulsory Acquisition. Affected Person's individual concerns about their land and rights will be addressed in a Compulsory Acquisition Hearing if one is required.

All references to the draft Development consent order are to revision A [AS-012].

| Issue Specific Hearing 1 regarding the draft Development Consent Order | |
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| Date: | Wednesday 6 September 2023 |
| Seating available at venue for those attending at the physical venue in person | 9:30am |
| Arrangements conference for those participating via Microsoft Teams | 9:30am for 9:45am Arrive at 9:30am to enter the virtual lobby. From here you will be admitted to the Arrangements Conference by the Case Team and given further instructions. The Arrangements Conference will start at 9.45am. |
| Hearing starts | 10.00am |
| Venue and joining details | Lincolnshire Showground, Grange-de-Lings, Lincoln LN2 2NA and via Microsoft Teams Full instructions on how to join will be provided to those who have had a request to register accepted by the ExA. |

Attendees:

The Examining Authority (ExA) would be assisted by attendance of representatives of the following parties:

- The Applicant
- Lincolnshire County Council
- West Lindsay District Council

- Canal and River Trust
- Environment Agency
- Marine Management Organisation
- Statutory Undertakers

In addition, all Interested Parties (IP) are welcome to attend and make oral representations on the matters set out in the agenda, subject to the ExA's ability to control the Hearing.

Anyone wishing to attend the Hearing in person, who has not already advised the Case Team of this, should do so as soon as possible.

The event will be livestreamed and a link for watching the livestream will be posted on the project webpage of the National Infrastructure Planning website closer to the Hearing date. IPs and members of the public who wish to observe the Hearing can therefore view and listen to the Hearing using the livestream, or view and listen to the recording, after it has concluded.

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| Item 1 | <p>WELCOME, OPENING REMARKS AND INTRODUCTIONS</p> <p>The Examining Authority (ExA) will welcome participants and lead introductions and the public livestream and recording will start.</p> |
| Item 2 | <p>THE PURPOSE OF THE HEARING AND HOW IT WILL BE CONDUCTED</p> <p>The ExA will introduce the hearing, including that:</p> <ul style="list-style-type: none"> • the purpose of the hearing is for the ExA to examine the draft Development Consent Order (dDCO) and related matters, and invite certain parties to make oral representations about them. • the hearing is subject to the powers of control of the ExA, as set out in the Planning Act 2008 and supporting legislation. • the ExA will invite parties to speak and will ask questions at relevant points on the agenda and when it otherwise considers necessary. • all comments, questions and answers are to be directed to the ExA and not directly to any other party. |
| Item 3 | <p>THE PURPOSE AND OVERALL STRUCTURE OF THE dDCO</p> <p>The ExA will invite the Applicant to take up to 10 minutes to provide an overview of:</p> <ul style="list-style-type: none"> • its overall approach for the dDCO. • a brief description of the structure of the dDCO, including the Schedules, explaining why each section is required. |

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| | <ul style="list-style-type: none"> • the role of the Explanatory Memorandum. |
| Item 4 | <p>THE INTERRELATIONSHIP WITH OTHER NATIONAL INFRASTRUCTURE PROJECTS</p> <p>The ExA will invite the Applicant to provide an update on matters to be included in the 'Report on the interrelationship with other National Infrastructure projects' (refer to Annex G of the Rule 6 letter).</p> <p>The ExA will invite any representatives of other Nationally Significant Infrastructure Projects present (refer to Annex C of the Rule 6 letter) to provide an update.</p> |
| Item 5 | <p>PARTS 1 TO 6</p> <p>FOR EACH OF THE PARTS BELOW THE APPLICANT WILL BE ASKED TO RESPOND TO THE QUESTIONS POSED AND OTHER IPS WILL BE INVITED TO PROVIDE ANY COMMENTS OR OBSERVATIONS ON THE MATTERS LISTED.</p> <p>Part 1 – Preliminary</p> <p><u>Article 2 - Interpretation</u></p> <p>a) 'Apparatus' is either as defined in the 1991 act or it is not. The Applicant's definition includes a long list of additional items. Please can the Applicant consider redrafting this definition.</p> <p>b) 'Authorised development' – Please can the Applicant explain why this definition includes development beyond that described in Schedule 1.</p> <p>c) 'Date of decommissioning' – Please can the Applicant explain the reference to Requirement 21 which appears to cover a different point (i.e submission and agreement of a decommissioning plan).</p> <p>Part 3 – Streets</p> <p><u>Article 11 – Temporary stopping up of streets and public rights of way</u></p> <p>d) The ExA notes that the drafting of this Article appears novel. The Applicant will be asked whether streets and public rights of way are better dealt with separately.</p> <p>e) The ExA notes that Article 11(1)(b) enables the undertaker to authorise the use of motor vehicles on classes of public rights of way where there is otherwise no public right to do so (albeit for the purposes of constructing and maintaining the Proposed Development). Please can the Applicant provide further justification for this power.</p> |

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- f) Furthermore, the power in Article 11(1)(b) is exercisable for 'any reasonable time'. Please can the Applicant explain the need for this and identify the public rights of way over which it considers this power would be exercised.

Article 12 – Private roads

- g) Article 12 enables the undertaker to use any private road within the Order limits for the purposes of, or in connection with, the construction or maintenance of the Proposed Development. Please can the Applicant provide further justification for the inclusion of this article and identify a prior precedent (whether Model Provisions or DCO).
- h) Please can the Applicant also identify which roads it considers will be affected by this provision and provide details of any discussions that have taken place with the owners of those roads.
- i) Please can the Applicant also explain why it considers the power to take temporary passage over private roads both during construction and maintenance is reasonable and proportionate in the context of this project.

Part 5 - Powers of Acquisition

Article 22(1) – Compulsory acquisition of rights

- j) The ExA notes that Article 22(1) is broadly drafted to enable the Compulsory Acquisition (CA) of new rights over **all** of the Order land. While Schedule 10 limits the CA power in defined plots to the rights listed in that schedule, CA of rights is not limited to the plots listed in Schedule 10. Please can the Applicant confirm whether this is its intention and if so, explain why it considers the approach of allowing the CA of undefined rights not listed in Schedule 10 is justified.
- k) Please can the Applicant provide evidence that persons with an interest in the Order land (and not just those plots listed in Schedule 10) have been made aware that new, undefined rights were being sought over all of the Order land and that they were consulted on that basis.
- l) Please can the Applicant explain why Article 22 is stated to be subject to Article 23.

Article 23(2)(c) – Private Rights

- m) Please can the Applicant explain what enquiries have been made to establish what private rights exist over the Order land and what affected parties have been consulted.

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- n) The ExA notes that there is some overlap with Article 22 which also gives the Applicant the ability to CA existing rights. Please can the Applicant explain why both articles are required.
- o) Please can the Applicant explain the inclusion of Article 23(2)(c). The Applicant's attention is drawn to paragraph 9.3 of the Secretary of State's decision letter in the Longfield Solar Farm DCO where the SoS removed a similarly drafted provision on the basis that it was uncertain and because he did not agree that rights should be affected before triggering one of the formal processes set out in (a) or (b).

Part 6 - Miscellaneous and General

Article 49 – Crown Rights

- p) The Applicant will be asked to confirm whether consent under sections 135(1) and (2) PA 2008 has been obtained (or when it anticipates such consent will be obtained).

Item 6

SCHEDULES 1, 2, 9 AND 17

FOR EACH OF THE SCHEDULES BELOW THE APPLICANT WILL BE ASKED TO RESPOND TO THE QUESTIONS POSED AND OTHER IPS WILL BE INVITED TO PROVIDE ANY COMMENTS OR OBSERVATIONS ON THE MATTERS LISTED.

Schedule 1 – Authorised Development

- a) In view of its stated purpose as associated development, please can the Applicant explain why there is no upper limit on the storage capacity of the BESS.
- b) Please can the Applicant explain the reasons for the final paragraph of Schedule 1, particularly in light of the extensive list of 'further associated development' listed immediately before it.

Schedule 2 – Requirements

General

- c) The ExA notes that ES Chapter 2 (EIA Process and Methodology) indicates the ES has assessed the environmental impacts of the scheme over a 40-year period. Please can the Applicant signpost where in the dDCO the consent is limited to this timescale or otherwise justify its absence.

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Requirement 5 – Detailed design approval

- d) Please can the Applicant explain why this requirement is confined to Work Nos 1 to 4 and how the details of design will be approved in relation to the other numbered works.

Requirement 9 – Biodiversity Net Gain

- e) The ExA notes that the Biodiversity Net Gain Report [APP-089] indicates a Biodiversity Net Gain (BNG) of 96% in habitat, 70% in hedgerow and 10% in river units. Please can the Applicant explain whether, and if so how, these levels of BNG are to be secured in the dDCO.

Requirement 12 – Archaeology

- f) Please can the Applicant explain the drafting of this requirement.
- g) Please can the Applicant confirm whether or not the WSI [APP-131] is currently in outline form and whether it has been agreed with the Host Authorities.
- h) The Applicant will be asked to add the WSI to the list of documents to be certified under Schedule 14 as indicated in Article 2.

Requirement 19 - Soils Management

- i) Please can the Applicant explain how soil resources will be managed during the operational and decommissioning phases of the Proposed Development and to signpost where/how this is secured in the dDCO.

Requirement 21 – Decommissioning and restoration.

- j) Please can the Applicant explain why a 12-month delay is required between its decision to decommission and the submission of a decommissioning plan to the relevant planning authority.
- k) Please can the Applicant explain how decommissioning will be secured within the 40-year period assessed in the ES.

Schedule 9 – Deemed Marine License Under the 2009 Act

- l) The Applicant will be asked to confirm whether the wording of this Schedule has been agreed with the MMO, and if not, provide an update on discussions including when it expects such agreement will be reached.

Schedule 17 – Procedure for Discharge of Requirements

- m) The ExA notes that this is a bespoke procedure. The Applicant will be asked to explain what consultation has taken place with the local

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| | <p>planning authorities and other consenting bodies on the wording of this Schedule.</p> <p>n) Please can the Applicant explain how the costs of the relevant local planning authorities associated with the discharge of requirements will be met under the Schedule.</p> |
| Item 7 | <p>SCHEDULES 3 TO 8</p> <p>FOR EACH OF THE SCHEDULES BELOW THE APPLICANT WILL BE ASKED TO RESPOND TO THE QUESTIONS POSED AND OTHER IPS WILL BE INVITED TO PROVIDE ANY COMMENTS OR OBSERVATIONS ON THE MATTERS LISTED.</p> <p>Schedule 4 – Streets Subject to Street Works</p> <p>a) Please can the Applicant explain the difference between the ‘streets plan’ and the ‘streets to be stopped up plan’ (which also appears in Schedule 5 and Schedule 8). The Applicant will be asked to identify the latter in the application documents.</p> <p>Schedule 5 – Alteration of Streets</p> <p>b) Please can the Applicant explain the extent of the alterations being proposed in column 3 of Schedule 5 (Parts 1 and 2) and why these are not specified in this Schedule.</p> <p>c) Article 10 distinguishes between the highway authority and the street authority. Should such a distinction be carried through to Part 1 of Schedule 5 (i.e should it make clear which streets are maintained by the highway authority and which are maintained by the street authority)?</p> |
| Item 8 | <p>SCHEDULE 14</p> <p>Schedule 14 – Documents and Plans to be Certified</p> <p><u>Latest versions and updates</u></p> <p>Annex G of the Rule 6 letter requests that the Applicant provide a schedule of the latest versions of the Applicant’s submission documents and documents to be certified.</p> <p>a) Please could the Applicant set out how it intends to respond?</p> <p>b) Please could the Applicant set out how it intends to update its application documents during the Examination? For example, to what extent does it intend to update the Environmental Statement to address clarifications identified during the Examination?</p> <p>c) Please could the Applicant set out its criteria for identifying the documents to be certified under Schedule 14?</p> |

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| | d) Please can the Applicant review the dDCO and ensure all documents to be certified are included in the Schedule. |
| Item 9 | <p>SCHEDULE 16 – PROTECTIVE PROVISIONS</p> <p>Progress updates</p> <p>Annex G of the Rule 6 letter requests that the Applicant provide a schedule of progress in relation to Statutory Undertakers, Protective Provisions, and any side agreements, that is updated during the Examination.</p> <p>a) Please could the Applicant set out how it intends to respond?</p> <p>b) Please could the Applicant summarise the progress made for each Statutory Undertaker and each Protective Provision, setting out any outstanding matters, the next steps to be taken, and the progress anticipated by the close of the Examination?</p> <p>c) Please could the Statutory Undertakers and other parties present that would benefit from the Protective Provisions comment?</p> |
| Item 10 | <p>OTHER CONSENTS</p> <p>Progress updates</p> <p>Annex G of the Rule 6 letter requests that the Applicant provide a schedule of progress in securing other consents that is updated during the Examination.</p> <p>a) Please could the Applicant set out how it intends to respond?</p> <p>b) Please could the Applicant summarise the progress made for each consent, setting out any outstanding matters, the next steps to be taken, and the progress anticipated by the close of the Examination?</p> <p>c) Please could the consenting authorities present comment?</p> |
| Item 11 | ANY OTHER MATTERS |
| Close of Issue Specific Hearing 1 | |

The agenda is subject to change at the discretion of the Examining Authority (ExA), although in making changes the ExA will be mindful of the need to provide opportunities for fair involvement to all Invited Parties.

The hearing will start at 10:00am irrespective of any late arrivals, for whom access may not be possible.

If you participate using Microsoft Teams, please join the virtual lobby promptly using the instructions that will be sent to you. It may take some time to admit participants from the virtual lobby into the Arrangements Conference. Your patience while you are waiting is appreciated.

Please contact the Case Team using the contact details at the top of the Rule 6 letter if you require any support to attend the hearing.

Procedure at the hearing

Guidance under the Planning Act 2008 and the Infrastructure Planning (Examination Procedure) Rules 2010 provides that it is for the ExA to probe, test and assess the evidence through direct questions of persons making oral representations at Hearings. Questioning at the Hearing will be led by the ExA. Cross questioning of a person giving evidence by another person will only be permitted if the ExA decides it is necessary to ensure representations are adequately tested or that an Interested Party has had a fair chance to put its case.