

APPLICATION BY COTTAM SOLAR PROJECT

POST HEARING SUBMISSIONS

ON BEHALF OF LINCOLNSHIRE COUNTY COUNCIL

AT DL1

Introduction

1. Lincolnshire County Council (“LCC”) attended the Preliminary Meeting (PM) and first Issue Specific Hearing (ISH) on the draft DCO held on 5th and 6th September 2023 respectively. A summary of LCC’s oral representations for both appears below.

Preliminary Meeting

2. LCC remains concerned to ensure that members of the public wishing to participate in the examination of this and other DCO applications should be able to participate meaningfully and easily. LCC’s concerns were highlighted and shared by members of the public, 7000 Acres and West Lindsey District Council (WLDC). 7000 Acres in particular noted the feeling of disenfranchisement which remains a concern of the Council.
3. This arises particularly in relation to the assessment of cumulative effects. LCC is host authority for a number of existing and forthcoming NSIP scale solar projects and is concerned to ensure that as a matter of substance, cumulative effects are considered holistically and thoroughly, and that as a matter of procedure, thought is given to how this might be best achieved in a way which encourages rather than discourages public participation. Specifically, LCC is concerned to ensure that interested parties don’t succumb to “consultation fatigue” and/or assume incorrectly that representations made to one Examining Authority (ExA) in relation to cumulative effects, for example, will automatically be taken into account by others.
4. One potential practical solution would be to hold a linked session with other extant examinations. This would be a visible statement to members of the public that cumulative effects are being given careful attention. By October 2023, 5 other examinations are likely to be underway and it would give LCC’s Members and members of the public great comfort if a join session were to be held. However, this is not the only means of achieving the aim of procedural fairness. Even if the ExA were to stop short of holding a formally linked ISH, cumulative effect ISHs for a number of projects could be held at the same location on the same

day or over consecutive days. This would give comfort to members of the public that a “joined up” approach was being taken and a “siloed” approach avoided.

5. At the Preliminary Meeting and Issue Specific Hearing 2 for Gate Burton a similar request was made and the Examining Authority for Gate Burton committed to reviewing this request once the examinations for Cottam and West Burton were underway.
6. In respect of the proposed timetable for Cottam the Council are of the opinion that these should be held in person and is not appropriate to hold these in a virtual way. The ISH on environmental matters must be held in person.
7. In respect of the Local Impact Report the Council is involved with 10 NSIP solar schemes some of which are at examination others working through the pre-application stages and by the end of September expect 5 of these projects to be in the examination phase. This is an unprecedented number for one host authority to be involved with at the same time this creates a resource challenge as the Council is only a small team. The Council want to engage to the extent expected by Councillors and local communities but this is proving challenging with the number of Local Impact Reports that need to be submitted in a short period of time. The submission date of 17th October is achievable depending on the outcomes of the other Preliminary Meetings that are taking place this month.
8. The PM for West Burton is later this week and Heckington Fen is 19th September. To meet the deadlines for all 3 of the examinations will require the Council to take 3 LIRs to the same Committee in early October this is a resource challenge to get all this information together and also a lot of information for one Committee to absorb and give the expected level of consideration too.
9. This is to give the Examining Authority an early indication that if there is no flexibility from one of the other Examining Authorities then the Council will not be able to meet the deadline of 17th October and ask if there is any flexibility to submit the LIR later. The next Planning Committee is 6th November and would be able to submit the LIR that same week if an extension of time to deadline 1 is agreed. If there is flexibility from the other ExAs then would be able to meet the October deadline.
10. The problem has largely been due to the late announcement of the West Burton PM which was expected to follow in chronological order of notifications and be held after Heckington in early October by the sudden announcement of the PM for West Burton as knocked our expected work programme out of sequence and led to 3 LIRs needing to go to one Committee which is not reasonable.

11. The Council will make the same request to the West Burton ExA and seek an extension to their deadline 1 and if agreed the Council will be able to submit its LIR for Deadline 1 for this examination.

ISH1 – the draft DCO

Agenda items 5 Part 1 to 6

12. Part 3 Streets comments not just on Article 11 but the preceding Articles 8,9 and 10.. The Council have concerns with the current wording as to the as to the mechanism is in place so that normal street works and permit processes re secured so the Council has the expected level of control.
13. The Council considers that Article 9 requires amendment to ensure clarity. At present, it is not clear what “consent of the Street Authority” refers to and it gives the developer an ability to undertake works that would normally be subject to a Section 278 Agreement without the level of control the Highway Authority would normally expect.
14. This process is normally controlled by a Section 278 Agreement and the Council requires assurance the works to the highway are undertaken in an acceptable way and need assurance that the DCO will enable the Council to have the same level of control as for any highway works that come forward under a Town and Country Planning Act application.
15. The Council will review the applicants response. Of note is how this is being addressed in the 2 other examinations that are underway. For Mallard Pass this appears to be considering capturing this via a separate side agreement and for Gate Burton this is seeking to amend the wording in the DCO to give the necessary controls.
16. For Article 11 have concerns regarding the temporary closure that this would allow. The Council is concerned that there is insufficient detail regarding the notice period and timeframe. Also ‘reasonable’ is undefined and the Council is concerned that this gives the potential for tension and uncertainty at a later date if the term is not given more clarity. Also question the mechanism and trigger if any required closure or diversion of a Public Right of Way (PROW) and more clarity is required. The wording in the Road Traffic Act 1984 gives more certainty and it is suggested similar wording that used in that Act could be used in the DCO.
17. The Council is concerned that there is no requirement to reinstate a PROW and suggest that similar wording to that which is used in Article 11 for Streets is used in respect of this Article to ensure that PROW are reinstated.

18. In respect of Part 6 Articles 38 and 39 as drafted allows any tree or hedge to be removed in the Order limits the Council has concerns about the ability to control and balance this. Firstly it is noted that the Draft Development Consent Order (DCO) (specifically: *PART 6 MISCELLANEOUS AND GENERAL: 38 Felling or lopping of trees and removal of hedgerows; 39: Trees subject to tree preservation orders;* and *SCHEDULE 13: HEDGEROWS TO BE REMOVED: PART 1, PART 2, PART 3.*) In respect to vegetation removal and retention contradicts the assumptions made in the Landscape and Visual impact Assessment(LVIA) report. This needs to be clarified as it has the potential to undermine the findings of the LVIA. The LVIA clearly states the intention is to retain and enhance trees and hedgerows, and this approach is reflected in the judgments of effects at all phases with existing vegetation forming key elements of the landscape baseline and also providing screening and softening of built elements of the scheme. However, the Draft DCO is seeking permission to have the ability to remove all hedgerows within the Order Limits and also remove any trees that are deemed necessary to facilitate development. While it is not anticipated all this vegetation would ultimately be removed, under the Draft DCO, as currently written, it could be and this is a clear contradiction, and creates uncertainty as to the parameters the LVIA baseline has been assessed against. It is considered that the extent of tree and hedgerow removal should be more proportionally set out in the DCO rather than including the full length of every hedgerow, Not only is this extent of vegetation removal completely unacceptable and unnecessary, it is also not captured on any vegetation removal plans or within the LVIA. Finally, as it is stated that the LVIA is utilising the Rochdale Envelope approach, so the ‘*worst case*’, based on the Draft DCO and permission to remove extensive hedgerows and trees, would likely be an assessment with little or no retained existing vegetation within the Order Limits.

Agenda item 6 Schedules 1,2,9 and 17

19. In respect of the time frame for this project which is currently proposed to be unrestricted LCC considers that the dDCO should be amended to specifically include reference to a 60 year time limit and a requirement to decommission the apparatus within this timeframe. The ES assesses a temporary scheme of a time period of 40 years and consent has not been expressly sought for a permanent installation. The project has been assessed by the Applicant and all Interested Parties on this basis. It is therefore necessary to reflect this in the DCO to avoid consent being granted for more than has been applied for and assessed within the ES.
20. Noted that the other solar DCOs in Lincolnshire both commenced seeking consent for a permanent installation but are now seeking 60 year consents. The Council believes there should

be consistency and therefore this scheme should also be time limited. In terms of the other Energy DCOs the applicant makes reference to the Alternative Energy Facility in Boston granted in July 2023 is for an Energy Waste Facility which is for a building situated on an industrial estate. It would not be normal to time limit the permission of a building on an industrial estate so submit that this is a different circumstance to this application and does not set a precedent for a solar development in a rural landscape to benefit from a permanent consent.

21. LCC would request inclusion as a named relevant planning authority given its expertise in areas relating to various requirements, specifically in relation to highways and rights of way, fire risk, waste, flooding and soils.
22. In respect of Requirement 5 the Council request an extra clause for planting 5 (1) (g) landscaping works including planting layouts, specifications and programme.
23. LCC considers it should properly be the discharging authority for Requirements 6, 11, 12, 15, 18 and 19. It should be a specified consultee in relation to Requirement 20.
24. In respect of Requirement 9 the Council agrees with the West Lindsey District Council comments and seeks consistency with this figure for the other DCO schemes working through examinations in Lincolnshire.
25. For Requirement 12 there is a tension between the Council and the applicant, the Council's archaeology team are not satisfied with the written scheme of investigation as currently drafted as there is disagreement as to what should be included in this document. The wording of this requirement is not agreed and discussions are on-going outside of the examination. At the core of this disagreement is the amount of trial trenching that should be undertaken across the Order limits. The Councils Local Impact Report will provide further details relating to this disagreement.
26. In respect of Requirement 21 should be amended to include the following
 - a. Express reference to the need for a decommissioning travel management plan and waste management plan in addition to (or as part of) an environmental management plan. Including references to these documents within a secured document is (1) to treat decommissioning differently to construction and (2) raises questions as to the degree to which these, as sub-documents, are properly secured. They should be expressly referenced in Requirement 21 to avoid doubt.

- b. Delete reference to submission of a plan within 12 months from the applicant deciding to decommission the project. This timescale is essentially meaningless as (1) the Applicant could decide never to decommission, thus avoiding the need to do so entirely and (2) the Applicant is, as presently drafted, not required to record or communicate to anyone its “decision” to decommission so the public and the enforcing authorities are entirely in the dark as to when the 12 month period starts and ends. Finally (3) the 12 month period, or indeed any length of period, is nothing to the point unless it is in relation to a long stop date beyond which the Applicant is required to remove the project and decommission it.
 - c. Include a requirement that the Applicant be required to notify the relevant planning authority if any part of the development has ceased to generate electricity and submit a plan for its replacement or decommissioning as appropriate. It is appropriate to address the potential for panels becoming damaged or defunct during the lifetime of the scheme to ensure they are replaced or decommissioned in a timely manner and not left producing visual and other effects whilst not providing any commensurate benefits.
 - d. Either here or potentially more appropriately within a s.106 agreement, to provide for a decommissioning bond to ensure sufficient funds are available to decommission the scheme should the Applicant (or future operator) be financially unable to do so at the point required. Whilst the Applicant has sufficient funds now to deliver the scheme there can be no certainty as to the position in the future how ever long that maybe.
27. In relation to Sch. 17, LCC does not object to the principle of including a deemed discharge provision, however, 6 weeks is an unreasonably short time period. 10 weeks would be more realistic and the Applicant should be required to notify relevant consultees to save any delay in this regard.
28. Sch.17 the Council welcomes that fees be included in the DCO and should include standard drafting provisions in relation to fees for discharge applications in line with Appendix 1 to Advice Note 15.

Item 11 – Any other Matters

29, A separate Section 106 agreement is likely to be necessary to provide a mechanism for the Applicant to pay a monitoring fee to LCC in relation to the battery safety management plan given the intention to require ongoing compliance for the lifetime of the development under draft Requirement 6(4). A similar matter was raised during the Issue Specific Hearing on Battery Energy Storage Systems(BESS) at the Gate Burton Examination who have reviewed the plans for the solar

DCOs and estimated the level of monitoring that will be required in the first year of energy generation and in subsequent years. In the first year this would be 20 days and thereafter 2 days per year. Cumulatively with the other known solar DCO projects in Lincolnshire this could be up to 10 schemes that require monitoring and further projects may emerge in the future. The Council is seeking to recover costs for monitoring for these BESS that come through either as DCOs or those that emerge as Town and Country Planning Act applications.

30. An advantage of this approach would ensure that the BESS is monitored in the first year to ensure all appropriate quality control and safety mechanisms are in place which would give confidence to local communities that this emerging technology is being independently checked which will reduce the possibility of a thermal fire taking place. Of the fires that have taken place in BESS to date and been investigated the majority have shown to be due to non adherence to the necessary quality control systems quality control and safety mechanisms are in place.

Conclusions

31 Any additional drafting comments will be picked up in the Council's Written Representations and the Council will continue to review the draft DCO as it evolves during the examination.