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Ref: EN010133

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5 September 2024

Dear Sir or Madam,

PLANNING ACT 2008

APPLICATION FOR DEVELOPMENT CONSENT FOR THE COTTAM SOLAR PROJECT

1. Introduction

- 1.1. I am directed by the Secretary of State for Energy Security and Net Zero (“the Secretary of State”) to advise you that consideration has been given to the Examining Authority’s (“ExA”) report dated 05 June 2024. The ExA consisted of two examining inspectors, Rory Cridland (Lead member of the Panel) and Darren Hendley. The ExA conducted an Examination into the application submitted on 12 January 2023 (“the Application”) by Cottam Solar Project Limited (“the Applicant”) for a Development Consent Order (“DCO”) (“the Order”) under section 37 of the Planning Act 2008 (“PA2008”) for the Cottam Solar Project (“the Proposed Development”). The Application was accepted for Examination on 9 February 2023. The Examination began on 5 September 2023 and closed on 5 March 2024. The Secretary of State received the ExA’s Report on 5 June 2024.
- 1.2. On 19 July 2024 a request for information letter (“first information request”) was issued by the Secretary of State seeking information on several matters. On 2 August an additional information request was issued (“second information request”) seeking an update on the Applicant’s Book of Reference (“BoR”). On 12 August, all Interested Parties (“IPs”) were invited to comment on the information received (“third information request”) from the first information request for completeness.
- 1.3. The Order, as applied for, would grant development consent for the construction, operation, maintenance and decommissioning of four ground mounted solar photovoltaic generating stations in West Lindsey, Lincolnshire, generating up to 600 megawatts (“MW”) of clean energy, four onsite substations, a Battery Energy Storage System (“BESS”), a grid

connection and associated infrastructure. The Proposed Development is composed of four separate sites which lie across Lincolnshire and Nottinghamshire within the administrative areas of West Lindsey District Council (“WLDC”), Bassetlaw District Council (“BDC”), Lincolnshire County Council (“LCC”) and Nottinghamshire County Council (“NCC”) and is wholly in England. The four sites would be located approximately 6.5 kilometres (“km”) southeast and 4km northeast of Gainsborough, referred to as Cottam 1, Cottam 2, Cottam 3a and Cottam 3b, and would total 1,270 hectares (“ha”) in area.

- 1.4. The Applicant also seeks compulsory acquisition and temporary possession powers, set out in the draft Order submitted with Application.
- 1.5. Published alongside this letter on the Planning Inspectorate’s National Infrastructure Planning website¹ is a copy of the ExA’s Report of Findings and Conclusions and Recommendation to the Secretary of State (“the ExA’s Report”). The ExA’s findings and conclusions are set out in Chapters 3 – 7 of the ExA Report, and the ExA’s summary of conclusions and recommendation is at Chapter 8. All numbered references, unless otherwise stated, are to paragraphs of the ExA’s Report [“ER *.*.”].

2. Summary of the ExA’s Report and Recommendation

- 2.1. The principal issues considered during the Examination on which the ExA has reached conclusions on the case for development consent are set out in the ExA Report under the following broad headings:
 - Noise, Vibration and Air Quality;
 - Ecology and Biodiversity;
 - Landscape and Visual Impacts;
 - Historic Environment;
 - Soils and Agriculture;
 - Socio-Economics, Tourism, Recreation and Human Health;
 - Transport and Access;
 - Water Environment and Flood Risk;
 - Other Planning Matters;
 - Cumulative Effects;
 - Habitats Regulation Assessment;
 - Land Rights and Related Matters;
 - Development Consent Order
- 2.2. The ExA recommended that the Secretary of State should **grant** development consent for the application, subject to the necessary Crown consent being obtained [ER 8.3.1]. By letter dated 12 April the Crown Estate confirmed that this consent had been obtained.
- 2.3. Except as indicated otherwise in the paragraphs below, the Secretary of State agrees with the findings, conclusions and recommendations of the ExA as set out in the ExA Report,

¹ <https://national-infrastructure-consenting.planninginspectorate.gov.uk/projects/EN010133>

and the reasons for the Secretary of State's decision are those given by the ExA in support of his conclusions and recommendations.

3. Summary of the Secretary of State's Decision

- 3.1. Section 104(2) of the 2008 Act requires the Secretary of State, in deciding an application, to have regard to any relevant National Policy Statement ("NPS"). Subsection (3) requires that the Secretary of State must decide the application in accordance with the relevant NPS except to the extent that one or more of subsections (4) to (8) apply.
- 3.2. The Secretary of State has considered the overall planning balance and, for the reasons set out in this letter, has concluded that the public benefits associated with the Proposed Development outweigh the harm identified, and that development consent should therefore be granted. Furthermore, the Secretary of State consider that there is a compelling case in the public interest for the compulsory acquisition and temporary possession powers sought.
- 3.3. The Secretary of State has decided under section 114 of the 2008 Act to make, with modifications, an Order granting consent for the proposals in the Application. This letter is a statement of the reasons for the Secretary of State's decision for the purposes of section 116 of the 2008 Act and the notice and statement required by regulations 31(2)(c) and (d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("the EIA Regulations").
- 3.4. In making the decision, the Secretary of State has complied with all applicable legal duties and has not taken account of any matters which are not relevant to the decision.

4. The Secretary of State's Consideration of the Application

- 4.1. The Secretary of State has considered the ExA's Report and all other material considerations, including representations received after the close of the ExA's Examination and responses to his consultation letters. 555 Relevant Representations ("RRs") were made in respect of the Application². Written Representations, responses to questions and oral submissions made during the Examination were also taken into account by the ExA.
- 4.2. The Energy White Paper, *Powering Our Net Zero Future*, was published on 14 December 2020. It announced a review of the suite of energy NPSs but confirmed that the current NPSs, designated in 2011, were not being suspended in the meantime. The ExA has referred to these 2011 NPSs as EN-1, EN-3, and EN-5 and this letter refers to them in the same way. Draft NPSs were published on 6 September 2021 and subject to a consultation which closed on 29 November 2021. Updated versions of these draft NPSs were published on 30 March 2023 and subject to a further consultation which closed on 23 June 2023. The ExA makes reference to the March 2023 draft NPSs in the Examination and Report [ER 2.4.7. et seq.].

² <https://national-infrastructure-consenting.planninginspectorate.gov.uk/projects/EN010133/representations>

- 4.3. Revised draft NPSs were released on 22 November 2023 and designated in Parliament on 17 January 2024 (“the 2024 NPSs”), but only have effect on applications accepted for Examination after their designation [ER 2.4.7]. The ExA concluded that the Proposed Development for this reason falls to be determined under section 105 of the PA2008 as no NPS was in effect for solar generation [ER 2.3.2]. Overall, the ExA considered the 2011 NPS EN-1 as important and relevant given the general principles that it provides for energy Nationally Significant Infrastructure Projects (“NSIPs”) [ER 2.4.4] and the consideration given to the BESS, which the Proposed Development includes as associated development for the purposes of the PA2008 [ER 2.4.6]. Additionally, given that the Proposed Development includes the installation of substations to facilitate the export of generated electricity to the grid, 2011 NPS EN-1 and EN-5 are considered important and relevant by the ExA as it falls within their scope [ER 2.4.5]. The ExA stated that the 2024 NPSs are also important and relevant for the Secretary of State to consider when determining the application as they provide the most up to date expression of Government policy in relation to the provision of large-scale ground mounted solar generation and afford them very great weight [ER 2.4.9]. As such, the Secretary of State has had regard to the designated 2024 NPSs in deciding the Application, and addresses these where relevant within this letter, but does not consider that there is anything contained within them that would lead him to reach a different decision on the Application than has been reached by relying on the 2011 NPSs. The Secretary of State has also had regard to the updated National Planning Policy Framework (“NPPF”) from December 2023 which was released during the Examination and similarly finds that there is nothing which would lead him to reach a different decision on the Application.
- 4.4. The Secretary of State has also had regard to the British Energy Security Strategy published on 7 April 2022, which outlined the steps to accelerate the government’s progress towards achieving Net Zero by 2050 and a long-term shift in delivering cheaper and cleaner power.
- 4.5. The Secretary of State has had regard to the NPSs, NPPF, PPG, the 2015 and 2024 WMSs, Local Impact Reports (“LIR”) submitted by WLDC, LCC, NCC and BDC, Local Development Plans (“LDPs”) environmental information as defined in regulation 3(1) of the EIA Regulations and to all other matters which are considered to be important and relevant to the Secretary of State’s decision as required by section 105 of the 2008 Act.
- 4.6. The Secretary of State agrees with the ExA’s conclusions and the weight it has ascribed in the overall planning balance in respect of the following issues:
- Noise, Vibration and Air quality (neutral weight)
 - Ecology and Biodiversity (moderate positive weight)
 - Historic Environment;
 - Non-Designated Heritage Assets (little negative weight)
 - Socio-Economic, Tourism, Recreation and Human Health (moderate positive weight)
 - Transport and Access (neutral weight)
 - Water Environment and Flood Risk (neutral weight)
 - Other Planning Matters;
 - Waste (limited negative weight)

- Minerals (neutral weight)
- Major Accidents and Disasters (neutral weight)

4.7. The paragraphs below set out the matters where the Secretary of State has further commentary and analysis to add beyond that set out in the ExA report. This includes matters where the Secretary of State considers it is necessary to provide further detail on his rationale for agreeing or disagreeing with the conclusions of the ExA:

- Landscape and Visual Impacts
- Historic Environment;
 - Designated Heritage Assets
- Soils and Agriculture
- Cumulative Effects

Landscape and Visual Impacts

Landscape Effects

- 4.8. The landscape and visual impact of the Proposed Development on the surroundings was a matter of concern for many IPs including the Host Authorities, Local Residents and community groups [ER 3.6.52]. These matters included concerns regarding the combined landscape effects turning the landscape into an ‘energy landscape’, the cumulative impact of the Proposed Development with other development and the effect on landscape and visual receptors.
- 4.9. In particular, LCC and WLDC had outstanding concerns at the end of examination process around the Applicant’s approach to cumulative assessments, including the impact of cumulative effects on regional landscape character [ER 6.6.65]. Both parties were also concerned that the conclusions of the landscape assessment were understated [ER 3.6.53 et seq.]. They proposed that the residual cumulative effects on the Regional Scale Landscape Character Type (“LCT”) – 4a Unwooded vales character area would be moderate adverse while the cumulative effects on land use would be moderate to major adverse. Several IPs have echoed these concerns, including 7000 Acres [ER 3.6.66].
- 4.10. The ExA disagreed. It noted that ES Appendix 8.2 extensively assessed the cumulative effects on both the Regional Scale LCT – 4a Unwooded Vales and on land use as a fine-grained receptor [ER 3.6.67]. In terms of the former, the ExA found that it identified that no significant cumulative effects would arise as a result of the Proposed Development along with other cumulative development. It points to the screening provided by the embedded and additional mitigation and the ability of the landscape to accommodate some change without undue adverse effects [3.6.68].
- 4.11. When considering the cumulative effects at a fine-grained level, the ExA found that Environmental Statement (“ES”) Appendix 8.2 recognised that the Proposed Development along with the other solar schemes would introduce new elements and features to the landscape in the form of solar panels, resulting in a moderate adverse effect during construction at year 1 of operation. However, it considered that due to the low-level nature

of the different elements, coupled with the embedded and additional mitigation, the cumulative effects would reduce to minor adverse by year 15 [3.6.69].

- 4.12. As such, the ExA did not agree with the implication that an 'energy landscape' will be formed; given the Applicant's proposed mitigation, they considered that there are unlikely to be significant residual adverse cumulative effects at year 15 of operation [ER 3.6.71].
- 4.13. The ExA went on to conclude that the Proposed Development would bring no significant adverse landscape effects at a regional scale for the solar array sites or along the cable route corridor. However, fine-grained and infrastructure receptors at the solar array sites would see significant adverse effects during construction. These would reduce to minor adverse (non-significant) by the end of year 1 [ER 3.6.101].
- 4.14. The ExA also concluded that there would be some significant cumulative adverse effects during construction and at year 1 of operation on fine grained land use, topography and watercourses receptors and communications and infrastructure receptors, all of which are predicted to reduce to no greater than minor adverse by year 15, taking account of the embedded and additional mitigation [ER 3.6.104].
- 4.15. The ExA noted significant adverse landscape effects on the 4a Unwooded vales Regional LCT in terms of land use and topography at the substation sites during both construction and operation but stated that these effects are expected to reduce from major-moderate adverse to moderate adverse by year 15, which the ExA considers is still significant [ER 3.6.102]. Significant combined effects on the Regional Scale 4a Unwooded Vales LCT during construction and year 1 are expected to reduce from moderate adverse to minor adverse (non-significant) at all substation sites by year 15 [ER 3.6.103].

Visual Effects

- 4.16. LCC and WLDC raised concerns about visual amenity [ER 3.6.72]. The ExA concluded that assessments of visual improvement were down to professional judgment and that no additional significant adverse visual effects over and above those identified by the Applicant were suggested [ER 3.6.73]. As such, the ExA was content that the Applicant had captured all likely significant adverse effects of the Proposed Development on the landscape [ER 3.6.74].
- 4.17. The ExA noted significant visual effects at a number of viewpoints, transport and PRoW receptors during construction and year 1 of operation. Although these would reduce at year 15, significant residual visual effects would remain [ER 3.6.105].
- 4.18. The ExA noted that seven residential properties would experience significant adverse visual effects during construction and at year 1 of operation, including North Farm. These effects would be temporary, with no residual significant effects predicted to remain by year 15 of operation [ER 3.6.106].
- 4.19. The ExA noted moderate adverse combined visual effects during construction and year 1 of operation for Viewpoint Receptor LCC-C-D: Blackthorn Lane. No other visual receptors were identified as likely to experience significant combined effects [ER 3.6.107].

- 4.20. The ExA noted that the predicted significant beneficial effects to landscape character and visual amenity are not relied upon by the Applicant as a purported benefit of the scheme. The ExA noted that the Secretary of State should therefore afford it no weight in the planning balance [ER 3.6.109].
- 4.21. The ExA concluded no significant cumulative visual effects as a result of the Proposed Development with other committed and planned development, including the other NSIP solar projects that have been identified [ER 3.6.108].
- 4.22. The ExA remarked that both the 2011 NPS EN-1 and 2024 NPS EN-1 make clear that all proposed energy infrastructure is likely to have landscape and visual effects. Despite mitigation, iterative design processes, and the temporary and reversible nature of some of the effects, the Proposed Development will still create a number of residual significant effects that would be experienced for many years to come. These are matters which the ExA considered weigh against the Proposed Development [3.6.110].

The Secretary of State's Conclusion

- 4.23. On balance, whilst the landscape effects of the Proposed Development are in some areas significantly adverse – such as the cumulative effects on fine-grained land use, topography and watercourses receptors, and communications and infrastructure receptors – these significantly adverse effects are in most cases expected to be non-significant by either year 1 or year 15. Although 15 years is not a negligible period of time, it is considered relatively short when compared to the 60-year lifecycle of the Proposed Development. The visual effects, however, are significant at a number of viewpoints during construction and year 1. These effects are expected to last beyond year 15 except in the case of the seven residential properties, though no wider cumulative effects are expected. Whilst landscape and visual impacts are unavoidable, the impact on existing landscape character and visual amenities is moderate. As such, the Secretary of State agrees with the ExA's assessment and conclusions and therefore ascribes this matter moderate negative weight in the planning balance.

Historic Environment; Designated Heritage Assets

- 4.24. The ExA noted that ES Chapter 13 (section 13.5) identified heritage assets that were considered within the 5km study area surrounding the Cottam 1, 2, 3a and 3b sites. This included 21 Scheduled Monuments ("SM") in the study area of the proposed array sites and two SMs in that of the proposed cable route, though none of these were located within the Order Limits [ER 3.7.18]. 35 Grade I and II* Listed Buildings ("LB") were found in the study area, as were 7 Conservation Areas ("CoA") and a total of 73 Grade II LBs. With regard to the proposed cable route corridor study area, there were 16 LBs, otherwise no LBs or CoAs were located within the Order Limits. One designated historic landscape was identified within the study area comprising Fillingham Castle Grade II Registered Park and Garden ("RPG") [ER 3.7.19].

Effects

- 4.25. In relation to designated heritage assets, the ExA noted the Planning Statement's consideration that the level of effects where there is an adverse effect amounts to less than substantial harm [ER 3.7.27].
- 4.26. The ExA identified a potential direct effect on a designated asset that relates to the churchyard wall of the Site of a college and Benedictine Abbey, St Mary's Church SM, caused by abnormal loads vehicles during the construction phase, to which mitigation was proposed by way of monitoring of manoeuvres by a suitably qualified banksman [ER 3.7.23]. A moderate adverse residual effect was identified on the setting of the Thorpe Medieval Settlement SM, due to the proximity and visibility of solar panels over the length of the operational period, to which although mitigation had been proposed, will remain a moderate adverse effect [ER 3.7.24]. Slight adverse residual effects were predicted at SMs associated with the Deserted village of Dunstall, Roman villa west of Scampton Cliff Farm, Southorpe medieval settlement, Gilby medieval settlement, Coates medieval settlement and moated site – which were considered by the Applicant to become neutral when the landscape planting becomes mature, with the exception of the Roman villa west of Scampton Cliff Farm [ER 3.7.25]. There were no anticipated direct impacts on LBs identified by the ExA. Slight adverse residual effects were predicted on settings of Glentworth Hall and the associated former stables; Fillingham Castle, Thorpe in the Fallows Farmhouse, Mount Pleasant Farmhouse east of Laughton and Corringham Windmill. The ExA stated that such effects will become neutral when landscaping becomes mature, with the exception of Glentworth Hall (grade II* LB) the associated former stables (Grade II LB) and Fillingham Castle (Grade I LB) [ER 3.7.26].

Site of a college and Benedictine Abbey, St Mary's Church SM

- 4.27. IPs raised concerns over the potential for effects on the structural integrity of the Site of a college and Benedictine Abbey, St Mary's Church SM. Historic England ("HE") set out that the measures to protect the asset would only be as effective as the degree to which they would be integrated into practice via a movement management plan or similar. The Applicant subsequently updated the Outline Construction Traffic Management Plan ("oCTMP") to reflect this provision, which HE confirmed appeared appropriate, and ultimately concluded that there were no unresolved matters related to this asset [ER 3.7.36].

Thorpe Medieval Settlement SM

- 4.28. IPs, including WLDC and HE, raised concerns that the Proposed Development would have unacceptable visual impacts on the SM, which they argued would continue into and throughout the operational period [ER 3.7.37]. The Applicant argued that the proposed 50m offset from the designated heritage asset was sufficient, in response to HE's request that the solar arrays be sited further away from the SM to relate to a former historic east-west boundary concerned with the historic agricultural setting of the settlement, and viewed the boundary related more to a modern landscape in contrast to the medieval landscape of the Thorpe Medieval Settlement. The Applicant also proposed a hedgerow to provide

screening [ER 3.7.37 et seq.]. The Applicant and HE agreed that the level of harm caused by the Proposed Development would be 'less than substantial', as the impact would be moderate adverse – 'significant' in EIA terms (REP5-042) [ER 3.7.41 et seq.], which the ExA agreed with, otherwise the concerns remained unresolved at the end of the examination.

- 4.29. On 19 July 2024, the Secretary of State requested the Applicant to revise the design of the Proposed Development to remove solar arrays on land between the Thorpe in Fallows SM and the former historic east-west boundary recorded on the 1886 Ordnance Survey Map, further requesting a hedgerow with the inclusion of appropriate native tree species and inviting comments from HE and WLDC.
- 4.30. On 6 August 2024, the Applicant revised the design of the Scheme to remove solar arrays on land between the Thorpe in Fallows Scheduled Monument (1016978) and the former historic east-west boundary recorded on the 1886 25-inch Ordnance Survey map. Additionally, a revised version of Cottam 1 South Sheet 2 of the Landscape and Ecology Mitigation and Enhancement Plan was submitted, showing the removal of the solar array area as requested, and the proposed planting of the historic boundary as a hedge formed of native tree species. On 6 August 2024, HE confirmed that they were content with the request to revise the design of the Proposed Development. The Secretary of State is content with the Applicant's proposals and considers the matter resolved.

Fleet Plantation Moated Site SM

- 4.31. BDC considered that there was potential for the Applicant's proposed 'Changes 1 and 2', which would extend the Order Limits, to result in works associated with the proposed cable route corridor closer to the Proposed Development being closer to the Fleet Plantation Moated Site SM. The ExA noted that the setting of the SM would experience temporary slight adverse effects, otherwise highlighted HE's view that no additional impacts upon the significance of the SM was likely to occur, which the ExA agreed with [ER 3.7.43].

Fillingham Castle LB and RPG

- 4.32. The ExA noted the Applicant's Heritage Statement and its conclusion that the layering effect of the Proposed Development would have a very low level of industrialising effect on the rural character of the Trent valley landscape, which would not result in significant effects on the RPG. However, in view of the high value attributed to the Grade 1 Fillingham Castle LB, the ES identified a slight to moderate (significant) adverse effect on this LB [ER 3.7.44]. The ExA noted the position of HE, who clarified that there would be a potentially harmful impact at a level of 'less than substantial harm'. The ExA agreed with this view [ER 3.7.46].

Cumulative Effects

- 4.33. The ExA acknowledged that WLDC considered that cumulative effects could arise due to views from the elevated form of Lincoln Cliff [REP-091]. However, no significant cumulative effects were identified for heritage assets as a result of the Proposed Development with other cumulative development. Slight adverse effects are identified in ES Chapter 13 on

the Roman villa west of Scampton Cliff Farm SM, which would result in less than substantial harm to the heritage asset, which the ExA agreed with.

Buried Archaeological Remains and Trial Trenching

- 4.34. The Applicant, LCC and NCC remained in dispute at the end of Examination over the level of evaluation trial trenching of buried archaeological remains that the Applicant had carried out [ER 3.3.49]. The Applicant argued its approach targeted fields where potential archaeological deposits had been identified through the geological survey and other non-intrusive investigations, which amounted to approximately 17% of the proposed array sites at a 2% sample, which equated to an overall sample of 0.35% of land [ER 3.7.51]. Although the Applicant viewed this approach as proportionate, LCC raised concerns that over 80% of the Order Limits had not been trial trenched, and that an adequate baseline would not be achieved until archaeologically sensitive areas have been identified and their depth, extent and significance determined [ER 3.7.52] [ER 3.5.73]. NCC also considered that as 80% had not been trial trenched it was not fit for purpose and that 3 to 5% was required in the sensitive areas [ER 3.7.54]
- 4.35. The Applicant subsequently revised its Written Scheme of Investigation (“WSI”) to incorporate comments from LCC and NCC and submitted a ‘Without Prejudice’ Written Scheme Investigation (Archaeology) (“WPWSI”) which included provisions for further archaeological trenching, matching the percentage area sample of trenching undertaken for the Gate Burton Solar project, in advance of the construction of the Proposed Development. The Applicant stated that the percentage area proposed under the WPWSI was considered sufficient for the Gate Burton Solar project. The WPWSI sets out the sample of trenching for the Proposed Development as totalling 1.09% [ER 3.7.62].
- 4.36. The ExA noted the disagreement of LCC and NCC with the Applicant’s WSI and considered that it did not provide for sufficient trial trenching to properly protect archaeological remains from harm. Although LCC and NCC’s challenge extended to the WPWSI, the ExA considered it appropriate for the Proposed Development and argued that it would also address the concerns over the buried archaeological remains and trial trenching [ER 3.7.64].
- 4.37. In response to a concern from LCC regarding potential harm to shallow archaeology from the use of concrete feet to mount solar panels the Applicant explained that under the WSI no areas had been proposed for concrete feet that had not already been subject to evaluation trial trenching. The ExA viewed this approach as acceptable [ER 3.7.65 et seq.].
- 4.38. On 19 July 2024, the Secretary of State proposed amended wording to Requirement 12 (Archaeology) of Schedule 2 in his first information request and invited the Applicant, LCC, NCC, and HE to comment on any concerns with the amendment to the DCO, which provides for a WSI to be submitted to and approved in writing by the relevant planning authority.
- 4.39. On 6 August 2024, the Applicant confirmed that it reviewed the draft WSI requirement set out in the first information request and proposed alternative text for Requirement 12

(Archaeology) for consideration by the Secretary of State. The Applicant argued that its revised drafting clarifies the role of the overarching archaeological mitigation strategy and the more detailed WSI which will apply to the pre-commencement trial trenching works and the construction of the Proposed Development following commencement. Additionally, that the revised drafting reflects the intention that further archaeological investigation should be carried out in the manner prescribed by the approved WSI, in order to inform the construction of the Proposed Development and identify and specific archaeological measures required for a particular location.

- 4.40. On 6 August 2024, LCC, NCC and HE provided responses to the Applicant's draft Requirement 12. LCC and NCC confirmed that they did not agree with the proposed wording and considered it unclear, arguing that the WPWSI is not fit for purpose and should be replaced with an agreed 'archaeological mitigation strategy' supplemented by WSIs for each phase of work. In response, the LCC and NCC each provided alternative wording to Requirement 12 that they considered more appropriate and in line with the 'archaeological requirement' incorporated into the DCO for the Mallard Pass Solar Farm Project ("Mallard Pass"). HE considered that the Secretary of State should be referred to the advice of local planning authorities with regards to the revised wording to Requirement 12 as it is them who will be responsible for the approval of the relevant documents.
- 4.41. The Secretary of State has considered the above submissions and acknowledges the need for the requirement to ensure that the entire archaeological process and mitigation is appropriately secured. Noting the issues raised by LCC and NCC in relation to trial trenching and the proposed mitigation, the Secretary of State concludes that he is satisfied with adopting wording, aligned with the 'archaeological requirement' incorporated into the DCO for Mallard Pass, in Requirement 12 of the DCO. The Secretary of State considers that an updated WSI, informed by additional trial trenching, to be approved by the relevant planning authorities will be fit for purpose.

ExA's Conclusion

- 4.42. The ExA concluded that the Applicant has satisfactorily assessed the significance of the designated heritage assets affected by the Proposed Development, and was satisfied with the overall assessment of the residual effects. The ExA agreed with the Applicant and HE that significant residual effects would be in effect for the Thorpe Medieval Settlement SM, though this would amount to less than substantial harm [ER 3.7.69 et seq.].
- 4.43. The ExA considered that the Proposed Development would result in adverse effects (amounting to less than substantial harm) to the following designated assets:
- SMs: Deserted village of Dunstall; Roman villa west of Scampton Cliff Farm; Southorpe medieval settlement; Gilby medieval settlement; Coates medieval settlement and moated site; and Fleet Plantation Moated Site.
 - LBs: Glentworth Hall (grade II*); Former stables at Glentworth Hall; Fillingham Castle (grade I); Thorpe in the Fallows Farmhouse; Mount Pleasant Farmhouse east of Laughton; and Corringham Windmill.
 - RPG: Fillingham Castle.

- 4.44. The ExA concluded that great weight should be given to an asset's conservation and that the more important the asset, the greater the weight should be; irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance [ER 3.7.73]. The ExA also explained that if the WPWSI is taken forward as the methodology for undertaking the archaeological mitigation, effects by way of buried archaeological remains, trial trenching and concrete feet would accord with the 2011 NPSs, 2024 NPSs, the NPPF and development plan policies [ER 3.7.76].
- 4.45. The ExA noted that paragraph 5.8.15 of 2011 NPS EN-1 requires any harmful impact on the significance of a designated heritage asset to be weighed against the public benefit of the development, recognising that the greater the harm to the significance of the heritage asset, the greater the justification will be needed for any loss [ER 5.3.2].
- 4.46. Taking into account the significant public benefits of the Proposed Development, including its contribution to meeting the urgent need for low carbon generating infrastructure and the greenhouse gas emission ("GHG") impacts of the Proposed Development, the ExA was satisfied there was a clear and convincing justification for the harm that would arise to designated heritage assets, both individually and collectively. Furthermore, it recognised all the adverse effects identified would be temporary and reversible following decommissioning [ER 5.33]. The ExA considered this should be afforded moderate negative weight in the overall planning balance [ER 5.3.4].

The Secretary of State's Conclusion

- 4.47. The Secretary of State agrees with the ExA's assessment and conclusions and considers that the great need for the Proposed Development outweighs, in each case, the harm in relation to the significance of designated heritage assets. The Secretary of State notes that of the designated heritage assets considered in this section, all would have an adverse effect that would amount to less than substantial harm, including Thorpe Medieval Settlement which would have significant residual effects eventually amounting to less than substantial harm, and that none will amount to more than substantial harm. Furthermore, that mitigations such as Requirement 12, Requirement 15, and Requirement 21 of the DCO are to reduce harm to the sites sufficiently. The Secretary of State considers for these reasons, that the need for the Proposed Development is justified and sufficiently assessed by the Applicant.
- 4.48. Whilst the Secretary of State affords great weight to the desirability of preserving these assets, he is mindful that the effects would be ultimately temporary and reversible. The Secretary of State therefore agrees with the ExA and ascribes this moderate negative weight.

Soils and Agriculture

- 4.49. The 2011 NPS EN-1 and 2024 NPS EN-1 both contain policy relevant to the consideration of soils and agriculture for energy NSIPs.
- 4.50. Paragraph 5.10.8 of 2011 NPS EN-1 explains that applicants should seek to minimise impacts on the Best and Most Versatile ("BMV") agricultural land (grades 1, 2 and 3a of the

Agricultural Land Classification (“ALC”)) and to preferably use land in areas of poorer quality (grades 3b, 4 and 5) except where this would be inconsistent with other sustainability considerations, and that any effects on soil quality should also be identified and measures sought to mitigate impacts [ER 3.8.2]. The 2024 NPS EN-1 takes forward similar principles, requiring justification for the use of BMV land and directs the Secretary of State to take account of the economic and other benefits of that land.

- 4.51. Paragraph 5.11.4 of 2024 NPS EN-1 acknowledges that development of land will affect soil resources, including physical loss of and damage to soil resources, through land contamination and structural damage. Indirect impacts may also arise from changes in the local water regime, organic matter content, soil biodiversity and soil process. In this context, paragraph 5.11.12 states that Applicants should seek to minimise impacts on the BMV agricultural land and preferably use land in areas of poorer quality [ER 3.8.4].
- 4.52. The 2024 NPS EN-3 reflects the overarching approach established in 2024 NPS EN-1 in protecting and prioritising high-quality agricultural land. In paragraph 2.10.29 it states that whilst land type should not be the predominant factor in determining the suitability of the site location, where possible previously developed, contaminated or industrial land should be utilised. Paragraph 2.10.30 is clear that whilst solar developments are not prohibited on BMV land, the impacts should be considered. Paragraph 2.10.31 recognises that at NSIP scale, it is likely that some agricultural land may be used [ER 3.8.6].
- 4.53. The proposed array sites contain agricultural land in grades 2, 3a and 3b. Grade 3b is said to predominate at 1118.3ha (94.8%), with grade 3a at 42ha (3.6%) and grade 2 at 6.1ha (0.5%). The Applicant stated that the remaining 1.1% of land is a small area of the sites which remains not surveyed, and absence of survey cover for this is not a significant omission given that over 90% of the agricultural land falls within ALC Grade 3b (ES Appendix 19.1 – 5.1.5). The proposed substations, BESS and temporary tracks would take up 47.9ha of the total agricultural land, of which 4ha would be BMV land. The limiting factor to the amounts of higher grade ALC land was reported to be soil wetness. Pockets of Grade 3a land were found in Cottam 1, 2, 3a and 3b, with pockets of Grade 2 land found in the Cottam 1 and Cottam 3a [ER 3.8.15 et seq.].
- 4.54. The ExA considered cumulative effects with neighbouring solar projects and noted that effects with Tillbridge Solar, Gate Burton Energy Park, West Burton Solar, Heckington Fen Solar, Temple Oaks Renewable Energy Park and Mallard Pass had been considered in ES Chapter 19. The ExA stated that most are within predominantly moderate likelihood of BMV land, which also includes the Proposed Development. The exceptions to this were the Heckington Fen site, which was high, and the Mallard Pass site, which was predominantly low. However, no meaningful data was available concerning farming circumstances and limited data for the soil resource across the projects considered above [ER 3.8.27].
- 4.55. The Applicant argued that the cumulative agricultural land resource loss would be temporary with actual loss limited to the small extent of switchgear housings and substations. The soil resource would experience little disturbance, and the risk of compaction from trafficking reduced compared to annual arable crop management. No significant cumulative effects were therefore reported by the Applicant [ER 3.8.27].

Farming Circumstances

- 4.56. The Applicant set out that there would be a beneficial effect on the farm businesses by way of the Proposed Development, due to the businesses having a new and substantial diversified enterprise e.g., rental income from the Proposed Development [ER 3.8.46]. That during operation, the required management of the grass below and between the panels could include grazing by livestock, and also decommissioning would allow for a return to arable management of the land [ER 3.8.23].
- 4.57. The Applicant accepted whilst there was the potential for possible cumulative effects where an agricultural occupant owns or rents farmland on multiple sites, this was difficult to determine because such information was not disclosed, and if there was any common occupancy, this would suggest large existing and diverse farm businesses minimising the potential for there to be any adverse cumulative effects [ER 3.8.49]. The ExA concluded, on this basis, that there was unlikely to be unacceptable impacts on the farming businesses from the Proposed Development. [ER 3.8.50].

Soil Management

- 4.58. During the Examination IPs raised a number of concerns regarding soil management. NE challenged the originally submitted Outline Soil Management Plan ("oSMP"), including seeking clarity over site restoration following decommissioning and a commitment to the reinstatement to the former ALC grades. LCC was concerned that during the construction phase there would be significant damage to soil structure particularly on heavy clay soils caused by vehicles and queried the degree to which existing site drainage and irrigation conditions would be affected. 7000 Acres referred to the need to consider *Welsh Government (2023) 2020/21 Soil Policy Evidence Programme*, which was purported to show that large scale solar arrays can have a detrimental impact on soil health and drainage [ER 3.8.51].
- 4.59. The Applicant updated the oSMP to account for NE's comments, including commitments to restore the agricultural land within the Order Limits to the same ALC grade following decommissioning similarly for cable trenches following construction. This also included a commitment to monitor soil health for the lifetime of the Proposed Development to inform remediation and the wider understanding of the impact of solar projects on soil health. NE confirmed it was content with the revised oSMP [ER 3.8.52]. The Applicant reaffirmed that with all structures removed and soil material replaced there would be no sterilisation of agricultural land following decommissioning work. This was deemed to be a beneficial effect because it would enable the farm businesses to utilise the land for their agricultural operations [ER 3.8.54]. In response to questioning by the ExA on whether the 60-year operational period could have a reverse negative impact on productivity given its length, the Applicant asserted that the economic value of hosting solar photovoltaic (i.e., the income received for the lease of land) is anticipated to exceed that of rotations combinable crops such as wheat, barley, and oil seed, and any farm income from grazing sheep within the solar farm would be in addition (REP4-058) [ER 3.8.55].

- 4.60. The ExA concluded that implementation of a Soil Management Plan (“SMP”), based on the oSMP would satisfactorily address the soil management issues raised by IPs, and provide for the land to be adequately restored for agricultural purposes post-operation [ER 3.8.56].

ALC Survey

- 4.61. 7000 Acres raised concerns over the number of purported anomalies and inconsistencies in the ALC survey, and the potential for the amount of BMV land to be greater than what had been indicated in the Order Limits [ER 3.8.29]. The Applicant set out that this concern related to the use of the climactic data for lowland arable land, soil wet/dryness and BMV land and that all the data needed to be assessed together, rather than being looked at individually for anomalies and inconsistencies, and that NE did not identify such deficiencies [ER 3.8.29]. 7000 Acres also highlighted that re-testing had taken place for the West Burton Solar scheme, to which the Applicant confirmed that additional sampling had also been carried out for the Proposed Development, but this had only resulted in ALC grading change related to the West Burton project [ER 3.8.30].
- 4.62. NE confirmed that the ALC survey had followed its guidance and that the proportion of BMV land across the Order Limits and that occupied by infrastructure would be low, ultimately considering the survey as ‘satisfactory’ [ER 3.8.31].
- 4.63. An ALC assessment was not undertaken for the cable route corridor as the interruption of the existing agricultural use would be limited to the brief cable laying operation, and information on farming circumstances along it had not yet been collected [ER 3.8.24]. The ExA therefore questioned why the Applicant’s ES Chapter 19 considered there would be an anticipated limited impact from the cable route corridor as it had not been the subject of the ALC survey. The Applicant responded that this was because the cable installation works would take place over a narrow strip of land within the proposed cable route corridor and would be of short duration. By requirement, a soil survey (under the final oSMP) would be carried out post-consent once the design and land needed for excavation is confirmed, avoiding surveying the whole proposed cable route corridor.
- 4.64. The ExA concluded that the ALC survey was fit for purpose, notwithstanding that the cable route corridor had not yet been surveyed [ER 3.8.32 et seq.]. The ExA agreed with NE in relation to the Applicant’s approach and considered that any associated loss of agricultural land from the cable corridor route would only be for a short duration and represent a narrow strip of land, which would be adequately secured in the oSMP [ER 3.8.57].

Use of Agricultural Land

- 4.65. 7000 Acres and LCC raised concerns during the Examination in relation to the loss of agricultural land and how it was assessed; what agricultural use would take place during the operational period; grazing; food security and production; damage caused to agricultural land in the proposed cable route corridor; and cumulative effects [ER 3.8.34].
- 4.66. The Applicant confirmed that it was not relying on land beneath the proposed solar arrays remaining in agricultural use during the operational period. The Outline Landscape and

Ecological Management Plan (“oLEMP”) would provide for the change of the majority of the land beneath the proposed solar panels from arable to permanent grassland and for its management for the benefit of biodiversity. This objective was considered to be achieved through either mechanical cutting, grazing or a combination of the two, subject to appropriately informed and ecologically led management prescriptions and timings [ER 3.8.36].

- 4.67. The ExA noted that while the land would not be available for continued agricultural use during the lifetime of the Scheme, the Applicant considered the extended fallow period would benefit soil health as the reversion from arable land to pasture would reliably deliver both soil health and wider environmental benefits [ER 3.8.37].
- 4.68. The Applicant did not consider the yield of the land, the displacement of food production, and food security to be material planning considerations. The ExA sought the views of all relevant parties regarding where the NPPF had been updated to refer to the availability of agricultural land used for food production [ER 3.8.38]. LCC considered that the NPPF now specifically referred to recognising and considering the value of agricultural land for food production as a material planning consideration and reinforced the need to ensure that agricultural usage would be secured through the DCO over the operational period. WLDC agreed that demonstrating availability would require a commitment from the Applicant and not just that land ‘could’ be used for such purposes without any measures to actively enable it. 7000 Acres considered this NPPF change was consistent with longstanding Government policy and restated that the Applicant had not taken account of food production. 7000 Acres argued that using productive farmland was not an efficient use of land [ER 3.8.39]. The Applicant argued this should be read in conjunction with the 2024 NPS EN-3 which recognises that solar farms may be located on agricultural land where necessary. The Applicant also reaffirmed that the Proposed Development had accounted for non-BMV land in its design and there were not more obviously suitable locations, and as such there was no change as regards policy compliance [ER 3.8.40].
- 4.69. The ExA concluded that whilst it concurred with the Applicant on its responses to the challenges from IPs outlined above on a number of matters, it was concerned that much of the land (apart from the buried cable route) would be removed from arable food production for a prolonged period of time and the availability of such land used for this purpose would thus be accordingly reduced, when deciding what sites are appropriate for development. The cumulative effects over 60 years would heighten this loss of the availability of agricultural land used for food production. As such, according to the ExA, the Proposed Development would not meet the requirements of the NPPF in this regard and subsequently accorded this a negative weighting. However, this was quantified by the ExA as “little negative weight” rather than “significant negative weight” in recognition of the point that, whilst the use of arable farmland exceeds NPPF guidance, it is in line with the 2024 NPS. As the ExA noted, the NPPF guidance is primarily aimed at the smaller Town and Country Planning Act 1990 projects rather than NSIPs covered by the Planning Act 2008 to which NPSs apply.

The Secretary of State's Conclusion

- 4.70. The Secretary of State has considered all relevant policy contained within the 2011 and 2024 NPSs relating to solar and land use as important and relevant considerations within the decision-making process. On 15 May 2024, a Written Ministerial Statement (“WMS”) was published on solar infrastructure and protecting food security and BMV land. The Secretary of State recognises that the 15 May 2024 WMS emphasises elements of the 2024 NPSs.
- 4.71. The Secretary of State notes paragraph 5.11.34 of 2024 EN-1 which states that Applicants should ensure their schemes are not sited on BMV land without justification, and where schemes are on BMV land, the Secretary of State should take into account the economic and other benefits of the land. The Secretary of State agrees with the ExA that the Applicant has sought to minimise impacts on the concerned land, exemplified through the co-location of the proposed solar array sites under the 2024 NPS EN-3. The Secretary of State also notes that the Applicant reduced the use of BMV land for the Proposed Development, noting in APP-040 the Applicant’s comment that a further review of all BMV land within the Order Limits was undertaken and, where practicable to do so, such BMV land was removed from the scheme, reducing from 8.3% to 4.1%.
- 4.72. The Secretary of State agrees with the ExA that the Applicant’s methodology for the ALC surveys and subsequent results are robust and sufficiently detailed. The Secretary of State agrees with the ExA that the cable corridor route, which was not covered by the survey, would be adequately secured in the oSMP. The Secretary of State also endorses the restoration of land grades and decommissioning arrangements secured in the oSMP, which would allow farming businesses to benefit from the fallowed and subsequently arable land.
- 4.73. In this regard, the Secretary of State agrees with the ExA and is satisfied that the Proposed Development would accord with the requirements of the 2011 NPSs, 2024 NPSs, the 2024 WMS, Planning Practice Guidance, and development plan policy.
- 4.74. The Secretary of State agrees that the Proposed Development would revert back to agricultural use once the operational time-period has expired and agrees with the ExA that any effects would be temporary and reversible. The Secretary of State acknowledges however, that whilst these losses e.g., in arable food production would be temporary it would be for a prolonged period of time, and the cumulative effects over 60 years would heighten such losses. The ExA consider that for these reasons, the Proposed Development would not meet the requirements of the NPPF in this regard, which the Secretary of State agrees with. However, the Secretary of State agrees with the ExA that this should be classed as “little negative weight” rather than “significant negative weight” in recognition of the point that, whilst the use of arable farmland exceeds NPPF guidance, it is in line with the 2024 NPS.
- 4.75. The Secretary of State concludes that as the losses to agricultural and BMV land brought about by the Proposed Development would be temporary and reversible, he agrees with the ExA and ascribes little negative weight in the planning balance.

Cumulative Effects

- 4.76. Schedule 4, Paragraph 5(e) of the EIA Regulations require an ES to include an assessment of the likely significant effects of the proposed scheme on the environment resulting from the cumulation of effects with other existing and/or approved projects. Similarly, 2011 NPS EN-1 advises that the Secretary of State should consider, amongst other things, any long term and cumulative adverse impacts. It requires applications to include information on how the effects of the proposal would combine and interact with the effects of other development. Similar advice can be found in the 2024 NPS EN-1 [ER 3.13.2].
- 4.77. The 2024 WMS emphasises that when considering whether planning consent should be granted for solar development the cumulative impacts where several proposals come forward in the same locality should be considered [ER 3.13.3].
- 4.78. The Applicant's ES Appendix 2.3 [APP-065] identifies a list of cumulative schemes which the ExA has used to inform each individual chapter of its Report [ER 3.13.7].

Appendix 2.3: Cumulative Assessment Sites: Long List of Sites for Potential Consideration

Tier classification:

1 – Under construction, permitted application, whether under PA2008 or other regime but not yet implemented, submitted application, whether under PA2008 or other regime but not yet determined.

2 – Projects on the Planning Inspectorate's programme of projects where a scoping report has been submitted.

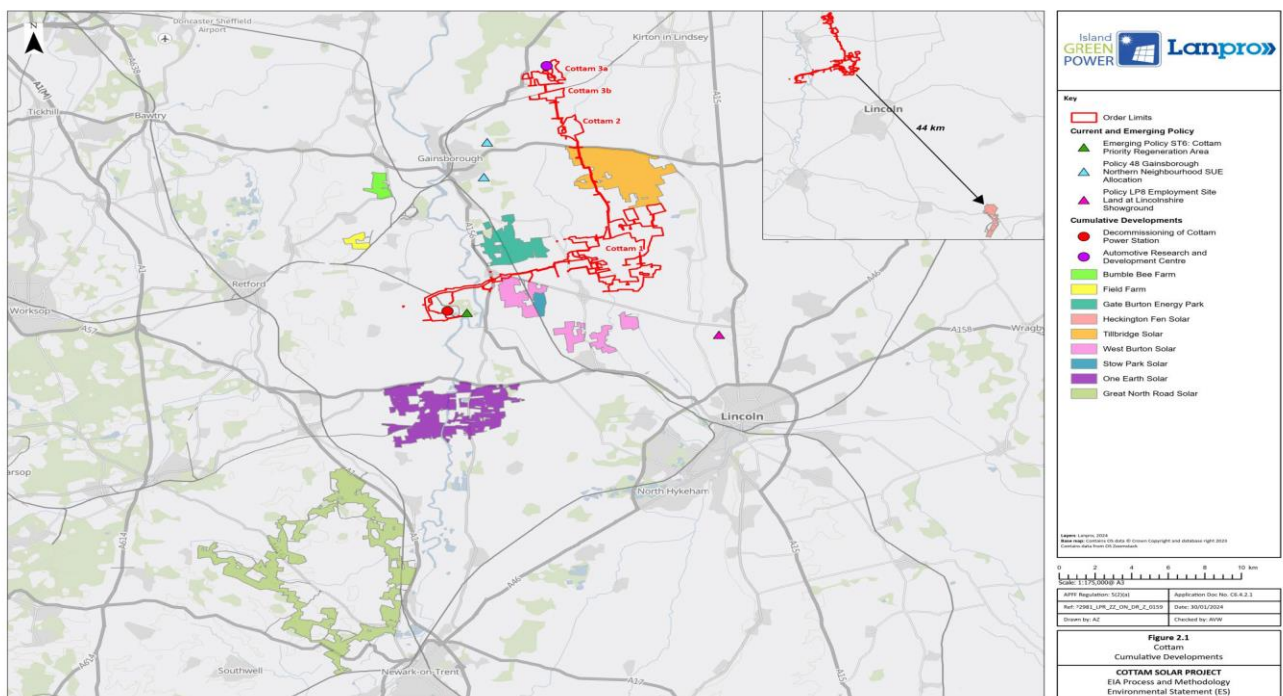
3 – Projects on the Planning Inspectorate's programme of projects where a scoping report hasn't been submitted, identified in the Development Plan (and emerging plan – with appropriate weight given as they move closer to adoption), identified in other plans and programmes (as appropriate) which set the framework for future development consents/approvals, where development is reasonably likely to come forward.

Application Reference	Applicant for 'Other development' & brief description	Distance from project	Status	Tier	Within ZOI
NSIP EN010132	West Burton Solar Project Development comprising four electricity generating stations, each with anticipated capacity in excess of 50MW (solar and energy storage)	1.5km south of Cottam 1	DCO Same timescales as Cottam Solar Project	2	Falls within all ZOI of ES topics
NSIP EN010131	Gate Burton Energy Park Gate Burton 500MW solar and energy storage (battery)	1km west of Cottam 1	DCO Scoping opinion issued 20.12.2021 Likely submission Q1 2023	2	Falls within all ZOI of ES topics
NSIP EN010088	West Burton C 299MW gas fired generating capacity	9km west of Cottam 1	DCO granted 21.10.2020	1	Falls within ZOI of landscape and socioeconomics

Requested by PINs. Currently no applications with either of the host authorities or PINs	Decommissioning of West Burton A due in 2022. EDF Energy have confirmed that the demolition of West Burton A will commence in 2024 at the earliest. An EIA screening opinion will be submitted to Bassetlaw DC in due course.	9km west of Cottam 1	Awaiting confirmation of what activities are involved with decommissioning as no planning applications have been submitted	3	Falls within ZOI of landscape and socio-economics
NSIP EN010123	Heckington Fen Solar generating exceeding 50MW with energy storage	44km southeast of Cottam 1.	DCO Scoping opinion issued 17.02.2022 Likely submission Q1 2023	2	Not within any ZOI but requested by Lincolnshire CC
NSIP EN0101[42]	Tillbridge Solar Development comprising solar electricity generating in excess of 50MW (solar and energy storage)	<1km north of Cottam 1, <1km southeast of Cottam 2	DCO Scoping opinion issued 04.11.2022 Likely submission Q1 2023	2	Falls within all ZOI of ES topics
Requested by PINs. Currently no applications with either of the host authorities or PINs	Decommissioning of West Burton A due in 2022. EDF Energy have confirmed that the demolition of West Burton A will commence in 2024 at the earliest. An EIA screening opinion will be submitted to Bassetlaw DC in due course.	9km west of Cottam 1	Awaiting confirmation of what activities are involved with decommissioning as no planning applications have been submitted	3	Falls within ZOI of landscape and socioeconomics

4.79. Similarly, Appendix A of the Applicant's Technical Note on Cumulative Effect of Additional Schemes [REP4-049] highlights all projects considered in the assessment of cumulative effects in connection with the Proposed Development [ER 3.13.12].

Figure 1: Plan Showing All Projects Considered in the Cumulative Effects Assessment



4.80. In Chapter 23 of its ES (Summary of Significant Effects), the Applicant identified a list of residual adverse cumulative effects which are the likely significant cumulative effects after the relevant mitigation measures have been applied:

- Moderate adverse (significant) visual effects during construction and operation (year 1) on VP LCC-C-D (Cottam 1).
- Moderate temporary adverse effects during construction on local tourist attractions as a result of landscape impacts, construction noise, traffic and views.
- Moderate adverse effects on long distance recreation routes as a result of traffic, visual impact, diversions and closures.
- Cumulative long term moderate adverse effects on net energy employment during operation (which results mainly from the closure of West Burton A).
- Moderate adverse effects at a local level during decommissioning as a result of energy sector job losses following the cessation of energy generation.
- Moderate / large adverse effects during decommissioning resulting from the cumulative effect of waste disposal on landfill capacity in Nottinghamshire.
- Significant cumulative effects likely at district scale in relation to the effect on ground nesting birds.
- Potential for moderate adverse effects with West Burton and Tillbridge where views from the Lincoln Cliff contribute to the significance of the following assets:
 - Roman villa west of Scampton Cliff Farm (NHLE 1005041)
 - Fillingham Castle (NHLE 1166045/NHLE 1000977)
 - Glentworth Hall (NHLE 1063348)
 - Former stables at Glentworth Hall (NHLE 1166094) [ER 3.13.15].

IP Concerns

4.81. A number of IPs were concerned with the Applicant's approach to cumulative effects and how these were examined, which was primarily centred on the fact that each NSIP application (i.e., Gate Burton, West Burton, Cottam and Tillbridge) was being considered separately [ER 3.13.16].

4.82. WLDC and LCC were concerned that the cumulative scenario assessed in the ES failed to consider all possible combinations of developments and raised concerns with a perceived lack of alignment between the different ES conclusions reached by different projects, ultimately stating that the assessment was flawed. The IPs argued that the approach could lead to a conclusion that each scheme is acceptable on its own merits, without comprehensively considering the cumulative interrelations between projects [ER 3.13.19].

4.83. Furthermore, the IPs argued that the information presented is not sufficient for the Secretary of State to ascertain a 'tipping point' at which the cumulative effects become unacceptable and if there is a 'tipping point' where that lies. They consider that the Secretary of State needs a cumulative assessment that addresses the following combinations to have the adequate information to make a sound decision:

- Cottam + Gate Burton

- Cottam + West Burton
- Cottam + Tillbridge
- Cottam + Gate Burton + West Burton
- Cottam + Gate Burton + Tillbridge
- Cottam + West Burton + Tillbridge; and
- Cottam + Gate Burton + West Burton + Tillbridge [ER 3.13.20].

- 4.84. The ExA appreciated these matters and the need for careful consideration of the cumulative effects of such developments but considered the Applicant's approach was not flawed. The ExA noted that the EIA regulations do not require an applicant to assess all possible combinations of cumulative development but rather a reasonable worst-case scenario and considered the Applicant's assessment had considered the worst-case scenario where all projects considered are consented. In considering the effect of the Proposed Development with other planned development (i.e., the Cottam + Gate Burton + West Burton + Tillbridge scenario), the ExA noted that the likely significant effects of all of the combinations set out above are already captured by the assessment.
- 4.85. Furthermore, the ExA proposed that in the event the Secretary of State were to determine that one or more of the proposed projects under consideration were not acceptable, either based on its individual or cumulative effects, the Secretary of State can be confident that the likely significant effects of the current proposal, taken with other planned development would be no worse than those assessed in the ES [ER 3.13.22 et seq.].
- 4.86. In response to the concerns of WLDC and LCC with the lack of alignment on the conclusions reached between solar projects, the ExA accepted that each EIA has been undertaken separately, assessing different projects against different receptors. The ExA acknowledged that while there would likely be similarities there was also considerable scope to reach different conclusions on the cumulative impact of projects, and there is fundamentally no requirement for the findings to align. Overall, the ExA noted some differences in the conclusions reached in terms of cumulative effects, but it did not consider that they undermined the findings of the ES to such an extent that it could not be relied on [ER 3.13.29].
- 4.87. The ExA considered that if the Secretary of State decided he required further information on the cumulative effects beyond what was assessed it would be disproportionate considering what the Applicant has provided and that the ExA were not aware of any legal or policy provisions required of the Applicant to do so [ER 3.13.25 et seq.].

The ExA's Conclusions

- 4.88. The ExA concluded that the Applicant has adequately assessed the likely significant effects of the Proposed Development cumulatively with other planned development and that the ES included sufficient information on how the effects of the Proposed Development would combine and interact with the effects of other schemes during construction, operation and decommissioning. Accordingly, it was satisfied that the requirements of the EIA Regulations, 2011 NPS EN-1 and 2024 NPS EN-1 are met [ER 3.13.30]. However, for a project of this size, the amount of best and most versatile land being removed from arable

food production would be a very small proportion of the total amount of land being used. The Secretary of State therefore agrees with the ExA that it is appropriate to afford this little rather than significant negative weight. In accordance with the NPSs, the Secretary of State is satisfied that the Applicant has exhausted its best efforts to avoid use of such land wherever possible.

Methodology for Assessing Cumulative Effects

4.89. In light of the ExA's conclusion in the paragraph above, the Secretary of State is satisfied that the Examination and the ExA's approach was correct in its consideration of cumulative effects taking into account the worst-case scenario and relevant mitigation measures available within the project, such as planting to screen landscape and visual impacts [ER 3.6.68 et seq].

The Secretary of State's Conclusions

4.90. The Secretary of State therefore agrees with the ExA's conclusions on the worst-case scenario of likely significant effects produced cumulatively with planned development, namely that the EIA Regulations, 2011 NPS EN-1 and 2024 NPS EN-1 have all been met.

First Information Request – Responses

4.91. On the 19 July, the Applicant and IPs were invited to provide updates or information as appropriate on various matters.

Electro-Magnetic Fields Impact Risk Assessment

4.92. NE was invited to comment on whether it was satisfied with the methodology and conclusions of the Applicant's 'Risk Assessment of Electro-Magnetic Field ("EMF") Impacts on Fish' under the Appendix to the Written Summary of the Applicant's Oral Submissions and Responses at Issue Specific Hearing 3 and Responses to Action Points [REP3-034].

4.93. On 2 August 2024, NE accepted the conclusions of the Applicant's Risk Assessment and considered a significant impact on the qualifying features of the Humber Estuary Special Area of Conservation ("SAC) to be unlikely. NE also stated that a minimum 5m burial depth of the cable is considered precautionary and is significantly greater than National Grid's reference to a typical burial depth of 1m. However, NE noted that the Applicant's rationale behind the use of the 5m burial depth is unclear and would welcome further clarity.

4.94. The Secretary of State is satisfied with NE's consideration of the Applicant's Risk Assessment and agrees that the potential for an LSE on the qualifying features of the Humber Estuary SAC that utilise the River Trent is unlikely. Whilst the Secretary of State notes the limited evidential base raised by NE, concerning EMF impacts on freshwater fish, the Secretary of State is satisfied that the Applicant's Risk Assessment is sufficiently precautionary and greatly welcomes the scheme of EMF monitoring that will identify any future deviations from the Applicant's Risk Assessment conclusion.

EMF Monitoring in Outline Operational Environment Management Plan (“oOEMP”)

- 4.95. The Applicant was requested to revise the oOEMP to provide for results of the scheme of EMF monitoring to also be relayed to NE on a regular basis for the purposes of informing best practice and assessments of EMF impacts on fish in the future.
- 4.96. The Applicant was also requested to revise the oOEMP to remove the statement (detailed in para 6 of the first information request) which inaccurately posits the Applicant as the competent authority to determine the need for any mitigation if adverse effects are found.
- 4.97. On 6 August 2024, the Applicant updated the oOEMP to provide for the results of the monitoring to be relayed to NE and remove reference to the statement as detailed in para 6 of the first information request. The Secretary of State is satisfied with these amendments.

Biodiversity Net Gain

- 4.98. The Applicant was requested to clarify whether the BNG Report commitment (i.e., 96.09% in habitat units, 70.22% in hedgerow units, 10.69% in river units) is the target commitment or superseded by the DCO commitment.
- 4.99. On 6 August 2024, the Applicant clarified that the BNG commitments within Requirement 9(2) of the draft DCO (“dDCO”) (76.8% in habitat units, 56.1% in hedgerow units, and 10% in river units) were the minimum commitment, and that those presented in the BNG Report were a target and could be achieved depending on future changes to the BNG metric. The Secretary of State is satisfied with this clarification.

Habitat Management and Aftercare

- 4.100. The Applicant was requested to revise the oLEMP to include details of the management actions required for the aftercare period and in the event of specific habitats failing to establish or reaching their intended condition.
- 4.101. On 6 August 2024, the Applicant updated the oLEMP to include additional detail as to the intended management actions for specific habitats during the aftercare period and in the event of specific habitats failing to establish or reach their intended condition. The Secretary of State is satisfied with these amendments.

Outline Decommissioning Statement

- 4.102. The Applicant was requested to revise the Outline Decommissioning Statement (“oDS”) to add further information on the avoidance and mitigation measures to be taken to preserve archaeological and heritage assets, and conserve trees, woodland and hedgerows.
- 4.103. On 6 August 2024, the Applicant updated the oDS with the following changes within Table 3.1: the provision of additional information on the avoidance and mitigation measures to be taken to preserve archaeological and heritage assets; and additional detail as to the avoidance and mitigation measures to be taken to conserve trees, woodland, and hedgerows. The Secretary of State is satisfied with these amendments.

LNT Aviation Limited (“LNT”)

- 4.104. LNT were invited to comment on the revised oCTMP [REP5-016] in relation to whether it addresses the concerns raised by it at Issue Specific Hearing (“ISH”) 3 as to the impact of the Proposed Development on access routes to Blyton Park Driving Centre, particularly the concerns about the potential consequent impact on the viability of the business.
- 4.105. On 6 August 2024, the Applicant confirmed that it had consulted with LNT on the oCTMP [REP5-016] and following this, added text to paragraph 3.15 of a revised version of the oCTMP clarifying that parking is not permitted on the access road to Blyton Park Driving Centre. The Applicant stated that a joint statement between the Applicant and LNT, including a plan of the areas in which no solar panels will be installed, was entered into confirming that LNT is content with the revised oCTMP. The Secretary of State is satisfied with the amendment.
- 4.106. The Secretary of State is aware that the Applicant and LNT are still negotiating and if negotiations become protracted or the heads of terms set out in the Joint Statement are not achievable then LNT reserves its position to uphold its objections. LNT will look to notify the Secretary of State of this by 30 August 2024. The Secretary of State is content with this arrangement.

Discharge of Requirements

- 4.107. Noting a disagreement during examination to the approval timescales for the discharge of requirements, the Applicant, LCC, NCC, WLDC, and BDC were asked for their final position on a realistic and proportionate timescale for the discharge of requirements.
- 4.108. On 6 August 2024, the Applicant retained its position that a suggested 10-week approval timescale for the discharge of requirements as set out in the DCO is appropriate and proportional. The Applicant did not consider that 16-weeks is proportionate even in the context of the multiple NSIPs in West Lindsey that the district council would be responsible for discharging as the relevant planning authority.
- 4.109. The following IPs stated that the following discharge periods would be most appropriate:
- LCC – 10 weeks
 - NCC – 16 weeks
 - WLDC – 16 weeks
 - BDC – No response
- 4.110. The Secretary of State has carefully considered the suggested discharge periods and concluded that a compromise of 13 weeks would be most appropriate to account for the number of applications coming forward in Lincolnshire, whilst seeking to avoid delays to the progress of the Proposed Development.

Protective Provisions, Thorpe in Fallows SM, Requirement 12 (Archaeology)

4.111. These matters of the first information request have been discussed in the relevant chapters of this letter, with updates from the Applicant and IPs considered.

5. Habitats Regulations Assessment

5.1. This is a record of the Habitats Regulations Assessment (“HRA”) that the Secretary of State has undertaken under the Conservation of Habitats and Species Regulations 2017 (as amended) (“the Habitats Regulations”) in respect of the Proposed Development and its associated infrastructure. For the purposes of these Regulations the Secretary of State is the competent authority.

5.2. The Habitats Regulations aim to ensure the long-term conservation of certain species and habitats by protecting them from possible adverse effects of plans and projects. Following the United Kingdom’s departure from the European Union, these domestic regulations continue to apply. The Habitats Regulations provide for the designation of sites for the protection of habitats and species of international importance. They also provide for the classification of sites for the protection of rare and vulnerable birds and for regularly occurring migratory species within the United Kingdom and internationally. These sites are called Special Protection Areas (“SPAs”). SACs and SPAs together form part of the UK’s National Site Network (“NSN”).

5.3. The Convention on Wetlands of International Importance 1972 (“the Ramsar Convention”) provides for the listing of wetlands of international importance. These sites are called Ramsar sites. Government policy is to afford Ramsar sites in the UK the same protection as sites within the NSN (collectively with SACs and SPAs referred to in this decision letter as “protected sites”).

5.4. Regulation 63 of the Habitats Regulations provides that:

“...before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which (a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in-combination with other plans or projects), and (b) is not directly connected with or necessary to the management of that site, [the competent authority] must make an appropriate assessment of the implications for that site in view of that site’s conservation objectives.”

And that:

“In the light of the conclusions of the assessment, and subject to regulation 64 (considerations of overriding public interest), the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).”

5.5. The Proposed Development is not directly connected with, or necessary to the management of a protected site. Therefore, under regulation 63 of the Habitats

Regulations, the Secretary of State is required (as the Competent Authority) to consider whether the Proposed Development would be likely, either alone or in combination with other plans and projects, to have a significant effect on any protected site. If likely significant effects (“LSE”) cannot be ruled out, the Secretary of State must undertake an Appropriate Assessment (“AA”) addressing the implications for the protected site in view of its Conservation Objectives.

- 5.6. Where an adverse effect on the integrity (“AEol”) of the site cannot be ruled out beyond all reasonable scientific doubt, Regulations 64 and 68 of the Habitats Regulations provide for the possibility of a derogation which allows such plans or projects to be approved provided three tests are met:
 - There are no feasible alternative solutions to the plan or project which are less damaging to protected sites;
 - There are imperative reasons of overriding public interest (“IROPI”) for the plan or project to proceed; and
 - Compensatory measures are secured to ensure that the overall coherence of the NSN is maintained.
- 5.7. The Secretary of State may grant development consent only if it has been ascertained that the Proposed Development will not, either on its own or in-combination with other plans or projects, adversely affect the integrity of protected sites unless he chooses to continue to consider the derogation tests as above. The complete process of assessment is commonly referred to as a HRA.
- 5.8. The Applicant submitted a HRA Report [APP-357] with the Application and supporting ES. A revised HRA Report (“HRA Report Rev A”) was subsequently submitted [REP3-024], which is the document that has been used to inform this HRA.
- 5.9. The HRA Report [APP-357] did not identify any protected sites within a 10km Zone of Influence (“Zol”) of the Order Limits boundary. Considering the mobility of certain protected species, however, the HRA did identify six protected sites within a 30km of the Order Limits boundary:
 - Humber Estuary SAC
 - Humber Estuary SPA
 - Hatfield Moor SAC
 - Thorne and Hatfield Moors SPA
 - Birklands and Bilhaugh SAC
 - Thorne Moor SAC
- 5.10. Natural England (“NE”), in its relevant representation (“RR”) [RR-037] and SoCG with the Applicant [REP3-046] agreed with the protected sites and qualifying features identified by the Applicant. Consequently, the ExA decided that a Report on the Implications for European Sites (“RIES”) would not be required.

- 5.11. The Applicant also did not identify any LSE on non-UK European sites in European Economic Area (“EEA”) States in its HRA Report Rev A. This was not disputed by any IPs during the Examination [ER 4.1.13].
- 5.12. However, the ExA [PD-011] questioned the Applicant and NE on the exclusion of the Humber Estuary Ramsar site, given that the site shares the same boundary as the Humber Estuary SAC which was included in the screening. In response, the Applicant produced the revised HRA Report Rev A [REP3-024] which included the Humber Estuary Ramsar site, and which is the report the Secretary of State has used to carry out this HRA.

Humber Estuary SAC – Electro-Magnetic Field Impacts

- 5.13. At Deadline 1, the Environment Agency (“EA”) [REP-093] and other IPs [REP-187] raised concerns that the impacts of EMF, from the proposed cable crossing the River Trent, to the qualifying features of the Humber Estuary SAC had not been considered in the Applicant’s HRA Report.
- 5.14. Consequently, the EA identified sea lamprey and river lamprey as qualifying features of the Humber Estuary SAC that utilise the River Trent for migration and spawning where the Proposed Development’s cable would cross the river. The EA requested that the Applicant produce an EMF risk assessment that focussed on the grid connection corridor, and which includes reference to the intensity of the emission, current type, cable characteristics, power transmitted, and other surrounding environmental factors which could have a potential impact pathway from EMF to migratory fish that use the River Trent (including Salmon, Sea Trout, European Eel, River Lamprey and Sea Lamprey).
- 5.15. At Deadline 3, the Applicant provided a ‘Risk Assessment of EMF Impacts on Fish’ (“Applicant’s Risk Assessment”) [REP3-034]. The Applicant’s Risk Assessment noted that the minimum 5m depth at which the cable would be buried beneath the lowest surveyed point of the riverbed, as secured through Requirement 5, meant that the proposed cable would have comparable EMF levels to that calculated for the Gate Burton Energy Park (32 microteslas at 5m from the centreline of the cable). This would be below background levels (50 microteslas) and permitted public exposure limits (360 microteslas). The Applicant’s Risk Assessment also noted the relatively small area of the riverbed affected, as well as the transitory nature of the qualifying features within the watercourse. The Applicant’s Risk Assessment therefore concluded that potential EMF impacts on fish would be unlikely, and an impact pathway on the Humber Estuary SAC could be excluded.
- 5.16. At Deadline 4, the EA confirmed that following a review of the Applicant’s Risk Assessment, it considered the potential risk to fish from EMF was low [REP4-077]. The EA requested the addition of three requirements in the dDCO which would entail a scheme of EMF monitoring. The Applicant updated the oOEMP to include details of the scheme of EMF monitoring to corroborate the impacts of EMF on fish in the River Trent.
- 5.17. The EA, in its SoCG with the Applicant [REP5-045], agreed with the methodology and conclusions of the Applicant’s Risk Assessment, and welcomed the scheme of EMF monitoring.

- 5.18. The Secretary of State, however, notes that NE as the statutory nature conservation body did not comment on the Applicant's Risk Assessment during the Examination [ER 4.2.7]. In a consultation letter issued on 19 July 2024, the Secretary of State invited NE to comment on whether it was also satisfied with the methodology and conclusions of the Applicant's Risk Assessment. The Secretary of State also invited NE to confirm whether they were content with a request by the Secretary of State to the Applicant to revise the oOEMP to provide for results of the scheme of EMF monitoring to also be relayed to NE for the purposes of informing best practice and assessments of EMF impacts on fish in the future.
- 5.19. NE, in a consultation response dated 2 August 2024, accepted the conclusions of the Applicant's Risk Assessment, and considered a significant impact on the qualifying features of the Humber Estuary SAC to be unlikely. NE stated that a minimum 5m burial depth is considered precautionary and is significantly greater than National Grid's reference to a typical burial depth of 1m. However, NE noted that the Applicant's rationale behind the use of the 5m burial depth is unclear, aside from the monitored data from 5m from the centreline of the: 'National Grid 400kV 0.9m buried cable', and calculated data from the 'Gate Burton Energy Park 400kV cable at 800A'. On this matter NE stated that they would welcome further clarity regarding the use of a 5m burial depth to ensure a negligible impact on fish.
- 5.20. NE also confirmed that they welcome receipt of all monitoring data to inform best practice and assessments on EMF impacts on fish in the future. Furthermore, they stated that they would welcome the opportunity to input upon the specification for the scheme of EMF monitoring, requesting wording to be included in the oOEMP which would require consultation with NE.
- 5.21. The Applicant, in a consultation response dated 6 August 2024, addressed the concerns of NE by clarifying that the minimum 5m burial depth at which the cable would be buried was agreed with the Canal and River Trust to prevent the risk of any scour exposing the cable. This was the depth then used to inform the Applicant's Risk Assessment.
- 5.22. In response to the consultation response from NE, the Secretary of State requested in the third information request issued on 12 August 2024 that the Applicant revise the oOEMP to include NE as a named consultee in the specification for the scheme of EMF monitoring. The Applicant duly amended the oOEMP to include NE as a named consultee in the specification for the scheme of EMF monitoring. The Secretary of State is satisfied with this amendment.
- 5.23. Several IPs also raised concerns in response to the Secretary of State's third information request issued on 12 August 2024 regarding the potential risk to fish from EMF. The Secretary of State has carefully considered these responses in coming to the decisions encapsulated in this decision letter.
- 5.24. However, based on all the information before him, the Secretary of State is content with the Applicant's Risk Assessment and considers it sufficiently precautionary. The Secretary of State agrees that the potential for a LSE on the qualifying features of the Humber Estuary SAC that utilise the River Trent to be unlikely. This is based upon the integral 5m minimum

depth at which the cable would be buried beneath the riverbed of the River Trent, as secured in under Requirement 5 of the Order. The Secretary of State also greatly welcomes the scheme of EMF monitoring, as detailed in the oOEMP and secured in Requirement 14 of the Order and is content that this will identify any future deviations from this conclusion.

- 5.25. The Secretary of State notes the Applicant's Risk Assessment and considers the minimum burial depth a feature integral to the design and physical characteristics of the Proposed Development as it is essential to defining the nature, scale, and location of the project. As such, the Secretary of State considers that it should be accounted for in the above consideration of LSE.

LSE from the Proposed Development Alone and In-combination with Other Plans or Projects

- 5.26. Ultimately, the HRA Report Rev A did not identify any LSE, alone and in-combination with other plans or projects, on the qualifying features of the identified protected sites, as neither the protected sites nor any functionally linked land connected to those sites lie within the Zol of the Proposed Development.
- 5.27. NE, in its SoCG with the Applicant [REP3-046], agreed with the conclusions of the HRA Report Rev A. The conclusions of the HRA Report Rev A were not disputed by any other IPs during the Examination [ER 4.2.11].
- 5.28. Based on the information before it, the ExA was satisfied that the correct impact-effect pathways on each site had been assessed and was satisfied with the approach to the assessment of alone and in-combination LSE [ER 4.2.12]. The ExA was also satisfied that no impact pathways exist to the identified protected sites either alone or in-combination with other plans or projects, and that the scheme of EMF monitoring is sufficient to identify any future deviations [ER 4.3.5].

The Secretary of State's Conclusion on the HRA

- 5.29. The Secretary of State agrees with the ExA that sufficient information has been provided to fulfil his duties under the Habitats Regulations [ER 4.3.6]. Having carefully considered all the information before him, the Secretary of State concludes that the potential for LSE alone or in-combination with other plans or projects to the identified protected sites within the NSN to be unlikely. This conclusion and its reasoning are consistent with the advice provided by NE, the EA, and the ExA's recommendation [ER 4.3.5].

6. Compulsory Acquisition

- 6.1. The Secretary of State notes that to support the delivery of the Proposed Development, the Applicant is seeking powers of compulsory acquisition and temporary possession of land and rights which it had not been able to acquire by voluntary agreement. The powers sought are for the acquisition of:
- all interests in land, including freehold (Article 20 in the DCO) - shown edged red and shaded pink on the Land Plan;
 - all interests in land, including freehold in respect of subsoil only (Article 25 in the DCO);

- permanent acquisition of new rights (Article 22 in the DCO) - shown edged red and shaded blue on the Land Plan;
- temporary use of land to permit construction or maintenance where the Applicant has not yet exercised powers of compulsory acquisition (Articles 29 and 30 in the DCO) - shown edged red and shaded yellow on the Land Plan; and
- extinguishment and / or suspension of rights (Article 23 in the DCO) and overriding of easements and other rights (Article 26 in the DCO) [ER 6.4.1].

Outstanding Objections / Representations

- 6.2. The ExA was satisfied that the CA powers sought over all of the land identified in the Land Plan and BoR are required for the Proposed Development, to facilitate it or are incidental to it. The ExA was therefore satisfied that the powers sought meet the condition set out in s122(2) of the PA2008 [ER 6.7.78].
- 6.3. The ExA accepted that whilst the compulsory acquisition and temporary possession powers sought might result in some adverse impacts to the private interests of the owners of the land affected, in view of the established need for energy generation and the need to provide certainty in terms of project delivery, the ExA considered there was a compelling case in the public interest for the land to be acquired compulsorily and were therefore satisfied that it met the tests in s122(3) of the PA2008 [ER 6.7.79].
- 6.4. Accordingly, the ExA found that the powers sought met the requirements of s122, s127 and s138 of the PA2008 [ER 6.7.81].

ExA's Conclusions

- 6.5. Overall, the ExA concludes the following [ER 6.8.1]:
- The application site had been appropriately selected.
 - All reasonable alternatives to compulsory acquisition had been explored.
 - The Applicant would have access to the necessary funds and the recommended DCO provided a clear mechanism whereby the necessary funding can be guaranteed.
 - There is a clear need for all the land included in the BoR to be subject to compulsory acquisition and temporary possession.
 - There is a need to secure the land and rights required to construct, operate and maintain the Proposed Development within a reasonable timeframe, and the Proposed Development represents a significant public benefit to weigh in the balance.
 - The private loss to those affected had been mitigated through the selection of the land; the minimisation of the extent of the rights and interests proposed to be acquired and the inclusion, where relevant, of protective provisions in favour of those affected.
 - That in all cases relating to individual objections and issues, that compulsory acquisition and temporary possession is justified to enable implementation of the Proposed Development.
 - The powers sought satisfy the conditions set out in s122 and s123 of the PA2008.
 - The powers sought in relation to statutory undertakers meet the conditions set out in s127 and s138 of the PA2008 and the CA Guidance.

- 6.6. The Secretary of State agrees with the ExA's conclusions and considers that there is a compelling case in the public interest for the compulsory acquisition and temporary possession powers sought.

Book of Reference

- 6.7. On 2 August, the Secretary of State requested the Applicant to provide further information on the plot of land that relates to 10-241 in the Island Green Power Book of Reference, which the Secretary of State had been advised had since transferred from 'C Nicholson No 1 Settlement' (the "Settlement") 'to 'Clifford Graham Rowles Nicholson' ("Mr Nicholson)". The Applicant was requested to confirm if the ownership of the plot of land had changed since the compulsory acquisition negotiations, and to provide evidence for any change where possible, if so.
- 6.8. On 6 August 2024, the Applicant confirmed that it reviewed the land ownership details in relation to plot 10-241 and noted the Title was transferred from the Settlement to Mr Nicholson on 5 April 2022. The Title was then immediately subject to a further transfer of the freehold, from Mr Nicholson to Tillside Limited, also dated 5 April 2022. The Applicant contacted the current landowner, and they confirmed that no further transfers of the Title had been made since the close of the Examination. An Option Agreement for plot 10-241 dated 19 February 2021 was also entered into between the Applicant and the representatives of the Settlement. The Secretary of State is satisfied that the update provided by the Applicant sufficiently clarifies the matter.
- 6.9. On 9 August 2024, the Applicant confirmed that it reviewed data held by the Land Registry relating to the registered plots of land listed in the Book of Reference. The Applicant identified a number of changes that have occurred since the close of the Examination, most of which relate to the transfer of property between the Settlement and Tillside Limited. The Secretary of State is content for these changes to be presented by the Applicant in the form of revised pages of Part 1 of the Book of Reference.

Statutory Undertakers and Protective Provisions

- 6.10. At the close of the examination a number of parties had unsigned agreements, and the ExA recommended that the Secretary of State should seek updates. On 19 July 2024, the Secretary of State wrote to the relevant parties seeking updates. Responses were received from the Applicant and IPs on the 6 August 2024 confirming the following:

National Grid Electricity Transmission ("NGET")

- 6.11. NGET confirmed that it had reached agreement in respect of protective provisions to be included in the DCO and an associated side agreement which provides satisfactory protection to NGET's apparatus and interests. NGET confirmed that a side agreement was also issued for execution and once this had been completed, it would withdraw its objection. The Applicant set out the agreed protective provisions in Appendix A of its letter.
- 6.12. On 30 August 2024, NGET confirmed that it had agreed protective provisions with the Applicant and subsequently withdrew its objection to the Order.

National Grid Electricity Distribution (East Midlands) (“NGED”)

6.13. The Applicant confirmed that it had reached agreement with NGED and an associated side agreement was entered into on 24 April 2024.

Northern Powergrid

6.14. The Applicant confirmed that the protective provisions set out in Appendix A of its letter are in an agreed form. The Applicant also confirmed that an associated side agreement is also in an agreed form and engrossments are being circulated for signature.

Network Rail Infrastructure Limited (“NIRL”)

6.15. NIRL confirmed that negotiations regarding the protective provisions were still underway and nearing finalisation of a confidential agreement that will ensure the inclusions of the necessary protective provisions for NIRL, which they expect to be concluded in the coming weeks.

Uniper UK Limited

6.16. Despite no agreement being reached between Uniper and the Applicant at the close of the Examination on the final form of the protective provisions, Uniper confirmed that discussions were continuing at Deadline 6 to secure mutually acceptable protective provisions [ER 6.7.73 et seq].

6.17. The Applicant confirmed that it contacted Uniper who requested that protective provisions contained in Part 14 of Schedule 16 to the dDCO are amended to reflect the relevant protective provisions contained in Gate Burton Energy Park Order 2024. The Applicant has therefore amended this provision and set them out in Appendix A of its letter.

LNT Aviation / Blyton Park Driving Centre

6.18. The Applicant confirmed that protective provisions set out in Part 19 of Schedule 16 are agreed as noted in the Joint Statement between the Applicant and LNT.

EDF Energy (Thermal Generation) Limited (“EDF”)

6.19. On 6 August 2024, EDF confirmed that they continue to negotiate with the Applicant on the protective provisions however no Voluntary Land Agreement had been reached, and the Applicant had not yet been able to provide the reassurance that EDF requires to ensure there will be no serious detriment to its undertaking in lieu of such Agreement.

6.20. EDF concluded that its position was that its preferred protective provisions submitted at Deadline 6 (REP6-013) which restricts the usage of compulsory acquisition powers without an agreement, must be included in the DCO.

6.21. The Secretary of State agrees with the ExA’s recommended changes as set out in Table 2 [ER 5.5.1] to EDF’s preferred form of protective provisions, with text included to make

consent explicitly subject to the test of reasonableness, to ensure that there would be no serious detriment to EDF's undertaking as a result of the exercise of CA powers by the Applicant.

Canal and River Trust Rail ("CRT")

6.22. The ExA noted that CRT did not formally withdraw their objection to the inclusion of CA powers but was satisfied that their interests would still be suitably protected [ER 6.7.31]. The Secretary of State is content with this view.

Crown Consent

6.23. The ExA noted that Crown Land had been identified within the Order Limits (Plots 17-349 and 17-347), and that by the end of the Examination, consent had not been obtained [ER 7.6.4].

6.24. On 12 April 2024, the Crown Estate provided an update in a post-examination submission confirming that an agreement had been reached with the Applicant which provides the Commissioners with sufficient assurance as to the way in which compulsory acquisition powers (as contained in Articles 20 and 22 of the dDCO) may be exercised in respect of third party interests in Crown land forming part of the Crown Estate.

6.25. As such, the Crown Estate confirmed their consent to the compulsory acquisition of the third-party interests in Plot 17-347 (to the extent that this Plot forms part of the Crown Estate) and Plot 17-349 for the purpose of Section 135(1) of the PA2008. However, the Crown Estate noted that the consent was subject to the Commissioners being consulted further if any variation to the dDCO is proposed which could affect any other provisions of the Order which are subject to section 135(1) and 135(2) of the PA2008 the Commissioners confirm their consent to Articles 3, 4, 5, 16, 19, 29, 30, 38, 43, 44 and 49 of the dDCO, to the extent that they are included in the Order, applying in relation to Plot 17-347 (to the extent that this Plot forms part of The Crown Estate) and Plot 17-349 for the purpose of section 135(2) of the Act.

6.26. The Secretary of State notes that the ExA removed Article 44 and Schedule 9 of the Deemed Marine License ("DML") from the dDCO as the developer had initially included it on a precautionary basis and the inclusion of article was strongly opposed by the Marine Management Organisation ("MMO") as the statutory regulator. The ExA justified its proposal to move it citing 'Some of the activities for which a license is sought are exempt activities under Article 35 of the Marine Licensing (Exempted Activities) Order 2011'. Other references and provisions to the MMO were also removed by the ExA (Table 2) [ER 7.5.1]. The Secretary of State appreciates that the Crown Estate may find this change inconvenient since any commercial agreement reached with the Applicant based on the DML being included will now likely to be out of date but is ultimately content with the ExA's reasoning for recommending the removal of Article 44 of the DML and considers this justified.

The Secretary of State's Conclusion

- 6.10. The Secretary of State agrees with the ExA that the case for the requested compulsory acquisition powers has been made, and that these powers should therefore be granted.
- 6.11. The Secretary of State has no reason to believe that the grant of the Order would give rise to any unjustified interference with human rights so as to conflict with the provisions of the Human Rights Act 1998.

7. Secretary of State's Consideration of the Planning Balance and Conclusions

- 7.1. The Secretary of State acknowledges the ExA's recommendation that development consent should be granted for the Cottam Solar Project.
- 7.2. The Secretary of State agrees with the ExA's conclusions and the weight it has ascribed in the overall planning balance in respect of the following issues:
- Noise, Vibration and Air quality – neutral weight
 - Ecology and Biodiversity – moderate positive weight
 - Landscape and Visual Impacts – moderate negative weight
 - Historic Environment;
 - Designated Heritage Assets – moderate negative weight
 - Non-Designated Heritage Assets – little negative weight
 - Soils and Agriculture – little negative weight
 - Socio-Economic, Tourism, Recreation and Human Health – moderate positive weight
 - Transport and Access – neutral weight
 - Water Environment and Flood Risk – neutral weight
 - Other Planning Matters;
 - Waste – limited negative weight
 - Minerals – neutral weight
 - Major Accidents and Disasters – neutral weight
 - Electro Magnetic Fields – neutral weight
- 7.3. The Secretary of State agrees with the ExA's conclusions in respect of Cumulative Effects [ER 3.13].
- 7.4. In the case of the Proposed Development, the potential impacts have been assessed by the ExA as having not breached 2011 NPS EN-1 and NPS EN-5 or those contained in the designated 2024 NPS EN-1, EN-3 and EN-5, subject in some cases to suitable mitigation measures being put in place to minimise or avoid them completely as required by NPS policy. The Secretary of State considers that these mitigation measures have been appropriately secured.
- 7.5. For the reasons given in this letter, the Secretary of State concludes that benefits of the Proposed Development outweigh its adverse impacts. Furthermore, the Secretary of State consider that there is a compelling case in the public interest for the compulsory acquisition and temporary possession powers sought.

- 7.6. The Secretary of State concludes that development consent should be granted for the Cottam Solar Project. The Secretary of State does not believe that the national need for the Proposed Development as set out in the relevant NPSs is outweighed by the Development's potential adverse impacts, as mitigated by the proposed terms of the Order.
- 7.7. In reaching this decision, the Secretary of State confirms that regard has been given to the ExA's Report, the relevant Development Plans, the LIRs submitted by BDC, LCC, WLDC and NCC, the NPSs, and to all other matters which are considered important and relevant to the Secretary of State's decision as required by section 105 of the PA2008. The Secretary of State confirms for the purposes of regulation 4(2) of the EIA Regulations that the environmental information as defined in regulation 3(1) of those Regulations has been taken into consideration.
- 7.8. The Secretary of State has therefore decided to accept the ExA's recommendation to make the Order granting development consent, including the modifications set out in section 9 of this document.

8. Other Matters

Equality Act 2010

- 8.1. The Equality Act 2010 includes a public sector "general equality duty" ("PSED"). This requires public authorities to have due regard in the exercise of their functions to the need to eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Equality Act 2010; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not in respect of the following "protected characteristics": age; gender; gender reassignment; disability; marriage and civil partnerships³; pregnancy and maternity; religion and belief; and race.
- 8.2. In considering this matter, the Secretary of State (as decision-maker) must pay due regard to the aims of the PSED. This must include consideration of all potential equality impacts highlighted during the Examination. There can be detriment to affected parties but, if there is, it must be acknowledged and the impacts on equality must be considered.
- 8.3. The Secretary of State has had due regard to this duty and has not identified any parties with a protected characteristic that might be discriminated against as a result of the decision to grant consent to the proposed Development.
- 8.4. The Secretary of State is confident that, in taking the recommended decision, he has paid due regard to the above aims when considering the potential impacts of granting or refusing consent and can conclude that the Proposed Development will not result in any differential impacts on people sharing any of the protected characteristics. The Secretary of State concludes, therefore, that granting consent is not likely to result in a substantial impact on

³ In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

equality of opportunity or relations between those who share a protected characteristic and others or unlawfully discriminate against any particular protected characteristics.

Natural Environment and Rural Communities Act 2006

- 8.5. The Secretary of State notes the “general biodiversity objective” to conserve and enhance biodiversity in England, section 40(A1) of the Natural Environment and Rural Communities Act 2006 and considers the application consistent with furthering that objective, having also had regard to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when making this decision.
- 8.6. The Secretary of State is of the view that the ExA’s Report, together with the Environmental Impact Assessment considers biodiversity sufficiently to inform him in this respect. In reaching the decision to give consent to the Proposed Development, the Secretary of State has had due regard to conserving biodiversity.

9. Modifications to the draft Order

- 9.1. Following consideration of the draft Order provided by the ExA, the Secretary of State has made the following modifications to the draft Order:
- a. Amendments to the definitions in Article 2(1) (Interpretation):
 - i. Amendment to the definition of “authorised development” to specify that the meaning of ‘development’ is the same as that in section 32 of the 2008 Act.
 - ii. Amendment to the definition of “relevant planning authority” to include those relevant planning authority described in Schedule 2 (Requirements).
 - iii. Amendments to the definitions of “Tillbridge Solar Order” and “West Burton Solar Project Order” to reflect that the fact that these projects are still in the Planning Act 2008 development consent process.
 - iv. Amendment to the definition of ‘the Gate Burton Energy Park Order’ to specify that it means the Gate Burton Energy Park Order 2024.
 - b. Amendments to Part 2 (Principal Powers)
 - i. Amendments to Article 15(5) to include an additional sub-paragraph (c) in relation to displaying a site notice. This is consistent with the position taken in previous Development Consent Orders.
 - ii. Amendment to Article 23(2) to move the words “whichever is the earliest” at the end of sub-paragraphs (a) and (b) to make it clear that it applies to both sub-paragraphs.

Schedule 1 (Authorised Development)

- c. Amendments to paragraph 1 in the description of the project after the definitions to remove entirely, as unnecessary, the sentence stating: “In the District of West Lindsey and in the County of Lincolnshire a nationally significant infrastructure project as defined in sections 14 and 15 of the 2008 Act and associated development under section 115(1)(b) of the 2008 Act”.

Schedule 2 (Requirements)

- d. Amendment to Requirement 1 (Interpretation) to specify the relevant planning authorities for Requirement 12 and Requirement 22 and to include a definition of “relevant highway authority”.
- e. Amendments to Requirement 7(1) (Landscape and ecological management plan) to include “Natural England” as a consultee since the subsequent plan will identify and implement protection and mitigation measures for species and habitats within the remit of Natural England. This is consistent with the position taken in previous Development Consent Orders. Also paragraph 3 amended to include the words “and maintained throughout the operation of the relevant part of the authorised development to which the plan relates” to provide greater security and certainty in the implementation of the plan.
- f. Amendment to Requirement 8(1)(Ecological protection and mitigation strategy) to include “Natural England” as a consultee since the subsequent plan will identify and implement protection and mitigation measures for species and habitats within the remit of Natural England. This is consistent with the position taken in previous Development Consent Orders. Also paragraph 3 amended to include the words “and maintained throughout the operation of the relevant part of the authorised development to which the plan relates” to provide greater security and certainty. This is consistent with the position taken in previous Development Consent Orders.
- g. Amendment to Requirement 9(3)(Biodiversity net gain) to include the words “and maintained throughout the operation of the relevant part of the authorised development to which the plan relates” to provide greater security and certainty in the implementation of the plan.
- h. Amendment to Requirement 11(4)(Surface and foul water drainage) to include the words “and maintained throughout the construction and operation of the authorised development” to provide greater security and certainty in the implementation of the plan.
- i. Requirement 12 (Archaeology) amended due to reasons given in this decision letter.
- j. Amendment to Requirement 14(3)(Operational environmental management plan” to include the words “approved and maintained throughout the operation of the relevant part of the authorised development to which the plan relates” to provide greater security and certainty in the implementation of the plan.
- k. Amendment to Requirement 16(2)(Operational noise) to include the words “and maintained throughout the operation of the relevant part of the authorised development to which the plan relates” to provide greater security and certainty in the implementation of the plan.

- i. Amendment to Requirement 20(4)(Skills, supply chain and employment) to include the words “and maintained throughout the operation of the relevant part of the authorised development to which the plan relates” to provide greater security and certainty in the implementation of the plan.
- m. Amendment to Requirement 21(6) (Decommissioning and restoration) to include “Natural England” as a consultee since the subsequent plan will identify and implement protection and mitigation measures for species and habitats within the remit of Natural England. This is consistent with the position taken in previous Development Consent Orders.

9.2. **Schedule 15 (Protective Provisions)**

- e. Amendments to Schedule 15 (protective provisions) in following Parts:
 - i. Part 3 (for the protection of National Grid Electricity Transmission) for the reasons provided in the relevant part of this letter.
 - ii. Part 5 (for the protection of Northern Powergrid) for the reasons provided in the relevant part of this letter.
 - iii. Part 14 (for the protection of Uniper UK Limited) for the reasons provided in the relevant part of this letter.

9.3. **Schedule 16 (Procedure for Discharge of Requirements)**

- f. Amendment to paragraph 4(2)(Appeals) to include a new sub-paragraph (a) which says “any appeal by the undertaker must be made within 42 days of the date of the notice of the decision or determination, or (where no determination has been made) the expiry of the time period set out in paragraph 22(1), giving rise to the appeal referred to in sub-paragraph (1)”. Also amendments made to sub-paragraphs (d) and (e) to replace “20 working days” with “10 working days”. These changes are consistent with the position taken in previous Development Consent Orders.

10. Challenge to decision

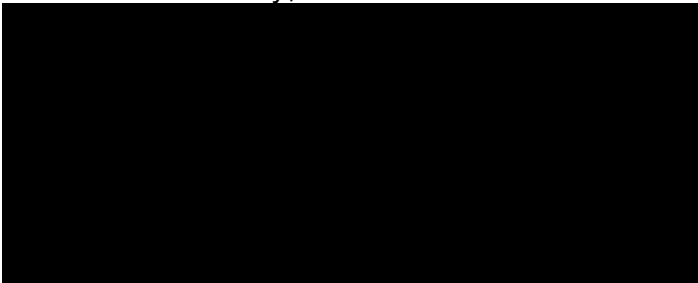
- 10.1. The circumstances in which the Secretary of State’s decision may be challenged are set out in the Annex **A** to this letter.

11. Publicity for decision

- 11.1. The Secretary of State’s decision on this Application is being publicised as required by section 116 of the PA2008 and regulation 31 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.
- 11.2. Section 134(6A) of the PA2008 provides that a compulsory acquisition notice shall be a local land charge. Section 134(6A) also requires the compulsory acquisition notice to be sent to the Chief Land Registrar, and this will be the case where the Order is situated in an area for which the Chief Land Registrar has given notice that they now keep the local land

charges register following changes made by Schedule 5 to the Infrastructure Act 2015. However, where land in the Order is situated in an area for which the local authority remains the registering authority for local land charges (because the changes made by the Infrastructure Act 2015 have not yet taken effect), the prospective purchaser should comply with the steps required by section 5 of the Local Land Charges Act 1975 (prior to it being amended by the Infrastructure Act 2015) to ensure that the charge is registered by the local authority.

Yours sincerely,



David Wagstaff OBE

Head of Energy Infrastructure Development

ANNEX A: LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the PA2008, an Order **granting** development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the Planning Court during the period of 6 weeks beginning with the day after the day on which the Order or decision is published. The decision documents are being published on the date of this letter on the Planning Inspectorate website at the following address:

<https://national-infrastructure-consenting.planninginspectorate.gov.uk/projects/EN010133>

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655).

ANNEX B: LIST OF ABBREVIATIONS

Abbreviation	Reference
AA	Appropriate Assessment
AEoI	Adverse Effects on Integrity
ALC	Agricultural Land Classification
BDC	Bassetlaw District Council
BESS	Battery Energy Storage System
BMV	Best and Most Versatile
BoR	Book of Reference
CoA	Conservation Area
CRT	Canal and River Trust
dDCO	Draft Development Consent Order
DCO	Development Consent Order
DML	Deemed Marine License
EA	Environment Agency
EDF	EDF Energy (Thermal Generation) Limited
EEA	European Economic Area
EIA	Environmental Impact Assessment
EMF	Electro-magnetic Field
ES	Environmental Statement
ExA	The Examining Authority
GHG	Greenhouse Gases
Ha	Hectares
HE	Historic England
HRA	Habitats Regulations Assessment
IP	Interested Party
IROPI	Imperative Reasons of Overriding Public Interest
ISH	Issue Specific Hearing
LB	Listed Buildings
LCC	Lincolnshire County Council
LCT	Landscape Character Types
LDP	Local Development Plan
LIR	Local Impact Report
LNT	LNT Aviation Limited
LSE	Likely Significant Effect
MMO	Marine Management Organisation
Mr Nicholson	Clifford Graham Rowles Nicholson
MW	Megawatt
NCC	Nottinghamshire County Council

NE	Natural England
NGET	National Grid Electricity Transmission
NGED	National Grid Electricity Distribution (East Midlands)
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NPS EN-1	National Policy Statement for Energy
NPS EN-3	National Policy Statement for Renewable Energy Infrastructure
NPS EN-5	National Policy Statement for Electricity Networks Infrastructure
NRIL	Network Rail Infrastructure Limited
NSN	National Site Network
NSIP	Nationally Significant Infrastructure Project
oCTMP	Outline Construction Traffic Management Plan
ODS	Outline Decommissioning Statement
oLEMP	Outline Landscape and Ecological Management Plan
oOEMP	Outline Operational Environment Management Plan
oSMP	Outline Soil Management Plan
PA2008	The Planning Act 2008
PSED	Public Sector Equality Duty
RIES	Report on the Implications for European Sites
RPG	Registered Park and Garden
RR	Relevant Representation
SAC	Special Area of Conservation
SMP	Soil Management Plan
SMS	Scheduled Monuments
SoCG	Statement of Common Ground
SU	Statutory Undertaker
SPA	Special Protection Area
The Ramsar Convention	The Convention on Wetlands of International Importance
The Settlement	C Nicholson No 1 Settlement
WLDC	West Lindsey District Council
WMS	Written Ministerial Statement
WPWSI	Without Prejudice Written Scheme Investigation
WSI	Written Scheme of Investigation
ZOI	Zone of Influence