

Authorship

Prepared by	Checked by	Approved by
RT		

Revision History

Revision	Revision Date	Authorised By	Position	Comment
1	20.11.2024			

Table of Contents

1	Written Summary of the Applicant's oral submissions at Compulsory Acquisition Hearing 1	2
1.1	Introduction	2
1.2	Agenda Item 1: Welcome, introductions and purpose of the Hearing	2
1.3	Agenda Item 2: General Case	2
1.4	Agenda Item 3: Crown Land	8
1.5	Agenda Item 4: Statutory Undertakers	9
1.6	Agenda Item 5: Funding	11
1.7	Agenda Item 6: Any other matters	12
2	Action Points	13
2.1	List of action points arising and the Applicant's responses	13

List of Tables

	Table 2-1: Action points arising during the hearing and the Applicant's post-hearing responses	13
--	--	----

1 Written summary of the Applicant's Oral Submissions at Compulsory Acquisition Hearing 1

1.1 Introduction

- 1.1.1 This document summarises the oral submissions by EPL 001 Limited ('**EPL**' or the '**Applicant**') at Compulsory Acquisition Hearing 1 ('**CAH1**') which took place in a blended format at the Ashford International Hotel and on Microsoft Teams on 20 November 2024.
- 1.1.2 In what follows, the Applicant's submissions on the points raised broadly follow the Agenda for the CAH1 set out in the Examining Authority's ('**ExA**') letter which was published on the Planning Inspectorate's website on 22 October 2024 (the Rule 6 letter) [[PD-004](#)]. Where the comment is a post-hearing note submitted by the Applicant, this is indicated.
- 1.1.3 The Applicant, which is promoting the Stonestreet Green Solar project (the '**Project**'), was represented by Mr Hugh Flanagan of Francis Taylor Building, instructed by Herbert Smith Freehills LLP. Mr Flanagan also introduced Ms Jessica Bere, Technical Director at Gately Hamer, land agents for the Applicant.

1.2 Agenda Item 1: Welcome, introductions and purpose of the Hearing

- 1.2.1 The ExA welcomed participants, introduced the purpose of the hearing and led introductions. He also noted that this hearing would cover compulsory acquisition matters generally, and that later hearings could be scheduled to cover specific compulsory acquisition matters, if requested.
- 1.2.2 No Affected Persons ('**APs**') were present at the hearing.
- 1.2.3 The ExA asked that parties do not display documents during the hearing that have not otherwise been submitted into the Examination. He also noted that the Examination process is intended to be a primarily written process, supplemented with hearings as necessary. The ExA noted he had held this hearing to understand the Applicant's general compulsory acquisition case.

1.3 Agenda Item 2: General Case

- 1.3.1 The ExA asked the Applicant to present and justify its case for compulsory acquisition and temporary possession.
- 1.3.2 Mr Flanagan on behalf of the Applicant confirmed that he would cover the matters listed on the agenda in outlining the general case for seeking compulsory acquisition powers.

- 1.3.3 Mr Flanagan explained that the **Statement of Reasons (Doc Ref. 4.2(A))** is the primary application document setting out the Applicant's compulsory acquisition case. He also noted that he would refer to the **Schedule of Negotiations (Doc Ref. 4.4(A))** in his submissions. He explained the information set out in Table 1 in the Schedule of Negotiations using the example of the various plots for Mr Christopher Price and Mr Richard Price, noting that each row sets out on a plot by plot basis what the land is required for, by reference to the specific work numbers set out in Schedule 1 to the **Draft DCO (Doc Ref. 3.1(B))**.
- 1.3.4 Mr Flanagan explained that the **Land Plans (Doc Ref. 2.1) [APP-007]** underpin the **Statement of Reasons (Doc Ref. 4.2(A))** and **Schedule of Negotiations (Doc Ref. 4.4(A))**, and set out the "pink" land which is to be acquired and the "blue" land over which rights are sought.
- 1.3.5 He explained that the **Book of Reference (Doc Ref. 4.1) [APP-019]** separates land included within the Order Limits into three categories, as required by the relevant legislation. The Book of Reference is then split into five parts, as required by legislation and guidance. Part 1 contains the Category 1 and 2 parties; Part 2 contains the Category 3 parties; Part 3 deals with those with easements or other private rights over land which it is proposed shall be extinguished, suspended or interfered with; Part 4 specifies Crown Land Interests; and Part 5 sets out special category land. He confirmed that no land required for the Project is special category land.
- 1.3.6 Mr Flanagan confirmed that all of the land described in the application documents is needed to construct, operate and maintain the Project. He noted that there have been no submissions that suggest that a particular plot is not required for the Project.
- 1.3.7 Mr Flanagan then noted that the second part of the general case is why these compulsory acquisition powers are needed. He explained that the compelling case in the public interest for the Applicant to be granted these powers is set out in the **Statement of Reasons (Doc Ref. 4.2(A))** and expanded on in the **Planning Statement (Doc Ref. 7.6) [APP-151]**. Mr Flanagan explained that the principal component of the compelling case is that national policy, as set out in NPS EN-1 and NPS EN-3, determines that there is an urgent need for renewable energy infrastructure, and that the Project is categorised by policy as a "critical national priority". There is a compelling case in the public interest to meet that need. The energy generating capacity of the Project means that it is over the threshold to be classified as a nationally significant infrastructure project ('**NSIP**'), meaning that the policy in the NPSs applies to the Secretary of State's ('**SoS**') decision on the application. He added that the impact of the Project will be significant: it will generate around 35% of solar energy generated in all of Kent.
- 1.3.8 Mr Flanagan also noted the other benefits of the Project, including ecological enhancements, biodiversity net gain, and public rights of way improvements. Although these matters are important, it is the renewable energy need and benefits which are at the heart of the compelling case in the public interest for the inclusion of compulsory acquisition powers in the **Draft DCO (Doc Ref. 3.1(B))**.

1.3.9 He went on to explain that Part 6 of the **Draft DCO (Doc Ref. 3.1(B))** contains a suite of compulsory acquisition provisions, summarised as follows:

- Article 22 (compulsory acquisition of land) and Article 26 (compulsory acquisition of rights and imposition of restrictive covenants) go together – Article 22 enables the undertaker to acquire compulsorily so much of the Order land as is required for the authorised development, and Article 26 provides a parallel power in respect of rights over land;
- Article 24 (statutory authority to override easements and other rights) allows the undertaker to override easements without automatically cleansing the title and without needing to acquire a greater right in the land than would be proportionate. It can apply where diligent investigations have not identified a right, where for instance there is a prescriptive right;
- Article 25 (time limit for exercise of authority to acquire land compulsorily) sets out a time limit for the exercise of compulsory acquisition powers of 5 years;
- Article 27 (private rights) enables the undertaker to extinguish private rights so that the Project can come forward and is not inhibited by inconsistent rights that would prevent this happening;
- Article 29 (acquisition of subsoil and airspace only) is a lesser power to avoid the greater acquisition of rights than is required to deliver the Project;
- Article 31 (temporary use of land for carrying out the authorised development) enables a more proportionate approach which avoids compulsory acquisition if only temporary possession of land is required;
- Article 34 (statutory undertakers) extends the powers to the acquisition of statutory undertakers' land, subject to the protective provisions in Schedule 13 to the **Draft DCO (Doc Ref. 3.1(B))**, which are given effect by Article 38 (protective provisions); and
- Article 49 (guarantees in respect of payment of compensation) provides that the undertaker may not exercise the powers conferred in respect of compulsory acquisition until a guarantee or alternative security has been put in place, which ensures funding for compensation will be in place before compulsory acquisition powers are exercised.

1.3.10 Mr Flanagan then picked up a point raised during Issue Specific Hearing 1 ('ISH1') relating to Article 31 (temporary use of land for carrying out the authorised development) of the **Draft DCO (Doc Ref. 3.1(B))**. He noted that the ExA had asked whether notice had been provided to landowners subject to this power.

1.3.11 Mr Flanagan confirmed that the answer is yes, notice has been provided to all landowners. All landowners received a copy of the section 48 notice during the statutory consultation exercise, which refers to both compulsory acquisition and temporary possession powers over land. He noted that powers to take temporary possession of land are a lesser power compared with compulsory acquisition, and that together these should be regarded as a package of powers, rather than temporary possession powers being regarded as something entirely separate.

1.3.12 **Post-hearing note:** Please see the Applicant's response to Action Point 1 below.

- 1.3.13 Mr Flanagan then noted that (as reflected by the lack of attendance at the hearing from principal landowners) there are only a few outstanding negotiations with affected landowners, all of which are set out in Table 1 in the **Schedule of Negotiations (Doc Ref. 4.4(A))**. He confirmed that, in respect of the private landowners in that table, all of them have an agreed an option agreement except for Mr Christopher Price and Mr Richard Price in the first row. In their case, Heads of Terms have been agreed, and there is no reason for the Applicant to think that this will not progress to a completed option agreement. Notwithstanding the progress of voluntary agreements, the compelling case in the public interest is made out to protect against a scenario where the freehold owners of the land required for the Project do not grant a lease and also where the undertaker requires powers to extinguish private rights.
- 1.3.14 Mr Flanagan noted that the landowners can be seen as falling within one of three groups, noting that these were not statutory categories. First, Table 1 in the **Schedule of Negotiations (Doc Ref. 4.4(A))** sets out information about the principal landowners (with whom there is a significant measure of agreement). Secondly, there are affected statutory undertakers. The third group encompasses those landowners with subsoil interests in land up to the middle of the highway where they own adjacent land. There is no practical effect on their property interests in acquiring subsoil rights. Table 2 sets out plots in the highway boundary over which rights are sought.
- 1.3.15 Mr Flanagan confirmed that in respect of human rights considerations, the interference with landowners' rights in Article 1 of the First Protocol (protection of property) of the European Convention on Human Rights is justified by the overriding need for the Project, and evidenced by the lack of substantive opposition to the Applicant seeking compulsory acquisition powers. No compulsory acquisition powers are sought over residential land. As such, Article 8 (right to respect for private and family life) of the Convention is not engaged. However, even if it were, it would be the Applicant's case that there is an overriding need in the public interest for such interference.
- 1.3.16 Mr Flanagan confirmed that the **Schedule of Other Consents and Licences (Doc Ref. 3.4)** [\[APP-018\]](#) sets out the consents required to deliver the Project that are not included in the **Draft DCO (Doc Ref 3.1(B))**. This document concludes there is no reason to think that any of these consents will not be forthcoming. The Applicant does not consider that there are any likely impediments to delivery of the Project.
- 1.3.17 Mr Flanagan confirmed that the Applicant has considered reasonable alternatives to seeking compulsory acquisition powers, particularly through pursuing voluntary agreements and relying on compulsory powers only as a last resort. In relation to alternatives to the Project, he referred to **Environmental Statement Volume 2: Main Text Chapter 5: Alternatives and Design Evolution (Doc Ref. 5.2(A))** [\[AS-010\]](#) which sets out the optioneering process undertaken. He explained that the assessment concluded that a "do nothing" scenario or a significantly reduced scale project are not reasonable alternatives as they do not meet Project objectives.

- 1.3.18 To conclude, Mr Flanagan confirmed that the Applicant had complied with all relevant legislation, policy and guidance in respect of its compulsory acquisition proposals.
- 1.3.19 The ExA noted that paragraph 6.1.4 of the **Statement of Reasons (Doc Ref. 4.2(A))** states that *"negotiations have been ongoing [with freehold owners of land] and there are some heavily negotiated agreements in almost final form."* He asked whether the agreements had been signed or were subject to the DCO being granted.
- 1.3.20 Mr Flanagan confirmed that the option agreements entered into will be subject to the making of the DCO, but that they are agreed and signed. He explained that they necessarily include that optionality in the event that DCO is not made by the SoS. He noted that, as referred to above, Table 1 of the **Schedule of Negotiations (Doc Ref. 4.4(A))** lists those parties that have entered into option agreements, noting there is one Affected Party in Table 1 in respect of whom Heads of Terms have been issued which are still to be converted into an agreement.
- 1.3.21 The ExA referred to bullet point 7 in paragraph 6.4.5 of the **Statement of Reasons (Doc Ref. 4.2(A))** and noted that the way that statement has been made suggests that the Project is not on best and most versatile ('**BMV**') land, whereas in fact about 20% is on BMV land. He added that some statements in the Environmental Statement and other documents suggest the Project is not situated on any BMV.
- 1.3.22 Mr Flanagan responded to confirm that it was correct that there is some BMV land within the Order Limits. He noted that paragraph 6.4.5 of the **Statement of Reasons (Doc Ref. 4.2(A))** states that *"approximately 80% of the Site has an ALC of Grade 3b or is non-agricultural, and is therefore not BMV land"*, so accordingly there is some BMV within the Site. He then added that the Applicant has sought to avoid, reduce and minimise the use of BMV, as is detailed in the Environmental Statement.
- 1.3.23 The ExA asked the Applicant to review the statements relating to BMV land in the Application, to check that none read as an absolute statement that there is no BMV land within the Site.
- 1.3.24 Mr Flanagan responded to confirm the Applicant would action this.
- 1.3.25 *Post-hearing note: Please see the Applicant's response to Action Point 2 below.*
- 1.3.26 The ExA referred to the Relevant Representation received from EDF Energy Renewables Limited [[RR-076](#)] and EDF Renewables Solar Limited [[RR-077](#)] (together, '**EDF-R**'), who are promoting the East Stour Solar Farm. The submissions state that *"EDF has provided the EPL 001 Limited with details of the interaction between the NSIP and the EDF solar project and draft documentation to address the interaction. However, at the date of this Written Representation, EDF has not received a response from EPL 001 Limited."* The ExA requested an update and for the Applicant to set out its expectations on whether those negotiations will conclude by the end of the Examination.
- 1.3.27 In response, Mr Flanagan clarified that the Applicant had been in discussions with EDF-R for 2.5 years, and insofar as it is suggested there have been no discussions

between the parties, the remarks in the Relevant Representation are not factually correct. He explained that the interaction between the two projects is well understood, and that it is recognised that there is a potential relationship between the cable routes of the Project and those of the East Stour Solar Farm. Mr Flanagan noted that an underground crossing of the two cables is proposed, as the cable of each project will need to cross the other to reach Sellindge substation.

- 1.3.28 Mr Flanagan confirmed that a private co-operation agreement between the parties is well advanced, its aim being to ensure both schemes can come forward entirely compatibly and he confirmed that the Applicant considers there is no reason why they cannot. He noted that this may require certain depths of trenching and separation distances between the cables, but noted this was entirely achievable. He also added that the cable crossing is the extent of the physical inter-relationship between the two schemes, confirming that the Applicant's cable route falls outside of the proposed security fence of the East Sour Solar Farm.
- 1.3.29 Mr Flanagan explained that the Applicant fully recognises EDF-R's interest in achieving their cable crossing, but also noted they are not a statutory undertaker occupying land in pursuance of their statutory functions, in contrast to National Grid. This means that in seeking rights of compulsory acquisition, the Applicant is not interfering with the rights of a statutory undertaker, noting that EDF-R's Relevant Representation does not suggest otherwise. He confirmed that EDF-R are a company set up to promote renewable development, in the same way as the Applicant is. He confirmed the Applicant would provide further detail in writing.
- 1.3.30 **Post-hearing note:** Please see the Applicant's response to Action Point 3 below.
- 1.3.31 The ExA referred to paragraph 2.3.5 of the **Grid Connection Statement (Doc Ref. 7.3)** [APP-148] which states that "*The Applicant has continued to engage with UKPN, which confirmed on 1 September 2023 that the Project would connect directly into Sellindge Substation using existing ducts, subject to confirming that the ducts have not collapsed*" (Option A). He also noted that paragraph 2.3.7 states "*If the existing ducts are not available then new ducts will be required, installed using HDD construction methods*" (Option B). He asked whether the Applicant had identified specific routes for Option A and Option B and asked the Applicant to confirm that appropriate land had been included in the **Book of Reference (Doc Ref. 4.1)** [APP-019].
- 1.3.32 Mr Flanagan responded to confirm that the location of the existing ducts is known. He added that, in the unlikely scenario that new ducts are required, land has been included in the **Book of Reference (Doc Ref. 4.1)** [APP-019] and **Land Plans (Doc Ref. 2.1)** [APP-007]. He confirmed that the Applicant would provide further detail on what that might involve in terms of land take and how that corresponds with the Land Plans and Book of Reference in writing.
- 1.3.33 **Post-hearing note:** Please see the Applicant's response to Action Point 4 below.
- 1.3.34 The ExA referred to Article 23 (compulsory acquisition of land – incorporation of the minerals code) of the **Draft DCO (Doc Ref. 3.1(B))** and noted that this article had

been removed from a recent DCO by the SoS. He asked the Applicant to confirm whether there would be any compulsory acquisition of mining and mineral rights.

- 1.3.35 Mr Flanagan confirmed the Applicant would take this away and respond in writing.
- 1.3.36 **Post-hearing note:** *Please see the Applicant's response to Action Point 5 below.*
- 1.3.37 The ExA referred to Articles 22 (compulsory acquisition of land) and 26 (compulsory acquisition of rights and imposition of restrictive covenants) of the **Draft DCO (Doc Ref. 3.1(B))**. Noting the need to ensure that need to compulsorily acquire land is minimised in order that the granting of acquisition powers is appropriate, he asked the Applicant whether there should be a restriction on the use of compulsory acquisition powers over land where voluntary agreement has been reached so that they can only be exercised if the landowner defaults on the agreement.
- 1.3.38 Mr Flanagan responded that it would not be reasonable to limit the Applicant's compulsory acquisition powers in that respect. He explained that where a private agreement has been entered into, compulsory powers become a back-up only. The category of unforeseen circumstances when the need to use compulsory powers might arise is difficult to define, and it cannot be foreseen when there could be an event of default on any private agreement.
- 1.3.39 He also explained that the other important point to note is the need case. Once the Applicant has established the need for compulsory powers (in light of the urgent need for a project to be delivered), if a landowner does not follow through on their agreement (for example, through bankruptcy, or another event outside of their control), not having compulsory powers as a back-up would run contrary to the established need case. He also added that there is no guidance or precedent which indicates that it is necessary or appropriate to remove, restrict or qualify compulsory powers where private agreement has been reached.

1.4 Agenda Item 3: Crown Land

- 1.4.1 The ExA asked the Applicant to present and justify its case for compulsory acquisition of rights over Crown Land and to set out the latest position as to whether it has obtained consent from the Crown required under section 135 of the Planning Act 2008. He noted that the Crown Land plots are all included because of rights owned by the SoS for Transport.
- 1.4.2 Mr Flanagan on behalf of the Applicant responded to confirm that all Crown Land plots relate to land around the railway and were interests of the Department for Transport ('DfT'). He confirmed that Article 42 (Crown rights) is included in the **Draft DCO (Doc Ref. 3.1(B))**, which provides that the Order does not prejudice the rights of the Crown, and that the undertaker cannot enter onto or interfere in any way with Crown Land without consent.
- 1.4.3 Mr Flanagan confirmed that the Applicant has been engaging with the DfT since May 2022 to secure the rights and access to carry out relevant parts of the Project and to obtain Crown consent. He confirmed that the latest position, as at 14 November 2024, was that the DfT had responded to the Applicant and requested

an undertaking for their costs of providing the necessary consent. He confirmed that the Applicant is happy to do this and is in the process of providing that undertaking. He noted that at no point during discussions has the DfT indicated that consent will not be forthcoming. He confirmed that updates will be provided throughout the Examination.

- 1.4.4 The ExA noted that Network Rail and the Environment Agency hold land on behalf of the SoS for Transport and the SoS for Environment, Food and Rural Affairs, as arm's length non-ministerial government bodies. He asked the Applicant to confirm whether their interests should be included as Crown Interests in the **Book of Reference (Doc Ref. 4.1)** [\[APP-019\]](#).
- 1.4.5 Mr Flanagan confirmed that the Applicant would respond in writing.
- 1.4.6 **Post-hearing note:** *Please see the Applicant's response to Action Point 6 below.*
- 1.4.7 The ExA asked what the Applicant's contingency plan was if agreement could not be reached with the DfT.
- 1.4.8 Mr Flanagan confirmed that there was no contingency plan at this stage, as there has been no indication that Crown consent will not be provided. He confirmed that a fuller response would be provided in writing.
- 1.4.9 **Post-hearing note:** *Please see the Applicant's response to Action Point 7 below.*
- 1.4.10 Mr Tennant on behalf of Aldington and Mersham Support Group asked what would happen if agreement is not forthcoming by the end of the Examination, and asked whether all of the parties except the DfT in the **Book of Reference (Doc Ref. 4.1)** [\[APP-019\]](#) were vulnerable to compulsory acquisition.
- 1.4.11 The ExA responded to confirm that this is the start of the Examination process, and there are still 6 months to resolve these issues. He noted it is in the Applicant's best interests to do that. He confirmed that before making the recommendation to the SoS, the ExA has to assess that the various statutory tests have been met. He noted that it is at the risk of the Applicant if matters such as Crown land consent are still outstanding at the close of the Examination.

1.5 Agenda Item 4: Statutory Undertakers

- 1.5.1 The ExA asked the Applicant to update it as to the latest position in respect of the powers sought over the operational land of statutory undertakers; whether it had obtained agreement for the land to be acquired; and whether there were, and if so what, any outstanding matters to be resolved.
- 1.5.2 In response, Mr Flanagan on behalf of the Applicant referred to Table 3 of the **Schedule of Negotiations (Doc Ref. 4.4(A))**, which sets out the statutory undertakers whose land and/or rights are affected. He confirmed that Table 3 sets out the status of negotiation as at the date of submission of the application, in June 2024. He explained that this table sets out whether each undertaker is protected by standard protective provisions, or whether bespoke protective provisions are being

negotiated. He confirmed that the protective provisions will appropriately safeguard each statutory undertaker's statutory interests, whilst enabling the Project to proceed. He also referred to the submissions made against Agenda Item 2 relating to EDF-R.

- 1.5.3 Mr Flanagan noted that the ExA had requested a Statement of Common Ground with National Grid in Annex G to the Rule 6 Letter [PD-004]. He confirmed that this was progressing, and the Applicant hopes for this to be submitted into the Examination accordingly.
- 1.5.4 Mr Flanagan then provided an explanation the roles of National Grid Electricity Transmission ('NGET') and UK Power Networks ('UKPN') in relation to the DCO, which he noted is important to understand. The Applicant has included compulsory acquisition powers to ensure that the land and rights are available to extend Sellindge substation, which is on National Grid's freehold land. The **Draft DCO (Doc Ref. 3.1(B))** also enables UKPN to install a grid connection cable from the Site to the point of connection at the Sellindge substation, and protective provisions are included for the protection of NGET in Schedule 13 to the **Draft DCO (Doc Ref. 3.1(B))**.
- 1.5.5 He explained that the Applicant has received and accepted an offer from UKPN, as the Distribution Network Operator licensed by Ofgem and in charge of the distribution network for this area, for a grid connection of 99.9MW. Although the connection is to Sellindge substation, which is on NGET's freehold land, the grid connection agreement is with UKPN. UKPN is contractually obliged to deliver this connection, despite the works being on land owned by NGET.
- 1.5.6 Mr Flanagan also confirmed that the grid connection agreement covers three elements of works, being the delivery of the UKPN part of the Project Substation, the cable connection, and the extension to Sellindge Substation. The Applicant will be responsible for the Project Substation, with UKPN being responsible for the latter two elements.
- 1.5.7 He referred back to a query raised during ISH1, and explained that "undertaker" as defined in Article 2 of the **Draft DCO (Doc Ref. 3.1(B))** includes both the Applicant and any person who for the time being has the benefit of the Order in accordance with Articles 6 and 7. Pursuant to Article 6, the provisions of the Order have effect for the benefit of UKPN (in addition to the Applicant) in respect of Work Nos. 3 and 4. UKPN thereby has compulsory acquisition powers in respect of those works (i.e. to acquire land and powers to install the cable route) as set out in the Order (rather than across the works as a whole).
- 1.5.8 He further confirmed that, whilst NGET owns the transmission network, this Project is connecting into distribution network, which explains why UKPN is involved and has a role in the **Draft DCO (Doc Ref. 3.1(B))**.
- 1.5.9 Mr Flanagan referred to the query raised by the ExA during ISH1 regarding the position on funding in respect of UKPN, where the ExA noted that UKPN has the ability to exercise powers of compulsory acquisition under the **Draft DCO (Doc Ref. 3.1(B))**, but that the **Funding Statement (Doc Ref. 4.3(A))** relates only to the

Applicant. Mr Flanagan explained that there should be no doubt or issue as to UKPN having adequate funding for three reasons:

- (1) UKPN is a statutory undertaker, and therefore the ExA can assume that it has funding sufficient to fulfil its statutory obligations, which in this instance would be connecting the Project into the distribution network;
- (2) A contract has been agreed between UKPN and the Applicant for the delivery of the connection works. UKPN would not have entered into this contract if it was not in a position to fulfil it; and
- (3) The operation of Article 49 (guarantees in respect of payment of compensation) requires the undertaker to put in place a guarantee or form of security in respect of compensation prior to the exercise of compulsory acquisition powers. This would also apply to UKPN, where it is acting as the "undertaker", so they would not be able to exercise powers of compulsory acquisition until a guarantee or security is in place. That provides additional and sufficient protection in respect of funding.

1.5.10 Mr Flanagan on behalf of the Applicant also confirmed that cable ducting under the railway will be under Network Rail's infrastructure. He noted that Network Rail has indicated a preference for the Project to use UKPN's existing ducts, which is the Applicant's hope and expectation. If this is not the case, he confirmed that the Applicant would discuss the position with Network Rail.

1.6 Agenda Item 5: Funding

1.6.1 The ExA referred to regulation 5(2)(h) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009, which requires a statement indicating how an order that contains compulsory acquisition powers is proposed to be funded to be included in an application. He asked the Applicant to update it as to the latest position in respect of funding. He also noted that the submitted **Funding Statement (Doc Ref. 4.3(A))** does not provide sufficient assurance about the corporate structure and financial standing of the Applicant and a summary of recent accounts. He asked the Applicant to provide more detail and comment by Deadline 1.

1.6.2 **Post-hearing note:** Please see the Applicant's response to Action Point 8 below.

1.6.3 The ExA noted he was mindful of changes in the economy in recent years. He noted that paragraph 2.2.1 of the **Funding Statement (Doc Ref. 4.3(A))** states that "*The current cost estimate for the Project is approximately £150m and includes construction costs, preparation costs, supervision costs and land acquisition costs.*" He asked whether this included contingencies, inflation, interest rate rises, blight compensation, and decommissioning costs and stated that it would be useful to have a full breakdown of costs and the value of each cost listed as a proportion of the overall estimate.

1.6.4 Mr Flanagan confirmed that this point would be dealt with in writing.

1.6.5 **Post-hearing note:** Please see the Applicant's response to Action Point 9 below.

1.6.6 In response to the ExA asking the Applicant to confirm that there are no business extinguishments required by the Project which would necessitate potential compensation claims, Mr Flanagan confirmed this was correct.

1.7 Agenda Item 6: Any other matters

1.7.1 Mr Flanagan on behalf of the Applicant read out the list of Action Points.

1.7.2 The ExA thanked participants and closed the hearing at 15:43.

2 Action Points and the Applicant's Responses

2.1 List of action points arising and the Applicant's written submissions in response

2.1.1 Table 2-1 below sets out the list of action points that arose during the hearing and the Applicant's post-hearing response to them.

Table 2-1: Action points arising during the hearing and the Applicant's post-hearing responses

Action Points	Applicant's response
Action Point 1: The Applicant to confirm the notification that has been provided to landowners that may be subject to temporary possession pursuant to the powers in Article 31 of the Draft DCO.	The Consultation Report (Doc Ref. 6.1) [APP-126] confirms that all persons falling within section 44 of the Planning Act 2008 were consulted on during the pre-application stage, with an example of the letter sent to those parties included in Appendix C (Doc Ref. 6.2) [APP-131] . These letters highlighted the types of all rights and powers sought within the DCO, including temporary possession powers.
Action Point 2: The Applicant to confirm the accuracy of any statements made in the application regarding the quantum of Best and Most Versatile land within the Order limits.	<p>The Applicant has reviewed the Application documents that made reference to the assessment of agricultural land classification within the Site and the search area around the point of connection at Sellindge substation, and can confirm that no statements in the Application state that there is no BMV land within the Order Limits. If there are particular statements within the Application that the ExA or IPs wish to bring to the Applicant's attention in this regard, the Applicant confirms that it will review any such statements upon receipt of such notification.</p> <p>Paragraph 6.4.5 of the Statement of Reasons (Doc Ref. 4.2(A)), which the ExA referred to during CAH1, states that:</p> <p><i>"Approximately 80% of the Site has an ALC of Grade 3b or is nonagricultural, and is therefore not Best and Most Versatile ('BMV') land. Large areas of land within 5km of the POC is provisionally classified by Natural England as Grade 2 and therefore classified as BMV land"</i></p>

Action Points	Applicant's response
	<p>The Applicant considers that this statement makes clear that there is BMV land within the Site – it states that 80% has an ALC of Grade 3b or below or is non-agricultural, which makes clear that the remaining 20% of land is categorised as BMV land.</p> <p>The Applicant also notes that the Planning Statement (Doc Ref. 7.6) [APP-151] sets out details of the BMV calculation undertaken during preparation of the Application, and how the Applicant's development of the Project's design has sought to minimise the amount of BMV land included in the Order Limits in accordance with relevant national policy. In relation to the inclusion of BMV land within the Order Limits, please refer to section 6.8 of this document, and particularly paragraph 6.8.8, 'Table 5 Summary of Agricultural Land within the Order limits' and 'Figure 2: BMV Land Loss Plan'.</p>
<p>Action Point 3: The Applicant to confirm: (i) the engagement that has been undertaken with EDF Renewables regarding the East Stour Solar scheme's cable crossing; and (ii) the status of EDF Renewables with regard to section 127 of the Planning Act 2008.</p>	<p><u>Action Point 3(i)</u></p> <p>As noted in Tables 18, 19, 20, 21, 22 and 24 of the Consultation Report (Doc Ref. 6.1) [APP-126] the Applicant first engaged with EDF Renewables on 6 September 2021. Further engagement with EDF Renewables took place on 17 March 2022, 21 April 2022, 5 May 2022, 31 October 2022, 17 November 2022, 19 December 2022, 8 February 2023, 22 February 2023, 28 April 2023, 21 July 2023 and 3 October 2023.</p> <p>On 12 January 2024 EDF Renewables confirmed to the Applicant it would have no objection to the Project provided that the EDF Renewables development proposal (East Stour Solar) was not negatively impacted and proposed an interface/cooperation agreement to secure this. A template form of agreement was provided by EDF Renewables on 13 March 2024 but this form was not considered by the Applicant to be appropriate.</p> <p>Following submission of the Application, the Applicant has sought further engagement with EDF Renewables. A number of positive discussions have been held and emails exchanged between the Applicant and EDF Renewables since September 2024. Heads of Terms for a cooperation agreement have been agreed which will ensure both the Project and the EDF Renewables East Stour Solar project can be delivered, if planning permission is granted (noting that permission for that project was refused but is subject to an ongoing appeal). The parties expect to progress these Heads of Terms to a signed co-operation agreement before the end of the Examination.</p>

Action Points

Applicant's response

Action Point 3(ii)

Section 127(1) of the Planning Act 2008 confirms that section 127 applies in relation to land if:

- (a) the land has been acquired by statutory undertakers for the purposes of their undertaking;
- (b) a representation has been made about a DCO application before the completion of the examination of the application, and the representation has not been withdrawn; and
- (c) as a result of the representation the Secretary of State is satisfied that: (i) the land is used for the purposes of carrying on the statutory undertakers' undertaking, or (ii) an interest in the land is held for those purposes.

The use of the word "and" at the end of section 127(1)(b) makes it clear that all three limbs must be satisfied in order for section 127 to apply.

The term "statutory undertakers" is defined for this purpose in section 127(8) of the Planning Act 2008 to have the meaning given by section 8 of the Acquisition of Land Act 1981 and also includes (amongst other things) undertakers which are deemed to be statutory undertakers for the purposes of that Act by virtue of another enactment. Schedule 16, paragraph 2(2)(g) of the Electricity Act 1989 states that *"A licence holder who is entitled to exercise any power conferred by Schedule 3 [Compulsory acquisition of land etc. by licence holders] to this Act shall be deemed to be a statutory undertaker and his undertaking a statutory undertaking for the purposes of... the Acquisition of Land Act 1981"*.

As far as the Applicant is aware, EDF Energy Renewables Limited falls within the definition of a statutory undertaker for this purpose as it was granted a licence under section 6(1)(a) of the Electricity Act 1989 on 29 May 2014. Paragraph 1 of EDF Energy Renewables Limited's Relevant Representation [\[RR-076\]](#) confirms that it holds a generation licence and considers itself to be a statutory undertaker. As far as the Applicant is aware, however, EDF Renewables Solar Limited does not fall within the definition of a statutory undertaker for this purpose.

Paragraph 2 of EDF Energy Renewables Limited's Relevant Representation states that: *"EDF has secured rights over the EDF Solar Site under two Option Agreements dated 9 September 2022 (held by EDF Energy Renewables Limited) and 24 November 2022 (held by EDF Renewables Solar Limited)"*. As only EDF Energy Renewables Limited is a statutory

Action Points	Applicant's response
	<p>undertaker, it is only the option agreement dated 9 September 2022 that is relevant for this purpose. Paragraph 1 of EDF Energy Renewables Limited's Relevant Representation states that part of the EDF Solar Site is included within the Order Limits for the Project, though it is unclear which (if any) of this land is covered by the 9 September 2022 option agreement. This option agreement is not registered on the relevant titles at the Land Registry and was not revealed by the land referencing exercise undertaken by the Applicant's land referencing team at Gateley Hamer.</p> <p>In any event, an option agreement simply grants the option holder the right to acquire the land within a specified period, and there is no transfer of legal or beneficial ownership until the option is exercised. Therefore, the existence of the 9 September 2022 option agreement is not sufficient to satisfy the requirement in section 127(1)(a), because the relevant land has not been acquired by EDF Energy Renewables Limited. On this basis, section 127 of the Planning Act 2008 does not apply to this land.</p>
<p>Action Point 4: The Applicant to provide further information regarding the required land take for the purposes of the cable crossing under the railway lines.</p>	<p>The Applicant has reviewed the Land Plans (Doc Ref. 2.1) [APP-007] and the Book of Reference (Doc Ref. 4.1) [APP-019] and confirms that, in the unlikely scenario that new ducts are required, sufficient land has been included within the Application to facilitate the construction of new ducts.</p> <p>Please also refer to the response to Action Point 1 in the Written Summary of Oral Submissions at Issue Specific Hearing 1 and Response to Action Points (Doc Ref. 8.5.3). This explains that UK Power Networks has confirmed to the Applicant that it completed its investigations to consider the soundness of the existing ducts under the railway on 21 November 2024.</p> <p>UK Power Networks has further confirmed its intention to relocate the existing 33kV electrical cables to release one of the existing ducts to allow the installation of the new 132kV cable for the Project, which is the preferred option (Option A). However, to ensure that the delivery of the Project is not jeopardised in the event that unforeseen circumstances mean the existing ducts are not available to be used by the Project due to future damage or other unforeseen circumstances, the land needed for the alternative option of installing new ducts under the railway (Option B) is included within the Application.</p>

Action Points	Applicant's response
<p>Action Point 5: The Applicant to confirm whether it is proposed to compulsorily acquire any mining rights in the context of Article 23 of the Draft DCO.</p>	<p>The Applicant confirms that it is not seeking to acquire any mining rights as part of the implementation of the compulsory acquisition powers sought in the Draft DCO (Doc Ref. 3.1(B)).</p>
<p>Action Point 6: The Applicant to consider whether the land interests owned by Network Rail and the Environment Agency within the Order limits should be treated as Crown interests.</p>	<p>The Applicant does not consider the land interests which are owned by Network Rail and the Environment Agency within the Order Limits to be correctly characterised as Crown interests for the purposes of section 135 of the Planning Act 2008. The Applicant does not consider that either party is an "appropriate Crown authority" for the purposes of section 135(1)(b). Instead, both Network Rail and the Environment Agency are classified as executive non-departmental bodies who operate at an arm's length from Ministers, meaning that they operate independently and are not managed directly by government, including in respect of their landholdings. It is for this reason that the Applicant considers they are not Crown Interests and as such the inclusion of land over which they own rights within the extent of the compulsory acquisition powers sought in the Draft DCO (Doc Ref. 3.1(B)) does not engage section 135 of the Planning Act 2008.</p>
<p>Action Point 7: The Applicant to explain the approach that should be adopted if Crown consent under section 135 of the Planning Act 2008 from the Secretary of State for Transport is not forthcoming.</p>	<p>As explained in paragraphs 1.4.2 and 1.4.3 of the written summary in part 1 of this document, all Crown Land plots included within the Order Land relate to land around the railway and are interests own by the DfT. The Applicant has been engaging with the DfT since May 2022 to secure the rights and access to carry out relevant parts of the Project and to obtain Crown consent.</p> <p>On 14 November 2024, the DfT responded to the Applicant and requested an undertaking for their costs of providing the necessary consent. The Applicant subsequently provided this undertaking on 6 December 2024 and requested a draft form of the consent documentation for review as soon as possible.</p> <p>At no point during discussions has the DfT indicated that consent will not be forthcoming, so the Applicant has no reason to believe that this will not be the case. Given that the Examination is not due to close until 19 May 2025, the Applicant is confident this is a sufficient period of time to secure consent from the Secretary of State for Transport.</p>

Action Points	Applicant's response
<p>Action Point 8: The Applicant to provide further information regarding the corporate structure and financial standing of the Applicant.</p>	<p>The Applicant has submitted an updated Funding Statement (Doc Ref. 4.3(A)) to include information requested by the ExA.</p> <p>The Applicant notes the statements made by the Secretary of State regarding funding in his Decision Letter for the Sunnica Energy Farm dated 12 July 2024. Specifically at paragraph 6.54 of the Decision Letter the Secretary of State noted that the applicant (Sunnica Limited) had provided an indication of how any potential shortfalls are intended to be met, rather than evidencing that they have the exact capital available currently, and that that this is common for large infrastructure projects and has been accepted by the Secretary of State on a number of previous applications. This is consistent with the requirements of paragraphs 17 and 18 of the (then) Department for Communities and Local Government's <i>'Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land' dated September 2013 ('CA Guidance')</i>, which states that an applicant "should be able to demonstrate that adequate funding is <u>likely to be available</u>" (our emphasis), not that it has already been secured.</p> <p>The Applicant's Funding Statement (Doc Ref. 4.3(A)) clearly demonstrates that should additional funding be required to deliver the Project, it has the relationships and experience to secure this funding. The Applicant further notes that Article 49 of the Draft DCO (Doc Ref. 3.1(B)) requires that a guarantee or alternative form of security is to be put in place and approved by the Secretary of State to cover the liabilities of the undertaker to pay compensation before any compulsory acquisition or temporary possession powers could be exercised.</p> <p>The Applicant therefore considers that the Funding Statement (Doc Ref. 4.3(A)) is satisfactory and complies with the requirements of legislation, policy and the CA Guidance.</p>
<p>Action Point 9: The Applicant to consider whether further information is required in connection with the cost estimates provided in the Funding Statement.</p>	<p>The Applicant has submitted an updated Funding Statement (Doc Ref. 4.3(A)) to include information requested by the ExA.</p>

