

National Highways Deadline 3 response including response to questions from Examining Authority ExQ1

Title:	National Highways- ExQ1 Question Response
Applicant	RWE Renewables UK Solar and Storage Limited
Proposal	Application by RWE Renewables UK Solar and Storage Limited for an Order Granting Development Consent for Byers Gill Solar Farm
Author	National Highways Limited
Date	19 th September 2024

Introduction

National Highways Limited (“National Highways”) has been appointed by the Secretary of State for Transport as strategic highway company under the provisions of the Infrastructure Act 2015 and is the highway authority, traffic authority and street authority for the Strategic Road Network (SRN). The SRN is a critical national asset and as such National Highways work to ensure that it operates and is managed in the public interest, both in respect of current activities and needs as well as in providing effective stewardship of its long-term operation and integrity.

This note provided below responds to the Examining Authority’s Written Questions (ExQ1) which relate to National Highways regarding the Byer Gills Solar Farm proposed development and response to the updated draft development consent order submitted by the Applicant at deadline 2.

National Highways sent a holding response on the 30th August and apologises for the time taken to provide its full response to the ExQ1.

National Highways response to CA.1.8

In your role as the Local Planning Authority and the Highway Authority are you aware of:

- 1. Any reasonable alternatives to CA or Temporary Possession (TP) for land sought by the Applicant?*

2. Any areas of land or rights that the Applicant is seeking the powers to acquire but that you consider would not be needed? If so, please provide details on which plots and explain why you consider they would not need to be acquired.

National Highways are the registered landowners of plots 1/1 and 3/1 identified in the Book of Reference (AS-017). The Applicant has also identified National Highways as the freehold owner of the unregistered Plots 1/2 and 3/6 after applying the ad medium filium rule ie. the presumption that adjacent landowners to a highway own land abutting a road up to the middle line.

Plots 1/1, 3/1 and 3/6 concern the subsoil to the public highway Aycliffe Lane and Plots 1/1/ and 1/2 concern the subsoil to public highway Lime Lane. Darlington Borough Council are the highway authority for Lime Lane and Aycliffe Lane. On the basis National Highways is not the highway authority for either Lime Lane or Aycliffe Lane and therefore have no interest in these plots we do not have any comments in relation to their compulsory acquisition. Now that this ownership anomaly has been brought to our attention National Highways will take steps to regularise the position by ensuring that ownership of the subsoil beneath the local road network passes to the local highway authority. In the meantime, should the local highway authority wish to object to the compulsory acquisition of these plots then we would support that objection whilst registered as the owner.

National Highways response to CA 1.17

National Highways [AS-009] are requested to comment on the Applicant's approach to on-road cabling in relation to CA and the need, or not, for CA or TP of land

National Highways is of the view that compulsory powers are not necessary in respect of cabling within the highway (or its subsurface). Street authorities routinely permit such works pursuant to the New Roads and Street Works Act 1991 (NRSWA). This does not involve an undertaker having to acquire the subsurface of the highway as is

being proposed here. The draft DCO already contains the equivalent NRSWA provisions to authorise the street works. The only thing missing is the consent to enter the subsoil, which would otherwise be a trespass if the cabling is taking place at a depth beneath the highway zone of ordinary use. This could easily be addressed by a simple drafting tweak to the relevant street works article such that the street authority provides its consent (subject to reasonable conditions). This would negate the need for CA powers which are considered unnecessary and disproportionate in these circumstances. Given this reasonable alternative to CA it cannot be said that the undertaker has made out its case to satisfy the necessary tests for CA being an option of last resort.

National Highways response to the updated draft development consent order submitted by the Applicant at deadline 2

National Highways has requested it be consulted on the updated Construction Traffic Management Plan (CTMP) and Decommissioning Traffic Management Plan (DTMP). It is noted Schedule 2, Part 1, Requirement 6 of the draft development consent order contains a requirement for National Highways (as highway authority) to be consulted on the CTMP however it is noted Schedule 2, Part 1, Requirement 5 does not extend to the consultation of National Highways in relation to the DTMP and, as drafted, there is no certainty that National Highways would be consulted by the LPA before approval is granted.

It is requested that Requirement 5(4) is amended to require the consultation with National Highways on the updated DTMP in line with the wording included at requirement 6(1) for surety that de-commissioning will not have an adverse impact on the operation of the Strategic Road Network in the future.