



National Infrastructure
Planning
Temple Quay House
2 The Square
Bristol, BS1 6PN

Customer
Services: 0303 444 5000
e-mail: byersgillsolar@planninginspectorate.gov.uk

To: The Applicant

Our Ref: EN010139

Date: 11 October 2024

Dear Michael Baker,

Planning Act 2008 (as amended) and The Infrastructure Planning (Examination Procedure) Rules 2010 (as amended) – Rule 9

Application by RWE Renewables UK Solar and Storage Limited for an order granting development consent for Byers Gill Solar (Proposed Development)

Procedural Decision regarding Notification of the Applicant's intention to submit a Change Application

RWE Renewables UK Solar and Storage Limited (the Applicant) gave notice to the Examining Authority (ExA), on the 27 September 2024, of its intention to submit a request to make changes to an order granting development consent for Byers Gill Solar (Proposed Development). The ExA used its discretion and accepted and published the Notification of intention to submit a Change Application [\[AS-021\]](#) (the Change Notification) on the 27 September 2024.

The Change Notification submitted [\[AS-021\]](#) identifies the nature of the changes proposed and suggests how the submission of the Change Application could be accommodated within the Examination Timetable. The Applicant also states that it intends to submit a formal Change Application on the 18 October 2024.

The Applicant sets out in the Change Notification letter the two changes it intends to submit. These are summarised below:

Change 1: Acquisition of new rights over subsoil interests which is expected to include changes to the draft Development Consent Order (dDCO) and associated Compulsory Acquisition (CA) documents to allow the Applicant to CA new rights over subsoil land beneath highway plots which are within the existing Order limits.

Change 2: extension to the Order limits and Work No.3 within Panel Area A to include section of an existing private access track known as High House Lane, more specifically the section between the entrance to Lovesome Hill Farm and where High House Lane turns north towards High House and re-enters Panel Area A.

It is the Applicant's initial view that the proposed changes would not have any new or different likely significant environmental effects compared to those reported in the Environmental Statement (ES). However, the Applicant states that it intends to publicise (in accordance with the spirit of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017) any further environmental information arising in connection with the proposed changes. It is also the Applicant's view that the proposed Changes, when considered separately or collectively, are not so substantial as to constitute a materially different project.

The Applicant considers that Change 1 will engage the provisions of the CA Regulations because it involves upgrading the Applicant's powers of compulsory acquisition over various subsoil plots within the Order limits.

In section 4 of the Change Notification [\[AS-021\]](#) the Applicant confirms that it is in the process of contacting all persons with an interest in the relevant subsoil land to request their consent to the inclusion of additional compulsory acquisition powers in the dDCO. The Applicant states that letters were sent on the 26 September 2024 to all Affected Persons with a registered subsoil interest and all Affected Persons with a presumed interest.

The Applicant also states it is confident that if written consent of all Affected Persons is not or cannot be obtained, that the procedures in Regulations 5 to 19 of the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (the CA Regulations) can be accommodated within the time remaining for Examination of the DCO Application.

The ExA has considered the Planning Inspectorate's Guidance on [Changes to an application after it has been accepted for examination](#) (PINs Guidance on Change), the CA Regulations and the guidance on the Planning Act 2008: Examination stage for Nationally Significant Infrastructure Projects dated April 2024 (the Examination Stage Guidance), and makes the following comments.

Materiality

The PINs Guidance on Change states that the ExA will consider whether, following the proposed changes, the project will be substantially the same as the project which was initially applied for. The ExA will also consider if the combined impact of the proposed changes may collectively result in a materially different project. This is a decision for the ExA.

It is also noted that regardless of the ExA's view on the nature of the change, the Applicant intends to publicise in accordance with the EIA Regulations, any further environmental information arising in connection with the proposed changes in parallel with carrying out consultation under the CA Regulations.

Although the Examination Stage Guidance states that the ExA will not be able to indicate what degree of change would be acceptable in advance of the Applicant submitting a proposed change request, based on the information submitted as part of the Change Notification, the ExA is minded to agree with the Applicant's assessment in relation to materiality.

However, and in line with the Examination Stage Guidance, the ExA stresses we will only be able to come to a view on the acceptability of the proposed change, and confirm this to the Applicant, once the change request is submitted.

Consultation on potential changes

Section 7 of the Change Notification [\[AS-021\]](#) sets out the Applicant's proposed consultation approach.

Given that Change 1 – Acquisition of new rights over subsoil interests would involve upgrading the Applicant's powers of compulsory acquisition over diverse subsoil plots within the Order limits, the Applicant is of the view that the provision of the CA Regulations would be engaged. The Applicant also considers that Change 2 will not engage the provisions of the CA Regulations as it does not involve any change in the Applicant's compulsory acquisition powers.

The ExA agrees with the Applicant that the proposed Change 1 would invoke the requirements of the CA Regulation as these would result in an 'upgrade' in powers sought over some plots.

It is noted that the Applicant has started the process of contacting all persons with an interest in the relevant subsoil land ("Affected Persons") with letters having been sent out on the 26 September 2024, as stated in the Change Notification [\[AS-021\]](#).

The Applicant also states that if written consent of all Affected Persons is not obtained, or it is not possible to identify all Affected Persons where subsoil interests are unregistered, in accordance with regulation 4 of the CA Regulations the procedures in regulations 5 to 19 of the CA Regulations would apply.

The ExA agrees that that the consultation must engage all those persons identified in the Planning Act 2008 under section 42 (a) to (d) who would be affected by the proposed changes including any section 42 persons not originally consulted on the application but who may now be affected by the proposed changes. The ExA also agrees that, since Change 1 engages the CA Regulations, if it is not possible to identify all Affected Persons where subsoil interests are unregistered, the procedures in regulations 5 to 19 of the CA Regulations would apply and therefore the Applicant should consider how these procedures could be accommodated within the examination timetable.

The Applicant is confident that these procedures can be accommodated within the time remaining for Examination of the DCO Application. The Applicant's proposed timetable for examining the Change Application is included in section 7 of the Change Notification.

The Applicant also sets out in section 8 of the Change Notification how it will comply with the publicity requirements of the CA Regulations and the EIA Regulations regarding the proposed changes. The Applicant proposes notices in local newspapers and national press, site notices to be affixed close to the relevant locations and also notices served on the persons prescribed by Regulation 7(I) of the CA regulations and the EIA Regulations.

The ExA considers that the proposed consultation is appropriate and proportionate given the specific targeted nature of the proposed change and therefore further non-statutory consultation is not required.

When submitting the change request, the ExA would ask the Applicant also submits a statement which:

- a) lists the persons (affected by the change request) under section 42 (a) to (d) who have been consulted;
- b) clarifies what the Applicant means by “proportionate neighbour notification” as set in paragraph 8.1(c) of the Change Notification and if those persons are included in a) above;
- c) identifies those section 42 (d) persons who are “affected persons” within list a), meaning those persons over whose land compulsory acquisition powers will be exercised;
- d) provides justification as to why any person under section 42 (a) to (d) is not affected by the proposed changes and has not therefore been consulted (if any); and
- e) appends as an annex any details of any consultation processes already undertaken including copies of the letters sent on the 26 September 2024 in relation to Change 1, any notices published and any responses thereto which should always be sent directly to the Applicant.

Timetable

In Table 2 of the Change Notification [\[AS-021\]](#), the Applicant has set out its proposed timetable for the Change Application, confirming how the Applicant anticipates that the procedures under regulations 5 to 19 of the CA Regulations could be accommodated within the examination timetable.

The ExA has considered the proposed Timetable and it is imperative, given the limited time remaining in the Examination, that the Applicant submits the change request and associated documents in line with the timetable agreed. As the time remaining in the Examination is limited, the ExA would request that the Applicant’s intended Relevant Representations period (RR period) for the proposed change request is no longer than a 30-day period.

In order for the proposed change request to be accommodated within the Examination Timetable, should it be accepted, the ExA would also require written confirmation from the Applicant that it is able to provide the Regulation 9a Notice and Regulation 9b Certificate¹ the next working day following the close of the RR period (i.e. by COP Monday 16 December 2024). The Applicant should confirm this in writing when submitting its change request.

In addition to this, the Applicant is also asked to consider what the implications would be for the Proposed Timetable if the ExA were able to accept the Change Application by the 25 October 2024. The Applicant is then asked to present an alternative timetable setting this out, for the ExA’s consideration, alongside the change request. The Applicant is also encouraged to set all Deadline for regular working days.

Should any submission not be made in line with the proposed timetable, then the Applicant is asked to give an indication as to how it considers the request can be accommodated within the Examination Timetable.

¹ In accordance with Regulations 9a and 9b of the CA Regulations

If you have any questions about the content of this letter, please contact the Byers Gill Planning Inspectorate Case Team on byersgillsolar@planninginspectorate.gov.uk

Yours faithfully,

Andre Pinto

Lead Member of the Panel of Examining Inspectors