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To: The Applicant, all Interested Parties,
Affected Persons, Category 3 Persons
and Other Persons

Our Ref: EN010139

Date: 1 November 2024

Dear Sir/Madam

**Planning Act 2008 (as amended) – Section 89; and The Infrastructure Planning
(Examination Procedure) Rules 2010 (as amended) – Rule 8, 9 and 17**

**The Infrastructure Planning (Compulsory Acquisition) Regulations 2010 –
regulations 4 to 19**

**Procedural Decisions and request for further information following request to make
a change to the original application for a Development Consent Order for Byers Gill
Solar and Amending the Examination Timetable**

We are writing to inform you of Procedural Decisions made by the Examining Authority
(ExA) in relation to the Applicant's request for the ExA to accept amendments, known as a
Change Request, to the above mentioned application.

The Change Request was submitted to the ExA on 18 October 2024 and published on 25
October 2024 [\[CR1-001\]](#) to [\[CR-018\]](#). The Change Request follows from Procedural
Decisions made by the ExA on 11 October 2024 [\[PD-007\]](#) in which the ExA provided its
view on the Applicant's Notification of Intention to submit a Change Application [\[AS-021\]](#)
(the Change Notification). All documentation referred to herein has been published under
the 'Documents' tab on the [project webpage](#) of the National Infrastructure Planning
website.

1. The Change Request

The Change Request comprises two changes which are summarised below in line with the
Change Application Summary Report [\[CR1-012\]](#).

*Change 1: the inclusion of provisions in the draft DCO for the compulsory acquisition of
new rights over subsoil land beneath highway plots which are within the existing Order
limits.*

*Change 2: minor extension of the Order limits and Work No.3 within Panel Area A to
include and cover part of an existing private access track known as High House Lane.*

In support of the Change Request, the Applicant has submitted a series of different documents which have been published under the 'Documents' tab on the [project webpage](#) of the National Infrastructure Planning website [\[CR1-001 to CR1-018\]](#). These are also detailed in Table 7-1 of the Change Application Summary Report [\[CR1-012\]](#).

As set out in the Planning Inspectorate's Guidance¹ (the PINs Guidance), upon receipt of a request to make a change to an application, the ExA must initially consider whether the development now being proposed is, in substance, the same as the development which was originally applied for. The ExA must also consider if the combined impact of a series of incremental changes, may collectively result in a materially different project.

The PINs Guidance also states that the ExA must consider the impact of the proposed change on the Interested Parties (IPs) and anyone that could be affected.

In relation to additional Compulsory Acquisition (CA) powers, the PINs Guidance states that if the Applicant is requesting a change which would require additional CA powers, they must obtain consent for the inclusion of those additional powers from all persons with an interest in the additional land, as per The Infrastructure Planning (Compulsory Acquisition) Regulations (the CA Regulations). If the Applicant is not able to obtain this consent before they request the change to the application, then regulations 5 to 19 of the CA Regulations would be engaged.

If the ExA considers that the effect of the change would not be so substantial as to constitute a materially different project, the change may be accommodated as part of the Planning Act 2008 (PA2008) examination process provided that the ExA considers there is sufficient time remaining.

In addition to the above, the ExA will also take into consideration the guidance set out in the Planning Act 2008: Examination stage for Nationally Significant Infrastructure Projects² dated April 2024 (the Examination Stage Guidance).

2. ExA's reasoning and decision in relation to the Change Request

Change 1, as described by the Applicant, has been identified following engagement between the Applicant, the ExA and Darlington Borough Council as Local Highways Authority.

The ExA first raised concerns regarding the Applicant's approach to CA on 09 May 2024 [\[PD-002\]](#) where it asked the Applicant to consider its approach to land rights required to deliver the proposed on-road cable route, particularly in relation to subsoil rights. The Applicant's reply to the ExA [\[AS-008\]](#) confirmed the Applicant's approach was, in its view, sufficient to secure the delivery of the on-road cable route option, if needed.

¹ [Nationally Significant Infrastructure Projects: Changes to an application after it has been accepted for examination - GOV.UK](#)

² [Planning Act 2008: Examination stage for Nationally Significant Infrastructure Projects - GOV.UK](#)

This issue was then raised again by the ExA at the Issue Specific Hearing 1 (ISH1) [\[PD-003\]](#), at the ExA's First Written Questions (ExQ1) [\[PD-004\]](#) and, more recently, at CAH1 [\[EV9-001\]](#). The Applicant now confirms, in the Change Application Summary Report [\[CR1-012\]](#), that it believes that separate additional land rights would be required to the extent that any cabling for the on-road route is laid at a depth beneath the strata of land comprising publicly adopted highway, and therefore seeks to submit the above mentioned change request.

The Applicant has confirmed, in paragraph 3.1.1 of the Change Application Summary Report [\[CR1-012\]](#), that it considers that Change 1 engages the provisions of the CA Regulations because it involves upgrading the Applicant's powers of compulsory acquisition over various subsoils plots within the Order Limits.

At CAH1, on 16 October 2025, Darlington Borough Council confirmed, as one of the relevant local highway authorities, that there is uncertainty in relation to the depth of the highway strata and therefore could not be sure that the Applicant would not require to go beyond the strata. Considering the uncertainty that remains in relation to the depth of the highway strata, the ExA agrees with the Applicant's view and justification for the proposed change.

The ExA also agrees that Change 1 would invoke the requirements of the CA Regulations as it would result in an 'upgrade' in powers sought over some plots already included in the Order limits. As such, and in accordance with PINs Guidance and the CA Regulations, the Applicant must carry out additional statutory consultation as to 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.

As per 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.

In order to demonstrate this, the Applicant has provided the ExA with two proposed options for consultation and examination of changes in Table 1-2 of the Change Application Summary Report [\[CR1-012\]](#). For the ExA's view on both the proposed timetable options, please see the Examination Timetable section below.

On the basis that the consent of all those with an interest in the land has not been obtained, the Applicant will need to submit full copies of the documents required by Regulation 5 of the CA Regulations and to notify the Affected Persons in accordance with the requirements in Regulations 7, 8 and 9.

Change 2 is being requested by the Applicant to clarify within the Development Consent Order (DCO) process the Applicant's proposals for High House Lane in relation to upgrade works for construction access. The Applicant also states that these works, which secure improvements to the surface condition of High House Lane and clarify management measures ensuring the priority and safety of users of Footpath No. 9 during the

construction period, are as a result of on-going engagement with IPs and relevant landowners.

In paragraph 3.1.4, the Applicant also confirms that it considers that Change 2 does not engage the provisions of the CA Regulations. The ExA agrees with the Applicant's view and justification for Change 2 and agrees that the proposed change does not invoke the CA Regulations.

In relation to both Change 1 and Change 2, the ExA has reviewed the information submitted by the Applicant and finds that neither one of the proposed changes, when considered individually or combined, are so material as to constitute a different project. Also, the proposed changes are not considered, individually or cumulatively, to lead to the project being different in nature or substance to that which was originally applied for.

However, the Applicant must also be alive to the fact that, considering the significant number of Affected Persons that are relevant to Change 1 and the additional compulsory acquisition rights sought, the Applicant is advised to start engagement as early as possible in order to provide the ExA with evidence of meaningful consultation and involvement with those Affected Persons.

The ExA does note that the Applicant has stated, in both the Change Application Summary Report [\[CR1-012\]](#) and the Change Notification [\[AS-021\]](#), that letters have been sent out to all persons with an interest in the relevant subsoil land (Affected Persons) on 26 September 2024 in relation to Change 1.

The ExA asked for any details of any consultation processes already undertaken to be submitted for its consideration and to provide advice regarding the adequacy of consultation already carried out, in accordance with the PINs Guidance. In response, the Applicant stated in section 3.2 of the Change Application Summary Report [\[CR1-012\]](#) that the information requested would be provided following the conclusion of the consultation process, via the submission of a Consultation Report. Although the ExA is willing to accept this approach, it means it is not in a position to provide any comment or advice to the Applicant regarding the adequacy or appropriateness of the consultation already carried out.

The ExA also requested, in its letter of 11 October 2024 [\[PD-007\]](#), for clarification of what the Applicant meant by "proportionate neighbour notification" in relation to Change 2 and if those persons were included in the list of persons (affected by the change request). The Applicant has now clarified, in the Change Application Summary Report [\[CR1-012\]](#), that it will send written notification and an invitation to respond to Lovesome Hill Farm and High House Farm to Change 2, as these are the two properties that utilise the section of High House Lane that would be affected. The ExA has reviewed this information and agrees with the Applicant's approach subject to the request made below in relation to additional information being carried out.

Further Procedural Decisions and request for information (Rule 17)

In light of the above, the ExA has made the Procedural Decision to accept the request for a change to be made to the DCO application for Byers Gill Solar. However, please note that, as per the PINS Guidance³, the ExA is only required to decide whether to accept or reject the change application once it can consider the consultation responses and any other representations made on the proposed change request.

In reviewing the submissions for the change request, the ExA has also made the following decisions:

- The Applicant is requested to carry out statutory consultation in accordance with the relevant CA Regulations for Change 1;
- The ExA notes the Applicant's intention to carry out, voluntarily, non-statutory consultation to reflect the EIA Regulations for Change 2;
- Based on the Change Application Summary Report, the Applicant is requested to produce as part of its consultation a non-technical Statement of Purpose in which it details the reasons for the Proposed Changes. The Statement of Purpose should also include clear visual representation of the proposed changes in a map(s) (please see ExA's request in relation to Land Plans below);
- In line with Table 7-1 of the Change Application Summary Report [\[CR1-012\]](#) full copies of all the documents submitted for consideration as part of the Proposed Changes Application (in tracked change and clean versions) should be made available;
- A separate supplemental set of Land Plans should be produced by the Applicant, before the start of the statutory consultation, clearly identifying the land within the Order Limits in respect of Change 1 and Change 2 only.

The ExA notes the Applicant's intention to submit a Consultation Report in line with the information included in Table 7-1 of the Change Application Summary Report [\[CR1-012\]](#). In addition, the ExA also:

- Requests that the Applicant provides a copy of the Statement of Purpose;
- Requests that the Applicant provides full copies of all the documents set in Table 7-1 of the Change Application Summary Report [\[CR1-012\]](#) should be submitted (in tracked change and clean versions);
- Requests that the Applicant provides copies of any newspaper notices or site notices;
- Notes the submission of an updated CA Schedule (Rev.3) [\[CR1-011\]](#). However, the ExA requests that the Applicant submits a separate CA Schedule for those Affected Persons that are relevant to Change 1. The Applicant may use the same structure as CA Schedule (Rev.3) [\[CR1-011\]](#) but the ExA asks that the Applicant includes additional information in relation to the Applicant's case for CA for each site, the basis for the AP's objection to the CA of land (if applicable) and relevant dates of consultation/engagement;
- Notes the Applicant's statement in relation to Funding. However it asks that the Applicant submits an updated version of the Funding Statement [\[APP-016\]](#);

³ [Nationally Significant Infrastructure Projects: Changes to an application after it has been accepted for examination - GOV.UK](#)

- In line with the PINs Guidance, asks the Applicant to confirm, in relation to proposed voluntary consultation in accordance with the EIA Regulations 2017, who has been consulted in relation to the proposed change and explain how and why they have been consulted; include details of how the Applicant has considered the content of the consultation responses received; include copies of all consultation responses received, including any responses to publicity about the proposed change. These should be included as an annex to the Consultation Report.

Examination Timetable

As previously mentioned within this letter, the Applicant has included in the Change Application Summary Report [\[CR1-012\]](#) a proposed timetable with two options for the change application which, in the Applicant's view, takes into account the statutory requirements for consultation.

However, having reviewed the CA Regulations and taking into consideration the number of Affected Persons relevant to Change 1 and the additional compulsory acquisition sought, the ExA is of the view that the period for Relevant Representations should not run concurrently with the period for Written Representations, as the Applicant suggested, as to ensure that no new Affected Persons are prejudiced by the Examination process. This is due to the fact that the CA Regulations are clearly drafted in chronological order and the ExA is mindful that Change 1 would lead to a significant number of new Affected Persons, as confirmed by the Change Application Summary Report [\[CR1-012\]](#).

Although the ExA recognises and acknowledges that the majority of those potential new Affected Persons identified by the Applicant are already known to the ExA as IPs and have engaged with the Examination process, the nature of their engagement changes if the Applicant's Change 1 is accepted.

With this in mind and based on the Applicant's proposed Option 1 timetable, the ExA has reviewed the proposed timetable and publishes a revised Examination Timetable (see Annex A) under Regulation 8(3) of the Examination Procedure Rules to make express provision for procedures that are required to examine the proposed changes under the CA Regulations. These include the submission of Relevant Representations on the proposed changes, submission of Written Representations and time reserved for oral examination at Hearings (if required). At present, we anticipate holding these additional hearings as virtual events.

The ExA is, consequently, satisfied that there is sufficient time within the Examination for the proposed changes to be properly and fairly examined including the opportunity for written submissions and any oral representations to be made at any hearings that are required, along with the procedural requirements of the CA Regulations.

As per the PINs Guidance, when the ExA will decide whether to accept or reject the change application, after it has considered the consultation responses and any other representations made on this matter. In accordance with Regulation 12 of the CA Regulations, once the ExA decides on the change application, it will send the timetable to all additional Affected Persons, additional IPs, IPs and any other person it has invited to any meeting.

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

Annex:

A. Revised Examination Timetable

Revised Examination Timetable (with variations in Red)

The Examining Authority (ExA) is under a duty to **complete** the Examination of the application by the end of the period of six months beginning with the day after the close of the Preliminary Meeting.

The Examination of the application primarily takes the form of the consideration of written submissions. The ExA will also consider any oral representations made at hearings.

Item	Matters	Date
1.	<p>Procedural Deadline A</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • Written submissions on the Examination Procedure and Timetable • Requests to be heard orally at the Preliminary Meeting • Request to participate in the Issue Specific Hearing 1 (ISH1) • Requests to be heard orally at the Open Floor Hearings (OFH) 1 or 2 • Suggested locations for site inspections (Accompanied and/or Unaccompanied), including justification 	10 Jul 2024
2.	Preliminary Meeting	Tuesday, 23 Jul 2024 at 10:00
3.	<p>Issue Specific Hearing (ISH) 1</p> <ul style="list-style-type: none"> • Overview of the Proposed Development and the Development Consent Order 	Tuesday, 23 Jul 2024 at 14:00
4.	Open Floor Hearing (OFH) 1	Wednesday, 24 Jul 2024 at 10:00
5.	Open Floor Hearing (OFH) 2	Wednesday, 24 Jul 2024 at 18:00
6.	<p>Issue by the ExA of:</p> <ul style="list-style-type: none"> • Examination Timetable <p>Publication by the ExA of:</p> <ul style="list-style-type: none"> • The ExA's Written Questions (ExQ1) 	As soon as practicable following the Preliminary Meeting
7.	<p>Deadline 1</p> <p>For receipt by the ExA of:</p> <ul style="list-style-type: none"> • Post-hearing submissions including written submissions of oral cases as heard on the ISH1, OFH1 and OFH2 • Comments on Relevant Representations (RRs) • Summaries of all RR's exceeding 1500 words 	Tuesday, 13 Aug 2024

	<ul style="list-style-type: none"> • Applicant's draft itinerary for Accompanied Site Inspection (ASI) (if required) • Local Impact Report(s) (LIRs) • Statements of Common Ground (SoCG) • Statement of Commonality (SoC) of SoCG • The Compulsory Acquisitions (CA) Schedule • Status of Negotiations with Statutory Undertakers • Guide to the Application • Notification by Statutory Parties of their wish to be considered as an Interested Party (IP) by the ExA • Requests by Interested Parties (IPs) to be heard at a subsequent Open Floor Hearing (OFH) • Requests by Affected Persons (APs) (defined in section 59(4) of the Planning Act 2008) to be heard at a Compulsory Acquisition Hearing (CAH) • Any further information requested by the ExA under Rule 17 of The Infrastructure Planning (Examination Procedure) Rules 2010 • Comments on any information/submissions accepted by the ExA 	
8.	<p>Deadline 2</p> <p>For receipt by the ExA of:</p> <ul style="list-style-type: none"> • Response to the ExA's ExQ1 • Comments on LIR(s) • Written Representations (WRs), summaries of all WRs exceeding 1500 words • Comments from APs on the Applicant's Compulsory Acquisition Schedule • An updated version of the draft Development Consent Order (dDCO) in clean, tracked and Word versions • Updated Explanatory Memorandum • Updated Statement of Reasons • Updated Guide to the Application • Comments on the Applicant's draft itinerary for the ASI • Any further information requested by the ExA under Rule 17 of the Examination Rules • Comments on any further information/submissions received by Deadline 1 	Thursday, 29 Aug 2024
9.	<p>Deadline 3</p> <p>For receipt by the ExA of:</p>	Thursday, 19 Sept 2024

	<ul style="list-style-type: none"> • Comments on WRs • Updated SoCG • Updated SoC • Updated CA Schedule (if required) • Updated Guide to the Application • Comments on responses to ExQ1 • Any further information requested by the ExA under Rule 17 of the Examination Rules • Comments on any further information/submissions received by Deadline 2 	
10.	Publication by the ExA of: <ul style="list-style-type: none"> • ExA's final itinerary for the ASI (if held) 	Thursday, 19 Sept 2024
11.	Dates reserved for: <ul style="list-style-type: none"> • Compulsory Acquisition Hearing (CAH) • Issue Specific Hearings (ISH1) • ASI (if held) 	Week commencing 14 October
12.	Deadline 4 For receipt by the ExA of: <ul style="list-style-type: none"> • Post-hearing submissions including written submissions of oral cases (if required) • Updated Statement of Reasons (if required) • Updated CA Schedule (if required) • Updated Status of negotiations with Statutory Undertakers • Updated Guide to the Application • Any further information requested by the ExA under Rule 17 of the Examination Rules Comments on any further information/submissions received by Deadline 3	Thursday, 24 Oct 2024
13.	Publication by the ExA of: <ul style="list-style-type: none"> • The ExA's Written Questions (ExQ2) • ExA's commentary on, or schedule of changes to, the dDCO 	Friday, 1 Nov 2024
14.	Deadline 5 For receipt by the ExA of: <ul style="list-style-type: none"> • Responses to ExQ2 • Updated SoCG • Updated SoC • Updated Explanatory Memorandum 	Friday, 15 Nov 2024

	<ul style="list-style-type: none"> • Updated Statement of Reasons • Updated CA Schedule • Updated Status of negotiations with Statutory Undertakers • Updated Guide to the Application • Comments on the ExA's commentary on, or schedule of changes to, the draft DCO • An updated version of the dDCO in clean, tracked and word versions • Any further information requested by the ExA under Rule 17 of the Examination Rules • Comments on any further information/submissions received by Deadline 4 	
15.	<p>Dates reserved (if required) for:</p> <ul style="list-style-type: none"> • Any Compulsory Acquisition Hearings • Any Issue Specific Hearings • Any Open Floor Hearings 	Week commencing 25 Nov 2024
16.	<p>Deadline 6</p> <p>For receipt by the ExA of:</p> <ul style="list-style-type: none"> • Comments on responses to ExQ2 • Post-hearing submissions including written submissions • Updated Status of negotiations with Statutory Undertakers • Updated CA Schedule (if required) • Updated Guide to the Application • Comments on the dDCO • Comments on any further information/submissions received by Deadline 5 • Any further information requested by the ExA under Rule 17 of the Examination Rules 	Friday, 6 Dec 2024
17.	<p>Deadline 6a</p> <p>Closing date for CA Regulations Relevant Representations (CA Regulations RRs) relating to change request</p>	Monday, 16 Dec 2024
18.	<p>Deadline 6b</p> <p>For receipt by the ExA of the Applicant's Certificate of Compliance under Regulation 9 of the CA Regulations and Consultation Report relating to change request</p>	Tuesday, 17 Dec 2024
19.	<p>Publication by the ExA of:</p> <ul style="list-style-type: none"> • Procedural Decision in relation to the change application and whether the change application is accepted. • Timetable to be sent to all additional APs, additional IPs, IPs and any other persons 	Wednesday, 18 Dec 2024

20.	Start of Written Representations (in accordance with Regulation 13 of the CA Regulations)	Wednesday, 18 Dec 2024
21.	Publication by the ExA of: <ul style="list-style-type: none"> • ExA's Further Written Questions (if required) • Report on the Implications for European Sites (RIES) and any associated questions (if required) • ExA's further commentary on, or schedule of changes to, the dDCO (if required) 	Friday, 20 Dec 2024
22.	Deadline 7a For receipt by the ExA of: <ul style="list-style-type: none"> • Requests to be heard orally at the Open Floor Hearing from additional affected persons or additional interested parties • Requests to be heard orally at a Compulsory Acquisition Hearing) from additional affected persons or additional interested parties • Written Representations (WRs) (in accordance with Regulation 13 of the CA Regulations) • Comments on the CA Regulations RRs received by Deadline 6a 	Wednesday, 8 Jan 2025
23.	Deadline 7 <ul style="list-style-type: none"> • Response to Third Written Questions (if issued) • Comments on the ExA's commentary on, or schedule of changes to, the draft DCO • Comments on any additional information/submissions received by Deadline 6 Any further information requested by the ExA under Rule 17 of The Infrastructure Planning (Examination Procedure) Rules 2010	Friday, 10 Jan 2025
24.	Dates reserved for: <ul style="list-style-type: none"> • An Open Floor Hearing (OFH) • A Compulsory Acquisition Hearing (CAH) • An Issue Specific Hearing (ISH) on the Change Application • Any other additional hearings (if required) 	Wednesday 15 – Thursday 16 Jan 2025
25.	Deadline 8 For receipt by the ExA of: <ul style="list-style-type: none"> • Comments on the REIS (if issued) • Comments on responses to Third Written Questions (if required) • Final dDCO to be submitted by the Applicant in the SI template with the SI template validation report • Final Schedule of Changes to the dDCO • Final Explanatory Memorandum (EM) and schedule of changes to Explanatory Memorandum 	Friday, 17 Jan 2025

	<ul style="list-style-type: none"> • Final updated BoR and schedule of changes to BoR • Final CA Schedule • Final Status of Negotiations with Statutory Undertakers • Final SoCG • Final SoC • List of matters not agreed where SoCG could not be finalised • Final Guide to the Application • Comments on any further information/submissions received by Deadline 7 • Any further information requested by the ExA under Rule 17 of The Infrastructure Planning (Examination Procedure) Rules 2010 	
26.	<p>Deadline 8a</p> <p>For receipt by the ExA of:</p> <p>Comments on WRs received at Deadline 7a</p>	Friday, 17 Jan 2025
27.	<p>Deadline 9</p> <p>For receipt by the ExA of:</p> <ul style="list-style-type: none"> • Any further information requested by the ExA 	Thursday, 23 Jan 2025
28.	<p>Deadline 9a</p> <p>For receipt by the ExA of:</p> <ul style="list-style-type: none"> • Post-hearing submissions including written submissions of oral cases as heard at the hearings held on the 15 – 16 Jan 2025 	Thursday, 23 Jan 2025
29.	The ExA is under a duty to complete the Examination of the application by the end of the period of six months	Thursday, 23 Jan 2025

Submission times for Deadlines

The time for submission of documents at any Deadline in the timetable is 23:59 on the relevant Deadline date, unless instructed otherwise by the ExA.

Publication dates

All information received will be published on the [project webpage](#) as soon as practicable after the Deadlines for submissions.